

Republic of South Africa  
Companies Act, 2008

**MEMORANDUM OF INCORPORATION FOR A PUBLIC COMPANY**

Evolution Credit Limited  
Registration No. : 1999/020093/06

This MOI was adopted by special resolution passed on 26 January 2022 in substitution for the existing memorandum of incorporation of the Company

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## 1. INTERPRETATION

In this MOI –

- 1.1 words that are defined in the Companies Act (which are contained in **Schedule 1** for easy reference but which do not form part of this MOI for purposes and interpretation) but not defined in this MOI shall bear the same meaning in this MOI as in the Companies Act. For ease of reading, such terms have been capitalized in this MOI;
- 1.2 unless the context otherwise requires –
- 1.2.1 **“A Ordinary Shares”** means the A ordinary shares in the Company;
- 1.2.2 **“A Ordinary Terms”** means the preferences, rights, limitations and other terms of the A Ordinary Shares set out in Schedule 3;
- 1.2.3 **“Accounts”** means the certified audited consolidated accounts of the Group for the financial period ending on the 31 March of each year, prepared in accordance with IFRS;
- 1.2.4 **“Articles”** means the Articles contained herein;
- 1.2.5 **“Auditors”** means the Auditors of the Company from time to time;
- 1.2.6 **“Affiliate”** means, in respect of any particular Person (**“the Subject Person”**) –
- 1.2.6.1 any company (including a close corporation) which is Controlled by the Subject person; and
- 1.2.6.2 if the Subject Person is a company, any Person which/who Controls the Subject Person; and
- 1.2.6.3 any company (including a close corporation) which is Controlled by the same Person as the Subject Person;

- 1.2.7                    **“Applicable Laws”** mean the common law and any legislation of any nature whatsoever including without limitation, any acts, statues, regulations, proclamations, decrees, orders and by-laws which have the force of law;
- 1.2.8                    **“Asset Value”** means, in relation to the Group and or any particular day, the value of all the Group’s assets of any nature whatsoever, as reflected in the consolidated management accounts of the Group for the most recent Calendar Month, such consolidated management accounts to be prepared in accordance with the same accounting policies as those which were adopted in compiling the Group’s most recent consolidated audited financial statements;
- 1.2.9                    **“B Preference Shares”** means the cumulative perpetual B preference shares in the Company;
- 1.2.10                   **“B Preference Share Terms”** means the preferences, rights, limitations and other terms of the B Preference Shares set out in Schedule 4;
- 1.2.11                   **“Board”** means, in relation to any Subsidiary, the board of directors of that Subsidiary;
- 1.2.12                   **“Business”** means the business of the Group conducted from time to time as approved by the Directors;
- 1.2.13                   **“Business Day”** means any day other than a Saturday, Sunday or officially recognized public holiday in the Republic of South Africa;
- 1.2.14                   **“Calendar Month”** means each Month of the Gregorian calendar;
- 1.2.15                   **“C Preference Shares”** means collectively, the C1 Preference Shares and the C2 Preference Shares;

- 1.2.16                    **“C Preference Share Terms”** means collectively, the C1 Preference Share Terms and the C2 Preference Share Terms;
- 1.2.17                    **“C1 Preference Shares”** means the cumulative perpetual C1 preference shares in the Company;
- 1.2.18                    **“C1 Preference Share Terms”** means the preferences, rights, limitations and other terms of the C1 Preference Shares set out in Schedule 5;
- 1.2.19                    **“C2 Preference Shares”** means the cumulative perpetual C2 preference shares in the Company;
- 1.2.20                    **“C2 Preference Share Terms”** means the preferences, rights, limitations and other terms of the C2 Preference Shares set out in Schedule 6;
- 1.2.21                    **“CEO”** means the Company’s Chief Executive Officer from time to time;
- 1.2.22                    **“CIPC”** means the Companies and Intellectual Property Commission, or its successor in title;
- 1.2.23                    **“Claim”** means –
- 1.2.23.1                    for the purpose of Article 10, all of a Shareholders’ present or future rights, claims, entitlements or other interests against the Company relating to a shareholder loan;
- 1.2.24                    **“Companies Act”** means the Companies Act, 71 of 2008, as amended or any legislation which replaces it;
- 1.2.25                    **“Company”** means Evolution Credit Limited, registration number 1999/020092/06, a company duly registered and incorporated in accordance with the company laws of the Republic of South Africa, or by whatever other name it may be known from time to time;

- 1.2.26                    **“Companies Act Effective Date”** means the date on which the Companies Act came into operation, namely 1 May 2011;
- 1.2.27                    **“Control”** means, in relation to any company (including a close corporation) (1) the direct or indirect holding of more than 50% (fifty *per centum*) of the Equity Shares of such company or, in relation to a close corporation, the direct or indirect holding of more than 50% (fifty *per centum*) of the member’s interest in such close corporation, or (2) the right to appoint more than one half of the board of directors of such company, or (3) the right to exercise more than one half of the votes which are exercisable at general meetings of such company;
- 1.2.28                    **“Credit Policy”** means the Group’s policy which deals with –
- 1.2.28.1                    the criteria to be taken into account in reaching any decision whether or not to extend any credit to any Person; and
- 1.2.28.2                    the writing off, as bad debts, of any amounts which are owing to the Group and the making of provisions for bad debts; and
- 1.2.28.3                    the procedure for collecting monies which have become payable to the Group by any of its debtors;
- 1.2.29                    **“Debt”** means, in relation to any member of the Group, any liability arising out of the obtaining of any finance and/or credit including, without limitation, any liability arising out of –
- 1.2.29.1                    the borrowing of any money pursuant to any loan agreements and/or facility agreements of any nature; and
- 1.2.29.2                    the issue of any bonds, debentures or other debt instruments of any nature; and
- 1.2.29.3                    the issue of redeemable preference shares; and

1.2.29.4 the conclusion of any financial lease (and the question whether any particular lease is a financial lease or an operating lease shall be determined in accordance with IFRS),

but excludes any such obligations which are (1) convertible into Equity Shares at the election of the applicable member of the Group, or (2) owed by one member of the Group to another member of the Group, or (3) owed by any member of the Group on account of any Securitisation Debt, or (4) included in the definition of Equity.

1.2.30 **“Director Reserved Matters”** means the matters listed in Article 33 below;

1.2.31 **“Directors”** means the Company’s board of directors from time to time and **“Director”** means any one of them;

1.2.32 **“Disposal”** means any sale, transfer, cession, assignment, lease, alienation, donation, renunciation, surrender, waiver, relinquishment, exchange or other disposal of any nature whatsoever, and **“Dispose”** has a corresponding meaning;

1.2.33 **“Distribution”** means, in relation to the Company –

1.2.33.1 any repurchase, by the Company in terms of section 48 of the Companies Act, of any share of any class in the issued share capital of the Company;

1.2.33.2 the declaration and/or payment of any dividend by the Company; and

1.2.33.3 the making of any payment as envisaged in terms of section 46 of the Companies Act by the Company to its Shareholders;

1.2.34 **“Equity”** means, on any day, the aggregate of –



- 1.2.34.1 the Company's stated capital on that day, excluding any portion of that capital which is attributable to any shares which the Company has issued and which do not constitute Equity Shares; and
- 1.2.34.2 the Company's share premium on that day, excluding any such share premium which is attributable to any shares which the Company has issued and which are not Equity Shares; and
- 1.2.34.3 the principal amounts owing by the Company to any Person on account of any loans which that Person may have made to the Company provided that the applicable Person's claims for payment of the applicable principal amount have been subordinated (in a manner which is valid and binding) to the claims, against the borrower, of all other persons to whom the borrower owes any money arising out of any cause of action whatsoever; and
- 1.2.34.4 the Company's retained earnings and non-distributable reserves after deducting deferred tax assets and revaluation reserves (other than revaluation of immovable property and/or an increase in the value of any currency in which the Company deals), the Rand value of that Equity as reflected in the Company's consolidated management accounts for the most recently completed Calendar Month, such management accounts to be prepared in accordance with the same accounting policies as those which were adopted in compiling the Company's most recent consolidated audited financial statements;
- 1.2.35 **"Equity Shares"** means, in relation to any company, its issued shares, excluding any share which, neither as respects dividends nor as respects capital; carries any right to participate beyond a specified amount in a distribution;
- 1.2.36 **"Exchange Item"** means any Debt owed by any member of the Group to any Person if that Debt is payable in any Foreign

Currency;

- 1.2.37            **“Financial Year”** means the Group’s financial year;
- 1.2.38            **“Foreign Currency”** means any currency other than (1) South African Rand, or (2) any currency which is linked to the South African Rand;
- 1.2.39            **“Foreign Currency Exposure”** means, on any day, the Rand amount obtainable by –
- 1.2.39.1           adding together the nominal amounts of all the Group’s Exchange Items, other than Hedged Exchange Items, which sound in the same Foreign Currency;
- 1.2.39.2           multiplying the aggregate of such nominal amounts which sound in each such Foreign Currency by the applicable Spot Rate on that date; and
- 1.2.39.3           totaling the Rand amounts thus obtained in respect of each Foreign Currency;
- 1.2.40            **“Group”** means the Company and all its Subsidiaries from time to time, and **“Group Company”** means any one of them;
- 1.2.41            **“Group Business”** means the business of the Group as set out in Article 6 below;
- 1.2.42            **“Group Company”** means any member of the Group’
- 1.2.43            **“Group Executive Committee”** means the committee established by the Directors of the Company, comprising senior executives of the Group, which is tasked with the day-to-day management of the businesses of the Group, the membership and powers of which are set out in a document entitled Terms of Reference approved by the Directors of the Company from time-to-time;

- 1.2.44                    **“Hedged Exchange Item”** means any Exchange Item if the member of the Group which owes that Exchange Item (the **“Applicable Member”**) has concluded –
- 1.2.44.1                    a forward exchange contract or cross currency swap contract with a bank in terms of which the Applicable Member has purchased from that bank (for delivery on the day on which the Exchange Item becomes payable by the Applicable Member) an amount of the applicable Foreign Currency equal to the amount which the Applicable Member is obliged to pay under that Exchange Item, at a rate equal to the Spot Rate or forward exchange rate (if applicable) on the day on which the Debt which gave rise to that Exchange Item was incurred by the Applicable Member; or
- 1.2.44.2                    a Foreign Currency option contract with a bank which grants to the Applicable Member an option to purchase the amount of the Foreign Currency which it will become obliged to pay on account of that Exchange Item, on the date on which that Exchange Item becomes payable by the Applicable Member, at an exchange rate equal to the Spot Rate on the day on which the Debt which gives rise to the applicable Exchange Item was incurred by the Applicable Member;
- 1.2.45                    **“Holding Company”** means, in respect of a company or corporation, any company or corporation of which the first-mentioned company or corporation is a Subsidiary;
- 1.2.46                    **“IFRS”** means the International Financial Reporting Standards;
- 1.2.47                    **“Ineligible or Disqualified”** means ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Schedule 2** for easy reference but which do not form part of this MOI for purposes of interpretation);
- 1.2.48                    **“Issuer SPVs”** means Izabelo NOK B.V., registration number

70126127, a private company with limited liability duly incorporated in accordance with the laws of the Netherlands and Izabelo SEK B.V., registration number 70126097, a private company with limited liability duly incorporated in accordance with the laws of the Netherlands and “**Issuer SPV**” means any one of them;

1.2.49 “**Market Value**” means, in relation to any Share, the market value of that share as determined in accordance with the provisions of Article 27 below;

1.2.50 “**Material Subsidiary**” means any Subsidiary if, as at the last day of the most recent completed Financial Year, the net asset value of that Subsidiary (as reflected in the Group’s audited annual financial statements for that Financial Year) (or, until those audited financial statements are available, as reflected in the Group’s consolidated management accounts for the last Calendar Month of that Financial Year) exceeds 10% (ten *per centum*) of the consolidated net asset value of the Group (as reflected in the aforesaid audited financial statements or management accounts, as the case may be);

1.2.51 “**MOI**” means this Memorandum of Incorporation;

1.2.52 “**Month**” means each period which commences on one day (the “**First Day**”) in one Calendar Month and which ends on the same day but one in the next Calendar Month (the “**Second Calendar Month**”) provided that if (1) the First Day is the first day of a Calendar Month the applicable Month shall end on the last day of that Calendar Month, and if (2) there is no day in the Second Calendar Month which corresponds numerically to the First Day, the applicable Month shall end on the last day of the Second Calendar Month;

1.2.53 “**Ordinary Shareholders**” means holders of Ordinary Shares from time to time; and the term “**Ordinary Shareholder**” means any one of them;

- 1.2.54            **“Ordinary Shares”** means the ordinary shares issued in the ordinary issued share capital of the Company having no par value;
- 1.2.55            **“Permitted Transferee”** means, in relation to any Shareholder, an Affiliate of that Shareholder;
- 1.2.56            **“Person”** means any natural person and any juristic person and includes (1) any trust, and (2) the estate of any natural person;
- 1.2.57            **“Profits”** means the accumulated profits of the Company;
- 1.2.58            **“Qualifying Shareholders”** means holders of Qualifying shares in the Company from time to time; and the word **“Qualifying Shareholder”** means any one of them;
- 1.2.59            **“Qualifying Shares”** means both the Ordinary Shares and the A Ordinary Shares;
- 1.2.60            **“Schedule of Authorities”** means a document (as amended and replaced from time to time by way of a resolution of the Directors (or the applicable Board, as the case may be)) which sets out:
- 1.2.60.1                      with reference to his job title, the identity of each member of the Group Executive Committee who will have the authority to bind the Company (or one of its Subsidiaries) to any contracts and/or actions; and
- 1.2.60.2                      the extent of the authority delegated to that Person (by the Directors or by the applicable Board, as the case may be);
- 1.2.61            **“Securitisation Debt”** means any Debt which is or becomes owing by any (1) Subsidiary, and/or (2) other Person which is not an entity within the Group (the **“Consolidated Entity”**) to any third Person, if the financial results of the Consolidated Entity must, in terms of IFRS, be consolidated into the financial results of the Group, if –

- 1.2.61.1 the applicable Subsidiary was formed specially for the purpose of (1) purchasing any assets from any person, and (2) incurring Debt which it uses to pay the purchase price of the assets just purchased by it, and (3) paying its expenses and servicing its Debt out of monies which become payable to it on account of the assets which it has purchased; and
- 1.2.61.2 neither the Company nor any other Subsidiary is liable, in any manner whatsoever, for the Debt of the aforesaid Subsidiary or Consolidated Entity;
- 1.2.62 “**Share**” means any share in the capital of the Company as issued by the Company from time to time;
- 1.2.63 “**Shareholder Reserved Matters**” means the matters listed in Article 21 below;
- 1.2.64 “**Shareholders**” means holders of Shares in the Company from time to time; and the word “**Shareholder**” means any one of them;
- 1.2.65 “**Spot Rate**” means, in relation to any Foreign Currency and on any day, the exchange rate (between that Foreign Currency and South African Rand) as quoted on the applicable page of Reuters Screen at approximately 11 a.m. on that day;
- 1.2.66 “**Subsidiary**” means any subsidiary of the Company in the sense in which the expression “**subsidiary**” is defined in the Companies Act;
- 1.3 references to Shareholders represented by proxy shall include Shareholders entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.4 references to Shareholders entitled to vote Present at a Meeting or acting in person shall include juristic persons represented by a duly authorised representative or acting in the manner prescribed in the Companies Act;

- 1.5 all references to “section/s” in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.6 the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7 words in the singular shall include the plural, and words in the plural shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.8 if any term is defined within the context of any particular Article in the MOI, the term so defined, unless it is clear from the Article in question that the term so defined has limited application to the relevant Article, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.9 save to the extent that item 4(4) of Schedule 5 of the Companies Act may permit this MOI to prevail, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.10 the rule of construction that a contract shall be interpreted against the party responsible for the drafting of preparation of the contract, shall not apply to this MOI.

## **2. CALCULATION OF BUSINESS DAYS**

If any period is referred to in this MOI by way of reference to a number of days, the days shall be reckoned inclusively of the first and exclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.

## INCORPORATION AND NATURE OF THE COMPANY

### 3. PUBLIC COMPANY

The Company -

- 3.1 is a Public Company; and
- 3.2 is not prohibited from offering its Shares or other securities to the public; and accordingly is a Public Company.

### 4. POWERS AND CAPACITY OF THE COMPANY

- 4.1 The Company has the powers and capacity of an individual. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a company to do if so authorised by its MOI.
- 4.2 The Company is not subject to provisions contemplated in section 15(2)(b) or (c).

### 5. INCORPORATION

- 5.1 The Company is governed by –
  - 5.1.1 the unalterable provisions of the Companies Act; and
  - 5.1.2 the alterable provisions of the Companies Act, subject to the limitations, extensions, variations or substitutions set out in this MOI; and
  - 5.1.3 the provisions of this MOI.

### 6. GROUP BUSINESS

- 6.1 The business of the Group shall consist of –
  - 6.1.1 lending money to members of the public;



6.1.2 purchasing claims which arise out of the lending of money by any financier, or the provision of credit by any supplier of goods and/or services, to members of the public (whether or not the applicable credit receivers have defaulted in their obligations to the applicable credit providers);

6.1.3 outsourced collections and assurance.

## **7. MANAGEMENT**

7.1 The day-to-day management of the business of the Group shall vest in the Group Executive Committee which will in exercising its powers, adhere to the Schedule of Authorities referred to in Article 7.2 below.

7.2 The Group Executive Committee shall, as soon as may be reasonably possible, cause a draft Schedule of Authorities to be prepared and submitted for approval to the Directors and to the Board of each applicable Subsidiary.

## **8. SHARES**

8.1 The Company is authorised to issue the following numbers and classes of Shares (which includes Shares already issued at any time) –

8.1.1 2 500 000 000 (two billion five hundred million) unclassified shares with no par value which have the preferences, rights, limitations and other terms as the Directors may determine. Notwithstanding anything else to the contrary contained in the MOI, the Directors' authority to determine the preferences, rights, limitations and other terms and to classify any unclassified shares is not limited or restricted in any manner;

8.1.2 1 000 000 000 (one billion) ordinary shares with no par value which shall have voting rights in respect of every matter that may be decided by voting, shall rank after all other classes of Shares in the Company which do not rank *pari passu* with the Ordinary Shares as regards Distribution and return of capital, but save as

aforesaid shall be entitled to receive the net assets of the Company upon its liquidation;

- 8.1.3 500 000 000 (five hundred million) A Ordinary Shares with the preferences, rights, limitations and other terms set out in Schedule 3;
  - 8.1.4 500 000 (five hundred thousand) B Preference Shares with the preferences, rights, limitations and other terms set out in Schedule 4;
  - 8.1.5 100 000 (one hundred thousand) C1 Preference Shares with the preferences, rights, limitations and other terms set out in Schedule 5; and
  - 8.1.6 100 000 (one hundred thousand) C2 Preference Shares with the preferences, rights, limitations and other terms set out in Schedule 6.
- 8.2 Subject to the provisions, if any, of this MOI, and without prejudice to any special rights previously conferred on the holders of existing Shares, any Share may be issued with such preferred, deferred, or other special rights, or subject to such restrictions (whether in regard to dividend, voting, return of share capital, or otherwise) as the Company may from time to time determine, and the Company may determine that any preference shares shall be issued on the condition that they are or are at the option of the Company, liable to be redeemed.
- 8.3 Every person whose name is entered as a Shareholder in the register of members shall be entitled to one certificate for all the Shares registered in his name, or to several certificates, each for a part of such Shares. Every share certificate shall specify the number of Shares in respect of which it is issued. Every original Shareholder shall be entitled to one Share certificate free of charge but for every subsequent certificate the Directors may make such charge as from time to time they may think fit: Provided that if a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding twenty-five cents, and on such terms, if any, as to evidence and indemnity as the Directors

may think fit.

- 8.4 Share certificates shall be issued under authority of the Directors in such manner and form as the Directors shall from time to time prescribe. If any Shares are numbered, all such Shares shall be numbered in numerical progression beginning with the number one, and each share shall be distinguished by its appropriate number; and if any Shares are not numbered, each Share certificate in respect of such Shares shall be numbered in numerical progression and each Share certificate distinguished by its appropriate number and by such endorsement as may be required under section 51(3)(b) of the Companies Act.
- 8.5 A certificate for Shares registered in the name of two or more persons shall be delivered to the person first named in the register as a holder thereof, and delivery of a certificate for a Share to that person shall be sufficient delivery to all joint holders of that Share.
- 8.6 The authority of the Company's Directors to authorise the Company to provide financial assistance in relation to the subscription or purchase of any option or securities of the Company in a related or inter-related company, as set out in section 44 is not limited or restricted.
- 8.7 The authority of the Company's Directors to approve the issuing of any authorised Shares of the Company as capitalization Shares, to issue Shares of one class as capitalization Shares in respect of Shares of another class, and to resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share, as set out in section 47(1) is not limited or restricted by this MOI.
- 8.8 Such of the Articles of the Company as are applicable to Shares shall apply to stock, and the word "Share" and "shareholder" therein shall include "stock" and "stock holder".

## **9. VARIATION OF RIGHTS**

If at any time the share capital is divided into different classes of Shares, the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may be varied with the consent in writing of the holders

of three-fourths of the issued Shares of that class or with the sanction of a resolution passed at a separate general meeting of the holders of the Shares of the class, and the provisions of section 65 of the Companies Act shall *mutatis mutandis* apply to the said resolution and meeting as if the resolution were a special resolution. To every such separate general meeting the provisions of these Articles, including Article 14, apply *mutatis mutandis*.

## SECURITIES OF THE COMPANY

### 10. TRANSFER OF SECURITIES

- 10.1 The Directors shall refuse to register the transfer or issue of any Shares if –
- 10.1.1 the proposed transfer or issue of Shares contravenes any of the terms and conditions of these Articles;
- 10.1.2 the relevant Shareholder does not transfer a pro rata amount of its Claims to the same proposed transferee in the same transaction even if the transfer of Claims results in a splitting of Claims against the Company and the Company shall consent to such splitting of Claims and shall, if so required by any such proposed transferee, make all corresponding payments directly to such transferee;
- 10.1.3 the proposed transfer of Shares would be a transfer of Preference Shares unless such transfer is approved by a special resolution of Qualifying Shareholders.
- 10.2 The instrument of transfer of any Share of the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of the Share until the name of the transferee is entered in the register of Shareholders in respect thereof.
- 10.3 Subject to the provisions of Article 22, any Shareholder may transfer all or any of his Shares by instrument in writing in any usual or common form or any other form which the Directors may approve.

- 10.4 The Directors may decline to recognise any instrument of transfer unless –
- 10.4.1 the instrument of transfer is accompanied by the certificate of the Shares to which it relates, any such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer; and
- 10.4.2 the securities transfer tax thereon has been paid.
- 10.5 Every instrument of transfer shall be left at a transfer office of the Company at which it is presented for registration, accompanied by a certificate of Shares to be transferred. Every power of attorney given by a shareholder authorizing the transfer of Shares, shall, when lodged, produced or exhibited to the Company or any of its proper officers, be deemed as between the Company and the donor of the power to continue and remain in full force and effect, and the Company may allow that power to be acted upon until such time as express notice in writing of its revocation has been lodged at such of the Company's transfer offices as the power was lodged, produced, or exhibited as aforesaid. The Company shall not be bound to allow the exercise of any act or matter by an agent for a shareholder unless a duly certified copy of that agent's authority be produced and lodged with the Company.
- 10.6 The issue and transfer of Shares (including transfer procedure) is further regulated by the provisions of Article 22 (**Pre-Emptive Rights**).

## **11. TRANSMISSION OF SECURITIES BY OPERATION OF LAW**

- 11.1 The executor of the estate of a deceased sole holder of a Share shall be the only person recognized by the Company as having any title to the Share. In the case of a Share registered in the names of two or more holders, the survivors or survivor, or the executor of the deceased survivor shall be the only persons recognized by the Company as having any title to the Share.
- 11.2 Any person becoming entitled to a Share in consequence of the death or insolvency of a Shareholder shall, upon such evidence being produced

as may from time to time be required by the Directors, have the right, either to be registered as a Shareholder in respect of the Share or instead of being registered himself, to make such transfer of the Share as the deceased or insolvent could have made, but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or insolvent before the death or insolvency.

- 11.3 The parent or guardian of a minor and the *curator bonis* of a lunatic Shareholder and any person becoming entitled to Shares in consequence of the death or insolvency of any Shareholder or by any lawful means other than by transfer in accordance with these Articles, may, upon producing such evidence as sustains the character in which he proposes to act under this Article, or of his title, as the Directors think sufficient, transfer those Shares to himself or any other person, subject to the Articles as to transfer hereinbefore contained (the “**Transmission Clause**”).
- 11.4 A person becoming entitled to a Share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the Share, except that he shall not, before being registered as a member in respect of the Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.
- 11.5 Any person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased Shareholder of the Company, or of a Shareholder whose estate has been sequestrated or of a Shareholder who is otherwise under a disability or as the liquidator of any body corporate which is a Shareholder of the Company, shall be entered in the register of Shareholders of the Company *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Shareholder of the Company.

## 12. ALTERATION OF CAPITAL

- 12.1 The Directors of the Company may, subject to Article 18, by special

## resolution-

- 12.1.1 increase the number of its Shares of no par value to such number, as the resolution shall prescribe or consolidate and reduce the number of the issued Shares of no par value;
- 12.1.2 increase its stated capital by transferring reserves or profits to the stated capital account, with or without a distribution of Shares;
- 12.1.3 increase the number of its issued no par value Shares without an increase of its stated capital;
- 12.1.4 convert all its ordinary or preference share capital consisting of Shares having a par value into stated capital constituted by Shares of no par value;
- 12.1.5 cancel any Shares which, at the date of the passing of the resolution, have not been taken by any person, or which no person has agreed to take;
- 12.1.6 reduce its Share capital, stated capital, any capital redemption fund or any Share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law;
- 12.1.7 approve the acquisition by the Company of Shares or debentures issued by it or, if the Company is a subsidiary, approve the acquisition of Shares issued by its Holding Company, up to any maximum provided for in the Companies Act, which approval may be a general approval subject to the provisions of the Companies Act or a specific approval for a particular acquisition, in accordance with the requirements of the Companies Act.
- 12.2 Newly issued Shares shall be subject to the same provisions as to transfer, transmission and otherwise as the Shares in the original capital of the Company.

### **13. FINANCIAL YEAR**

The financial year of the Company is 31 March.

## **SHAREHOLDERS**

### **14. NOTICE OF SHAREHOLDERS MEETINGS**

14.1 Whenever notice of a meetings is given pursuant to section 62 of the Companies Act, the Company shall forward a copy thereof to the Auditors of the Company and to the manager or other appropriate officer of any stock exchange, if any, upon which any Shares of the Company are listed.

14.2 The accidental omission to give notice of a meeting or, where applicable, to send an instrument of proxy therewith, or the failure to receive a notice or proxy by any person entitled thereto, or the late receipt thereof, shall not invalidate the proceedings at that meeting.

14.3 The Company may call a Shareholders Meeting with less notice than required by section 62(1) of the Companies, but such a Shareholders Meeting may proceed only if every Person who is entitled to exercise voting rights in respect of any item on the meeting agenda –

14.3.1 is Present at the Shareholders Meeting; and

14.3.2 votes to waive the required minimum notice of the Shareholders Meeting.

### **15. GENERAL MEETINGS**

15.1 The Company shall in each year hold an annual general meeting of Qualifying Shareholders: Provided that not more than fifteen months shall elapse between the date of one annual general meeting and that of the next and that an annual general meeting shall be held within six months after the expiration of the Financial Year of the Company.

15.2 Other general meetings of the Qualifying Shareholders may be held at



any time.

- 15.3 Annual general meetings and other general meetings shall be held at such time and place as the Directors may direct.

## 16. PROCEEDINGS AT SHAREHOLDERS MEETINGS

- 16.1 Notwithstanding anything to the contrary contained in the MOI, the quorum for any Qualifying Shareholders' meeting (whether that meeting is the Company's annual general meeting or a special general meeting) shall be Qualifying Shareholders present in person or by proxy who, between them, hold at least 50,1% (fifty comma one *per centum*) of the issued Qualifying Shares.
- 16.2 Any Qualifying Shareholder shall be entitled to be present, speak and vote at any Qualifying Shareholder's meeting by means of video conference facilities or telephone conference facilities.
- 16.3 If a quorum is not obtained the meeting shall be adjourned for a minimum of 48 (forty-eight) hours. A quorum shall be present at the adjourned meeting if Qualifying Shareholders holding at least 50,1% (fifty comma one percent) of the Qualifying Shares are present thereat, or, if fewer Qualifying Shareholders are present after 30 (thirty) minutes of commencement of the meeting, the Qualifying Shareholders present in person or by proxy shall form a quorum.
- 16.4 Where a meeting has been adjourned as aforesaid, the Company shall, upon a date not later than three days after the adjournment send a written notice to each Qualifying Shareholder of the Company stating –
- 16.4.1 the date, time and place to which the meeting has been adjourned;
- 16.4.2 the matter before the meeting when it was adjourned; and
- 16.4.3 the ground for the adjournment.
- 16.5 The chairperson of the Directors of the Company shall preside as chairperson at every general meeting of the Qualifying Shareholders of the Company.

- 16.6 If there is no such chairperson, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Qualifying Shareholders present shall elect one of their number to be chairperson.
- 16.7 The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is so adjourned, the provisions of Article 16.1 shall *mutatis mutandis* apply to such adjournment.
- 16.8 At any general meeting a resolution put to the vote of the meeting shall be decided by a majority of affirmative votes on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or Qualifying Shareholders referred to in section 63(7) of the Companies Act, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negatived, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- 16.9 If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutineers shall be elected to determine the result of the poll
- 16.10 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 16.11 A poll demanded on the election of a chairperson or on a question of adjournment, shall be taken forthwith. A poll demanded on any other

question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

**17. PROXIES**

17.1 Each Shareholder shall have the right to a permanent proxy to attend, speak at and vote at all Shareholders’ meetings on his behalf.

17.2 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be deposited at the registered office of the Company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

17.3 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

<b>Evolution Credit Ltd (the “Company”)</b>			
I, <b>[insert name of appointer]</b> of <b>[insert details of appointer]</b>			
being a Shareholder of the Company, hereby appoint:			
<b>[insert name of proxy]</b>	of <b>[insert details of proxy]</b> or failing him		
<b>[insert name of proxy]</b>	of <b>[insert details of proxy]</b> or failing him		
<b>[insert name of proxy]</b>	of <b>[insert details of proxy]</b> or failing him		
<b>[insert name of proxy]</b>	of <b>[insert details of proxy]</b> or failing him		
as my proxy to vote for me and on my behalf at the annual general or general meeting (as the case may be) of the Company to be held on (insert date of meeting) and any adjournment as follows:			
	<b>In favour</b>	<b>Against</b>	<b>Abstain</b>
Resolution to <b>[insert description of proposed resolution]</b>			
Resolution to <b>[insert description of proposed resolution]</b>			
Resolution to <b>[insert description of proposed resolution]</b>			

Resolution to <b>[insert description of proposed resolution]</b>
Indicate instruction to proxy by way of a cross in space provided above. Unless otherwise instructed, my proxy may vote as he thinks fit.
Signed on <b>[insert date]</b>
-----
Signature
(Note: A Shareholder entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not also be a Shareholder of the Company.)

## **18. SHAREHOLDER RESOLUTIONS**

- 18.1            For an ordinary resolution to be adopted at a Shareholders Meeting, it must be supported by the holders of at least 50.1% of the voting rights exercised on the resolution.
- 18.2            For a special resolution to be adopted at a Shareholders Meeting, it must be supported by the holders of at least 60% of the voting rights exercised on the resolution.
- 18.3            A special resolution adopted at a Shareholders Meeting is not required for a matter to be determined by the Company, except those matters set out in section 65 (11) or elsewhere in the Companies Act.

## **19. VOTES OF SHAREHOLDERS**

- 19.1            Subject to any rights or restrictions for the time being attached to any class or classes of Shares, on a show of hands every Shareholder present in person and if a Shareholder is a body corporate, its representative, shall have one vote and on a poll every Shareholder present in person or by proxy shall be entitled to exercise the voting rights determined by section 37 of the Companies Act.
- 19.2            In the case of joint holders the vote of the person whose name appears first in the register of Shareholders and who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

- 19.3 The parent or guardian of a minor, and the *curator bonis* of a lunatic Shareholder, and also any person entitled under the Transmission Clause to transfer any Shares, may vote at any general meeting in respect thereof in the same manner as if he were the registered holder of those Shares: Provided that forty-eight hours at least before the time of holding the meeting at which he proposes to vote he shall satisfy the Directors that he is such parent, guardian or *curator* or that he is entitled under the Transmission Clause to transfer those Shares, or that the Directors have previously admitted his right to vote in respect of those Shares. Co- executors of a deceased Shareholder in whose name Shares stand in the register shall, for the purposes of this Article, be deemed to be joint holders of those Shares.
- 19.4 On a poll, votes may be given either personally or by proxy.

## **20. DUTIES OF SHAREHOLDERS**

- 20.1 Any corporate body holding Shares conferring the right to vote may, by resolution of its directors or other governing body, appoint a person to act as its representative at any meeting of the Company or at any meeting of holders of any class of Shares of the Company.
- 20.2 Such representative shall be entitled to exercise the same rights on behalf of the corporate body which he represents as that corporate body could exercise if it were an individual who was a Shareholder of the Company.
- 20.3 The Directors may but shall not be obliged to require proof to their satisfaction of the appointment or authority of such representative.
- 20.4 A person who is entitled to more than 1 (one) vote need not cast all his votes, or cast them in the same manner.
- 20.5 If more than 1 (one) of such joint holders are present at a meeting in person or by proxy, only that holder who is present whose name appears first in the Register in respect of the Share may vote.

## 21. SHAREHOLDER RESERVED MATTERS

- 21.1 Notwithstanding anything to the contrary contained in this MOI –
- 21.1.1 the Directors shall not have any power to make any decisions in relation to any of the Shareholder Reserved Matters; and
- 21.1.2 decisions relating to the Shareholder Reserved Matters shall be made only by the Shareholders; and
- 21.1.3 no decision of the Shareholders, which deals with a Shareholder Reserved Matter shall be valid and binding except if (1) Shareholders who between them hold 60% (sixty *per centum*) of the issued Qualifying Shares have consented to that decision in writing; or (2) the applicable decision requires a special resolution (in terms of the Companies Act), such decision has been adopted by the majority required in terms of the Companies Act, of the votes cast at a duly constituted general meeting of the Company.
- 21.2 The Shareholder Reserved Matters are the following matters –
- 21.2.1 the conclusion of any off balance sheet financing arrangements by the Company and/or any Subsidiary other than the obtaining of any Securitisation Debt;
- 21.2.2 any issue of shares of any class whatsoever by any Subsidiary;
- 21.2.3 any material change in the nature of the Group's business, irrespective of the entity(ies) in which it is conducted;
- 21.2.4 any discontinuation of any material portion of the Group's business;
- 21.2.5 any decision for the voluntary liquidation of any Material Subsidiary;
- 21.2.6 the appointment or removal of the Group's CEO;

- 21.2.7 any amendment to the principal framework within which the terms and conditions of Group senior executive remuneration and employment are based;
- 21.2.8 the conclusion by the Company or by any Subsidiary of any transaction with any Related Party (other than with any other Group company) other than in the ordinary course of business or on market related terms as determined by the Directors (of the applicable Board, as the case may be);

## 22. PRE-EMPTIVE RIGHTS

### Share Transfers

- 22.1 The provisions of this Article 22 shall not apply to any transfer of any Share by any Shareholder to a Permitted Transferee in relation to that Shareholder.
- 22.2 Subject to the provisions of Article 22.1 above, no Shareholder (the “**Seller**”) shall Dispose of any of his Ordinary Shares without first offering those Ordinary Shares to the other Ordinary Shareholders (the “**Offerees**”) in accordance with the provisions of this Article 22.
- 22.3 The Seller shall in writing (a “**First Offer Notice**”) advise each other Ordinary Shareholder that the Seller wishes to Dispose of any Ordinary Shares and the Seller shall, in the First Offer Notice, set out (1) the number of Ordinary Shares (the “**Offered Shares**”) of which the Seller wishes to Dispose, and (2) the price per share which the Seller requires for the Offered Shares.
- 22.4 The delivery of a First Offer Notice by the Seller to the Offerees shall constitute an offer (the “**First Offer**”) made by the Seller to the Offerees to sell the Offered Shares to the Offerees, at the price set out in the First Offer Notice, pro rata to their holdings of Ordinary Shares on the date on which the First Offer Notice is delivered.
- 22.5 The First Offer shall be deemed to have been made on the following terms and conditions –

- 22.5.1 if any Offeree wishes to accept the First Offer, he shall do so by delivering written notice of acceptance to the Seller within 20 (twenty) Business Days of the date on which the Offeree receives the First Offer Notice (failing which the applicable Offeree shall irrebuttably be presumed to have elected not to accept the First Offer);
- 22.5.2 the acceptance of the First Offer by any Offeree shall be subject to the suspensive condition that the Offeree in question obtains, within a period of 4 (four) months, all regulatory approvals which that Offeree may require in order to enable him to purchase the applicable proportion of the Offered Shares (and the Offeree shall make application for the required regulatory approvals as soon as may be reasonably possible in the circumstances);
- 22.5.3 the effective date of the sale agreement which will come about between any Seller and any Offeree (if the Offeree accepts the First Offer) shall be the 2nd (second) Business Day after the date on which the Offeree obtains the aforesaid regulatory approvals or, if the Offeree does not require such regulatory approvals, the 5th (fifth) Business Day after the date on which the Offeree in writing accepts the First Offer;
- 22.5.4 on the aforesaid effective date the Offeree in question shall pay the agreed purchase price to the Seller and the Seller shall deliver the applicable Offered Shares to the Offeree;
- 22.5.5 the Offeree shall pay all the stamp duties which become payable as a result of the sale and transfer of the Offered Shares to it;
- 22.5.6 the Seller gives the Sale Warranties, and no other warranties, to the applicable Offeree, and the First Offer shall not be subject to any further terms and/or conditions.
- 22.6 If any First Offer is (1) not accepted by all the Offerees, or (2) accepted by an Offeree who, thereafter, does not obtain the required regulatory approval required by him to purchase the applicable Offered Shares –



- 22.6.1 the Seller shall in writing (a “**Second Offer Notice**”) advise each of the Offerees who have accepted their offers and/or who have obtained regulatory approval (as the case may be) (such Offerees the “**Successful Offerees**”) of the non-acceptance/non-obtaining regulatory approval;
- 22.6.2 the Seller shall, in his Second Offer Notice, set out the number of Ordinary Shares (the “**Remaining Offer Shares**”) in respect of which the First Offer has not been accepted/in respect of acceptances which have been obtained but regulatory approval has not been obtained;
- 22.6.3 the delivery of a Second Offer Notice by the Seller to the Successful Offerees shall constitute an offer (the “**Second Offer**”) made by the Seller to the Successful Offerees to sell the Remaining Offer Shares to the Successful Offerees, at the price originally set out in the applicable First Offer Notice, pro rata to their holdings of Ordinary Shares on the date on which the First Offer Notice was delivered;
- 22.6.4 the provisions of 22.5.2 to 22.5.5 above shall apply, with the necessary changes, in respect of the Second Offer;
- 22.6.5 if any Successful Offeree wishes to accept the Second Offer he shall do so by delivering a written notice of acceptance (an “**Acceptance Notice**”) to the Seller within 15 (fifteen) Business Days after receipt of the Second Offer Notice by him;
- 22.6.6 each Successful Offeree who wishes to accept the Second Offer shall, in its Acceptance Notice, set out the number of the Ordinary Shares which it wishes to purchase from the Seller;
- 22.6.7 if acceptances are received, from the Successful Offerees, in respect of a number of Ordinary Shares which exceeds the Remaining Offer Shares, the Remaining Offer Shares shall be allocated amongst the Successful Offerees who deliver Acceptance Notices pro rata to their holding of the Ordinary Shares on the date on which the First Offer Notice was delivered

(and each Successful Offeree who has delivered an Acceptance Notice to the Seller shall irrebuttably be deemed to have purchased the aforesaid number of Ordinary Shares as a result of the delivery of his Acceptance Notice).

- 22.7 If (1) the Seller does not receive any acceptance in respect of the First Offer, or (2) the Seller receives acceptances in respect of the First Offer but, by the expiry of the 15<sup>th</sup> (fifteenth) Business Day period envisaged in 22.6.5 above, the Seller has not received acceptances for all the Offered Shares, the Seller shall be entitled, subject to the provisions of 22.8 below, to sell the Offered Shares in respect of which it has not received acceptances (the “**Unsold Shares**”) to a third party provided that –
- 22.7.1 the Seller shall not sell the Unsold Shares to a third party on terms and conditions which are more favourable to the third party than the terms and conditions on which the First Offer was made; and
- 22.7.2 the sale to the applicable third party shall be subject to the approval of the Directors who shall not withhold that approval unreasonably, and it is specifically agreed that a refusal by the Directors to consent to the transfer of any Ordinary Share to any Person shall be reasonable if that Person competes with the Company or holds any interest in any other Person who competes with the Company.
- 22.8 If the Seller has not sold the Unsold Shares to a third party by the date 60 (sixty) Business Days after the expiry of the 15 (fifteen) Business Day period envisaged in 22.6.5 above, the Seller shall not thereafter sell the Unsold Shares without again following the procedure set out in this Article 22. For the purposes of this Article 22, the expression “**sold**” means that the Seller has concluded a valid and binding sale agreement in respect of the Unsold Shares with a third party, even if that agreement is subject to the fulfilment of suspensive conditions (or if that agreement may be resolved as a result of the non-fulfilment of resolute conditions).
- 22.9 The provisions of Articles 22.1 to 22.8 above shall apply *mutatis mutandis* to each class of Shares, as between the holders of the Shares of that class, save that:

- 22.9.1 the 20 (twenty) Business Day period referred to in Article 22.5.1 shall be reduced to 5 (five) Business Days;
- 22.9.2 the 4 (four) month period referred to in Article 22.5.2 shall be reduced to 3 (three) months); and
- 22.9.3 the 15 (fifteen) Business Day period referred to in Articles 22.6.5 and 22.7 shall be reduced to 3 (three) Business Days.

## 23. SHARE SUBSCRIPTIONS

- 23.1 For the purpose of this Article 23 –
- 23.1.1 **“Issue Date”** means the day 30 (thirty) Business Days after the date on which the Company delivers an Issue Notice to the Qualifying Shareholders;
- 23.1.2 **“Issue Notice”** means the notice envisaged in 23.2.1 below;
- 23.1.3 **“Shareholder’s Portion”** means, in relation to any Qualifying Shareholder, the percentage of the issued Qualifying Shares held by that Qualifying Shareholder on the date on which the Company delivered an Issue Notice.
- 23.2 If the Company proposes to issue any new shares of any class –
- 23.2.1 the Company shall give written notice (an **“Issue Notice”**) to each of the Qualifying Shareholders;
- 23.2.2 the Company shall, in its Issue Notice, set out the details of (1) the class of shares which it proposes to issue and the number of such shares which it proposes to issue (the aforesaid shares the **“Subject Shares”**), and (2) the subscription price per share which it requires in respect of the Subject Shares;
- 23.2.3 each Qualifying Shareholder shall be entitled (but not obliged) to require the Company to issue to that Qualifying Shareholder or, in the case of the Issuer SPVs, the relevant Issuer SPV and/or its

nominee/s, the Shareholder's Portion of the Subject Shares, or such a smaller number of Subject Shares as the applicable Qualifying Shareholder may elect, by delivering a written notice of acceptance (a "**Subscription Acceptance Notice**") to the Company within 20 (twenty) Business Days of such Qualifying Shareholder receiving the Issue Notice;

- 23.2.4 the Subscription Acceptance Notice shall set out the number of Subject Shares which a Qualifying Shareholder wishes to subscribe for;
- 23.2.5 notwithstanding the provisions of Article 23.2 above, shareholders who between them hold 60% (sixty *per centum*) of the issued Ordinary Shares may, by way of resolution, authorise the Company to offer and/or issue shares to any one or more person(s), whether or not they are Shareholders, without first offering those shares to the Qualifying Shareholders in accordance with the provisions of Article 23.2 above;
- 23.2.6 if any Qualifying Shareholder fails to deliver an Subscription Acceptance Notice to the Company within 20 (twenty) Business Day period referred to in Article 23.2.3, that Qualifying Shareholder shall irrebuttably be deemed to have waived its right to subscribe for its portion of the Subject Shares;
- 23.2.7 if any particular Qualifying Shareholder delivers an Acceptance Notice to the Company and has obtained all regulatory approvals which that Shareholder may require in order to enable it to subscribe for the shares set out in the Qualifying Shareholder's Subscription Acceptance Notice, the Company shall, on the Issue Date, issue to that Shareholder or, in the case of the Issuer SPVs, the relevant Issuer SPV and/or its nominee/s (as the case may be), the number of shares set out in the Qualifying Shareholder's Subscription Acceptance Notice;
- 23.2.8 on the Issue Date each applicable Qualifying Shareholder shall pay the subscription price of the applicable Subject Shares to the Company.

- 23.3 If (1) the Company has complied with the provision of Article 23.2 above, and (2) fewer than all the Subject Shares reflected in the applicable Issue Notice are taken up by the Qualifying Shareholders and the Issuer SPVs' nominee/s, to the extent applicable, the Company shall be entitled to issue the remaining Subject Shares, at a subscription price not lower than the subscription price reflected in the Company's Issue Notice, to Persons who are not Qualifying Shareholders.

#### 24. PERMITTED TRANSFEREES

- 24.1 Notwithstanding anything to the contrary contained in this MOI, each Shareholder shall be entitled to transfer his Shares to a Permitted Transferee.
- 24.2 If an Ordinary Shareholder wishes to transfer his Ordinary Shares (or any portion of his Ordinary Shares) to a Permitted Transferee that Ordinary Shareholder shall in writing advise the Company and each other Ordinary Shareholder.
- 24.3 If (1) any Ordinary Shareholder has transferred his shares to a Permitted Transferee, and (2) after such transfer the Permitted Transferee ceases to qualify as a Permitted Transferee in relation to the applicable Ordinary Shareholder, the Ordinary Shareholder shall procure that the Permitted Transferee retransfers the applicable Ordinary Share to the Ordinary Shareholder within 20 (twenty) Business Days of the date on which the Permitted Transferee ceases to be a Permitted Transferee in relation to the applicable Ordinary Shareholder.
- 24.4 If (1) any Permitted Transferee becomes obliged, in terms of the provisions of Article 24.3 above, to transfer any Ordinary Shares held by him to the applicable Ordinary Shareholder, and (2) that Permitted Transferee fails to transfer the applicable Ordinary Shares to the applicable Ordinary Shareholder within the period envisaged in 24.3 above –
- 24.4.1 the Permitted Transferee (the “**Offeror**”) shall be deemed to have offered his Ordinary Shares to the other Ordinary Shareholders (the “**Offerees**”), pro rata to their holdings of the

Ordinary Shares, at a price equal to the Market Value of those Ordinary Shares;

- 24.4.2 each Offeree shall be entitled to accept the aforesaid offer (the “**Deemed Offer**”) by giving written notice of acceptance to the Offeror within a period of 20 (twenty) Business Days after the date on which it first becomes aware that the Deemed Offer has been made to it;
- 24.4.3 if any particular Offeree does not accept the Deemed Offer within the aforesaid 20 (twenty) Business Day period, that Deemed Offer shall irrefutably be deemed to have rejected the Deemed Offer;
- 24.4.4 if any Offeree accepts the Deemed Offer, (1) the Market Value of the applicable Ordinary Shares shall be determined in accordance with the provisions of Article 27 and (2) the resulting sale agreement between the Offeror and that Offeree shall be subject to the suspensive condition that the Offeree obtains all regulatory approvals which it may require in order to purchase the applicable Ordinary Shares within a period of 4 (four) Calendar Months after acceptance of the Deemed Offer by the Offeree, and the Offeree shall apply for those regulatory approvals as soon as may be reasonably possible in the circumstance;
- 24.4.5 the effective date of the resulting sale agreement between the Offeror and any Accepting Offeree shall be the 2nd (second) Business Day after the date on which the aforesaid regulatory approval is obtained or, if no such regulatory approval is required, on the 5th (fifth) Business Day after the date on which the Market Value of the applicable Ordinary Share is determined in accordance with the provisions of Article 27;
- 24.4.6 on the aforesaid effective date the Offeree shall pay the purchase price in question to the Offeror and the Offeror shall, against such payment, transfer ownership of the applicable Ordinary Shares to the Offeree; and

- 24.4.7 the Offeror gives the Sale Warranties, and no other warranties, in connection with the sale of any Ordinary Shares resulting from the acceptance of the Deemed Offer.

## 25. DEEMED OFFERS

- 25.1 If –
- 25.1.1 the estate of any Qualifying Shareholder who is not a company is sequestrated, whether provisionally or finally; or
- 25.1.2 any Qualifying Shareholder which is a company is placed into liquidation (whether provisionally or finally and whether voluntarily or otherwise),
- 25.2 that Qualifying Shareholder (the “**Insolvent Shareholder**”) shall irrebuttably be deemed to have offered his Qualifying Shares to the other Qualifying Shareholders (the “**Offerees**”), pro rata to their holding of Qualifying Shares, at a price equal to the Market Value of those shares and the aforesaid offer (the “**Deemed Offer**”) shall be deemed to have been made by the Insolvent Shareholder on the date prior to his/its sequestration or liquidation (as the case may be).
- 25.3 The provisions of Articles 24.4.2 to 24.4.7 above shall apply, with necessary changes, to any Deemed Offer envisaged in Article 25.1 above.

## 26. DRAG ALONG RIGHTS

- 26.1 For the purposes of this Article 26:
- 26.1.1 “**Companies Regulations**” means the Companies Regulations, 2011, promulgated under the Companies Act, as amended from time to time;
- 26.1.2 “**Comparable Offer**” means a comparable offer to acquire any class/es of Shares in terms of section 125 of the Companies Act;

- 26.1.3            **“Independent Board”** means those Directors who have been appointed as the independent board in terms of the Companies Act and the Companies Regulations for purposes of the transaction which gives rise to the obligation to make the Comparable Offer and/or Mandatory Offer, as the case may be;
- 26.1.4            **“Independent Expert”** means the independent expert appointed by the Independent Board in terms of the Companies Act and the Companies Regulations to provide the Independent Board with appropriate external advice regarding the transaction which gives rise to the obligation to make the Comparable Offer and/or Mandatory Offer, as the case may be; and
- 26.1.5            **“Mandatory Offer”** means a mandatory offer to acquire any Shares in terms of section 123 of the Companies Act.
- 26.2              It is recorded that, as the Company is a public company, it is a “regulated company” as contemplated in the Companies Act. In terms of section 125 of the Companies Act, if *inter alia*, an offer is made which if accepted, would result in a person or number of related or inter-related persons (**“Acquirer”**) holding securities of a regulated company entitling the Acquirer to exercise more than 35% of the general voting rights associated with all issued securities of the company, the Acquirer will be obliged to make a comparable offer to acquire the securities of each class of issued securities of such company. In terms of section 123 of the Companies Act, if *inter alia*, an Acquirer acquires the prescribed percentage (currently 35%) or more of the general voting rights associated with all issued securities of a regulated company, the Acquirer will be obliged to make a mandatory offer for the remaining securities of such company.
- 26.3              In the event that (i) a Comparable Offer and/or a Mandatory Offer is made to the Shareholders of any class/es of Shares, or (ii) an offer is otherwise made to the Shareholders to acquire all of the Shares in the Company (in each case, an **“Offer”**), such Shareholders (**“Offeree Shareholders”**) shall be obliged (to the extent permitted by law) to accept the Offer within 10 Business Days of receiving it, provided that:



- 26.3.1 Ordinary Shareholders representing at least 60% of the voting rights attaching to the Ordinary Shares have voted in favour of a resolution requiring that the Offeree Shareholders accept the Offer; and
- 26.3.2 either:
- 26.3.2.1 in respect of each class of Offeree Shareholders, the Offer is accepted by independent holders of voting rights who between them hold not less than 60% of the voting rights of that class; or
- 26.3.2.2 to the extent required by law, the Independent Board has indicated that the Offer is fair and reasonable to the Offeree Shareholders and the Independent Expert is of the opinion that the Offer is fair and reasonable to the Offeree Shareholders.
- 26.4 If an Offeree Shareholder fails or refuses to comply with its obligations under this Article 26, the Company shall irrevocably be appointed as such Offeree Shareholder's agent and attorney, on its behalf and in its name or otherwise and in such manner as the Company deems fit to take all steps and execute all documentation which the Company may in its absolute discretion consider necessary or desirable to accept an Offer pursuant to this Article 26 and implement the acquisition which is the subject matter of the Offer. The appointment shall in all circumstances remain in force and be irrevocable until such time as the Company confirms in writing that the Offer and/or the transaction forming the subject matter of the Offer has been implemented or terminated, but shall have no further effect after that date.

## **27. MARKET VALUE**

- 27.1 The provisions of this Article 27 shall apply if it becomes necessary to determine the Market Value of any Share as a result of –
- 27.1.1 the acceptance of any Deemed Offer made in terms of Article 24 above or;

- 27.1.2 the acceptance of any Deemed Offer made in terms of Article 25.1 above.
- 27.2 For the purposes of this Article 27 the “**Interested Parties**” means, if the Market Value of any Shares must be determined in terms of –
- 27.2.1 Article 24 above, the Permitted Transferee and the Offerees (as defined in 24.4.1 above); or
- 27.2.2 Article 25 above, the Insolvent Shareholder and the Offerees (both as defined in 25.1 above).
- 27.3 Any Interested Party (the “**Notifier**”) shall be entitled to give written notice (the “**Appointment Notice**”) to the other Interested Parties (the “**Recipients**”) in which the Notifier calls on the Recipients to agree on the identity of a suitably qualified professional person (the “**Expert**”) who will be appointed to determine the Market Value of the applicable Shares. If the Interested Parties are unable to agree on the identity of the Expert within 10 (ten) Business Days of delivery of the applicable Appointment Notice, the Expert shall be appointed by the chairperson for the time being of the South African Venture Capital Association.
- 27.4 The Expert shall determine the Market Value of the applicable Shares and shall, in doing so, act as an expert and not as an arbitrator. The Expert shall be entitled to follow such a procedure as he may deem appropriate provided that the Expert shall –
- 27.4.1 give, to each Interested Party, an opportunity to make written submissions to him in relation to the Market Value of the applicable Shares (each such a written submission a “**Contention**”); and
- 27.4.2 cause a copy of the Contention filed by each Interested Party to be delivered to each other Interested Party; and
- 27.4.3 give, to each Interested Party, a period of at least 7 (seven) Business Days within which to make written submissions to him in regard to any Contentions which have been delivered to that

Interested Party.

- 27.5 The Expert shall be entitled –
- 27.5.1 to rely on such evidence of such witnesses as he may deem appropriate; and
- 27.5.2 to make a ruling in regard to the payment of his costs, failing which those costs shall be paid by the Interested Parties who were unsuccessful.
- 27.6 The Expert's determination of the Market Value of any Share shall, in the absence of manifest error, be final and binding.

## 28. EXIT EVENT

- 28.1 For the purposes of this Article 28:
- 28.1.1 **“Acting in Concert”** shall have the meaning given thereto in the Listings Requirements of the Johannesburg Stock Exchange;
- 28.1.2 **“Exchange”** means an exchange as defined in Section 1 of the Financial Markets Act, 2012, and shall include an **“external exchange”** as defined in Section 1 of the Financial Markets Act, 2012;
- 28.1.3 **“Exit”** means a Listing or a Sale;
- 28.1.4 **“Exit Event”** means the adoption of a resolution approved by Ordinary Shareholders representing at least 60% of the voting rights attaching to the Ordinary Shares, pursuant to which an Exit is approved in principle;
- 28.1.5 **“Listing”** means the admission of any part of the share capital of the Company, or any part of the share capital of a holding company of the Company inserted for the purpose of such admission, or any part of the share capital of the holding company of any subsidiary of the Company to listing and trading on an

Exchange;

28.1.6           **“Prescribed Percentage”** shall have the meaning given thereto in section 125 of the Companies Act, read with the Companies Regulations; and

28.1.7           **“Sale”** means:

28.1.7.1                 a Disposal of Shares pursuant to the provisions of Article 25 (*Deemed Offers*) or Article 26 (*Drag Along Rights*); or

28.1.7.2                 a disposal of all or the greater part of the assets or undertaking of the Company.

28.1.8           If an Exit Event occurs, then the Company and the Shareholders shall use their reasonable endeavours to implement the Exit, including but not limited to:

28.1.8.1                 providing such customary know-your-client and similar information as is reasonably required by any third party in connection with an Exit;

28.1.8.2                 providing reasonable assistance in the production, negotiation and execution of such documentation as is reasonably required to achieve an Exit;

28.1.8.3                 providing reasonable assistance to any third party advisers advising the Company in connection with an Exit; and

28.1.8.4                 negotiating in good faith to agree and sign all such documents, and do all such things as may be reasonably necessary to implement the Exit,

in each case as appropriate taking into account the proposed form of the Exit.

## 29. CONFIDENTIALITY

- 29.1 Each party shall use its best efforts (including the issuing of appropriate instructions to, and the entering into of appropriate agreements with, its respective employees) to ensure that any information made available to it in terms of this MOI (the “**Confidential Information**”) shall not be disclosed to any third party.
- 29.2 Without prejudice to Article 29.1 above, none of the parties shall use or disclose to any Person any financial or other information relating to the business of any other party which shall have been, or may in the future be, supplied to the first mentioned party or to the Company by that other party or which the first mentioned party may properly obtain as a result of its legitimate interest in or the operation of the Company, otherwise than for the sole purpose of participating in the running of the Company in their respective capacities operating the Company.
- 29.3 The obligations to observe the confidentiality provisions of this Article 29 shall not apply to information which –
- 29.3.1 is or comes into the public domain through no wrongful act of any Person concerned;
- 29.3.2 is at the time of disclosure already known by the Person to whom disclosure is made unless such knowledge is subject to a restriction as to use of disclosure imposed on such Person;
- 29.3.3 is required to be disclosed by any party by any relevant law or regulation, court of competent jurisdictions or the rules of any stock exchange on which the shares of that party or its ultimate holding company are listed and whether or not having the force of law, provided that (to the extent possible) that party limits any disclosures to what is absolutely necessary, procures an equal obligation of confidentiality from the third party requiring disclosure, and informs the other Parties in advance of the nature and extent of any disclosure so required and otherwise as soon as reasonably practicable thereafter.

- 29.4 Nothing in this Article 29 shall prevent the disclosure of Confidential Information by a Shareholder to its professional advisors; or to its shareholder or to any Affiliate.

## **DIRECTORS AND OFFICERS**

### **30. AUTHORITY OF THE BOARD OF DIRECTORS**

- 30.1 Subject to the Companies Act and to the provisions of Article 21, all the corporate powers of the Company vest in the Directors. Without derogating in any manner whatsoever from any duties owed by the Directors to the Company under any Applicable Laws, the Directors shall –

30.1.1 cause accounting records as are prescribed by section 28 of the Companies Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transaction and a financial position of the trade or business of the Company;

30.1.2 maintain all books, accounts and records to a good and internationally acceptable standard system of accounting and administration, and shall prepare and provide quarterly statements of accounts and timely budget forecasts in compliance with good accounting practice and keep operational statistics to enable a timely follow up of business operations and performance;

30.1.3 the accounting records shall be kept at the registered office of the Company or such other place or places as the Directors think fit, and shall always be open to inspection by the Directors;

30.1.4 the Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by Shareholders not being Directors, and no Shareholder (not being a Director) shall

have any right of inspecting any accounting records or documents of the Company except as conferred by the Companies Act or authorized by the Directors or by the Shareholders in general meeting;

- 30.1.5 effect such insurance policy with an insurer of good repute to mitigate potential losses and claims arising from all risks inherent in the Company's business from time to time and in accordance with good industry practice;
- 30.1.6 pay all lawful taxes, charges and claims made on the Company and service all loans and financial commitments legally contracted by the Company;
- 30.1.7 maintain sufficient reserves in accordance with the prudent management practice in such an amount and for such purposes as the Directors may from time to time determine; and
- 30.1.8 ensure that the Company does not engage in any business other than the Group Business,

and the Board of each Subsidiary shall comply (with the necessary changes) with the requirements set out in this Article 30.1.

- 30.2 Subject to the provisions of Article 33 below, the Directors may exercise all the powers of the Company to borrow money and to mortgage or bind its undertaking and property or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.
- 30.3 The Directors shall not be required to hold Share qualification.

## **31. THE APPOINTMENT AND REGISTRATION OF DIRECTORS**

- 31.1 The Directors shall be appointed in accordance with the provisions of section 68 of the Companies Act.
- 31.2 A Director shall cease to hold office as such, if –

- 31.2.1 he resigns as a Director by notice in writing to the Company;
  - 31.2.2 he becomes disqualified from being a Director in terms of the MOI or in terms of any provision of the Companies Act; or
  - 31.2.3 for more than six months is absent without permission of the Directors from meetings of Directors held during that period; or
  - 31.2.4 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Companies Act.
- 31.3 The chairperson of the Directors of the Company shall –
- 31.3.1 be appointed by the Directors from amongst those of their members who are not fulltime employees of the Company; and
  - 31.3.2 not have a second or casting vote.
- 31.4 The Directors may elect a chairperson of their meetings and determine the period for which he is to hold office, but if no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the Directors present may elect one of their number to be chairperson of the meeting.

## **32. CHIEF EXECUTIVE OFFICER**

Subject to Article 21, the Directors may from time to time recommend to the Shareholders the appointment of a member of their body to the office of CEO for such term and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way and partly in another) as they may think fit. A Director so appointed shall not, while holding such office, be subject to retirement by rotation, or be taken into account in determining the rotation of retirement of Directors, but his appointment shall determine if he ceases for any reason to be a Director.



### 33. DIRECTOR RESERVED MATTERS

- 33.1 The following matters shall be reserved for determination by the Directors of the Company –
- 33.1.1 the creation of an Encumbrance over any asset of any member of the Group;
  - 33.1.2 the furnishing, by any member of the Group, of any guarantee, suretyship, indemnity, undertaking or other form of personal security for the obligations of any third person (including, without limitation, another member of the Group), other than in the ordinary course of business;
  - 33.1.3 any change in the Auditors/accounting reference date/accounting policies of the Group;
  - 33.1.4 taking out any insurances, including keyman insurance;
  - 33.1.5 any change of primary transactional banker of the Group;
  - 33.1.6 the approval of the Group's Credit Policy and the approval of amendments to the Group's Credit Policy from time to time;
  - 33.1.7 the incurral, by any company in the Group, of any Debt during any Financial Year if that Debt will constitute an Exchange Item, other than a Hedged Exchange Item, and (2) as a result of the incurral of that Debt the Group's Foreign Currency Exposure will exceed 10% (ten *per centum*) of the Asset Value on the first day of that Financial Year.

### 34. DIRECTORS' MEETINGS

- 34.1 At least 7 (seven) days clear notice shall be given of all meetings of the Directors, except if all the Directors agree to a shorter notice period.
- 34.2 At each meeting of the Directors, each Director shall have 1 (one) vote.

- 34.3 A quorum for any Directors' meeting shall be one-half of the Directors then in office provided that if, at any time, there is an uneven number of Directors then in office, a quorum for Directors' meetings shall be the number of Directors then in office divided by 2 (two) and rounded up to the nearest integer.
- 34.4 No business shall be conducted at any meeting of Directors unless a quorum is present at the beginning of the meeting and at the time when there is to be voting on any business.
- 34.5 If a quorum is not present within 1 (one) hour after the time appointed for the commencement of any meeting of the Directors, that meeting shall stand adjourned for 7 (seven) days, at the same time and place, or such other date, time or place as the chairperson of the meeting shall determine. The adjourned meeting may only deal with the matters which were on the agenda of the meeting which was adjourned.
- 34.6 If any Directors' meeting is adjourned as envisaged in Article 34.5 above, the Company shall use its best endeavours to inform the Directors who were not present at that meeting that it was adjourned, and of the time, date and place to which that meeting has been adjourned. If, at the adjourned meeting, a quorum is again not present, the Directors present at the adjourned meeting shall constitute a quorum.
- 34.7 The Directors shall meet as often as may be required but in any event at least 4 (four) times in each year.
- 34.8 Each Director shall, on his appointment, furnish the Company in writing with a postal address, a telefacsimile number and an email address at which notice of meetings of the Directors may be given to him.
- 34.9 The Company shall give notice of meetings of the Directors to each Director at the address, telefacsimile number or email address provided in terms of 34.8 above. Each notice which convenes any Directors' meeting shall be accompanied by an agenda of the business to be discussed at that meeting and copies of any papers to be discussed at the meeting.

- 34.10 Matters not on the agenda may not be voted upon at a meeting of Directors or business conducted in relation to those matters unless a majority of the Directors agree otherwise.
- 34.11 Subject to the provisions of sections 74 and 75 of the Companies Act, a Director shall not vote in respect of any contract or proposed contract with the Company in which he is interested, or any matter arising therefrom, and if he does so vote, his vote shall not be counted.
- 34.12 All the decisions of the Directors shall be made by means of majority of the votes cast at the applicable meeting.
- 34.13 Any Director shall be entitled to be present, speak and vote at any Directors' meeting by means of video conference facilities or telephone conference facilities.
- 34.14 The minutes of each Directors' meeting shall be recorded in writing and shall be circulated to each Director within a reasonable time after the holding of the applicable meeting.
- 34.15 A written resolution signed by the requisite majority of Directors in office at any time shall be as valid and binding as if it had been passed at a duly constituted Directors' meeting.
- 34.16 Any Director shall be entitled to require that any matter tabled for a decision at any meeting of the Directors must be removed from the agenda for that meeting and tabled at a meeting of the Qualifying Shareholders for a decision. Notwithstanding anything to the contrary contained in this MOI, the Qualifying Shareholders shall be entitled to make a decision in relation to the applicable matter.
- 34.17 All acts done by any meeting of the Directors or a committee of Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and were qualified to be a Director.

## 35. COMMITTEES OF THE BOARD

- 35.1 The authority of the Company's Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the board, as set out in section 72 (1), and to include in any such committee persons who are not Directors, as set out in section 73 (2)(a) is not limited or restricted.
- 35.2 Except to the extent that a board resolution establishing a committee provides otherwise, the committee –
- 35.2.1 must not include persons who are Ineligible or Disqualified to be a Director in terms of section 69 of the Companies Act and no such person shall have a vote on any matter to be decided by the committee;
- 35.2.2 may consult with or receive advice from any person; and
- 35.2.3 has the full authority of the Directors in respect of any matter referred to it.
- 35.3 The Directors of the Company shall establish a social and ethics committee, an audit committee (on which the chairperson of the Directors shall sit) and a remuneration committee as standing committees of the Board. The chairperson of the remuneration committee shall be appointed by the Directors of the Company.
- 35.4 All material questions concerning auditing and accounting policy matters of the Group shall be dealt with by the audit committee.
- 35.5 The remuneration committee shall deal with all questions concerning the terms of employment and any other arrangement with all Directors and the allotment and issue of any Shares or options over Shares to any employee of the Group.
- 35.6 The remuneration committee may invite any non-executive Director to attend and speak at any meeting of the committee, but he shall not be entitled to vote at any meeting of the committee.

- 35.7 Save for the chairperson of the remuneration committee who shall be appointed by the Directors of the Company, a committee may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the members present may elect one of their number to be chairperson of the meeting.
- 35.8 A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the event of an equality of votes the chairperson shall not have a second or casting vote.

## **36. ROTATION OF DIRECTORS**

- 36.1 The Qualifying Shareholders in general meeting may from time to time determine the number of Directors, their terms of office and the manner of their retirement. An annual general meeting or other general meeting of the Qualifying Shareholders of the Company may fill any vacancy and a retiring non-executive Director shall be eligible for re-election.
- 36.2 If at any meeting at which an election of Directors ought to take place, the offices of the retiring non-executive Directors are not filled, unless it is expressly resolved not to fill such vacancies, and if at such adjourned meeting the vacancies are not filled, the retiring Directors or such of them as have not had their offices filled shall be deemed to have been re-elected at such adjourned meeting unless a resolution for re-election of any such Director shall have been put to the meeting and negatived.
- 36.3 For the purpose of article 36 only, the existing non-executive Directors, will be deemed to have been appointed in following years:
- 36.3.1 Norman Thomson – 2016;
- 36.3.2 Kenneth Hopkins – 2016;
- 36.3.3 Derrick Msibi – 2017; and
- 36.3.4 Peter de Beyer – 2018.
- 36.4 At the annual general meeting each year, non-executive Directors who

have served for 3 (three) consecutive years, from year of appointment (or deemed year of appointment as set out in article 36.3 above) shall retire from office.

- 36.5 A retiring non-executive Director shall be eligible for re-election.
- 36.6 The Company at the annual general meeting at which a non-executive Director retires in the manner aforesaid or at any other general meeting may fill the vacancy by electing a person thereto.
- 36.7 If at any meeting at which an election of non-executive Directors ought to take place the offices of the retiring directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the provisions of Article 16.3 and 16.4 shall apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors or such of them as have not had their offices filled shall be deemed to have been re-elected at such adjourned meeting unless the Directors have expressly resolved to the contrary.
- 36.8 The Directors shall have power at any time, and from time to time, to appoint a person as an additional Director and such Director who shall retire from office at the next following annual general meeting and shall then be eligible for re-election.

## **37. PAYMENTS WATERFALL**

- 37.1 For the purposes of this Article 37:
- 37.1.1 **“B Preference Share Settlement Date”** means the date on which any and all amounts payable to the holders of the B Preference Shares in accordance with the terms of the B Preference Share Terms are fully paid;
- 37.1.2 **“C Preference Share Settlement Date”** means the date on which any and all amounts payable to the holders of the C Preference Shares in accordance with the terms of the C Preference Share Terms are fully paid;

- 37.1.3 **Cash Distributions** means any amounts paid by the Company to the Investors;
- 37.1.4 **“D PIK Notes”** means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as a *“D PIK Note”*;
- 37.1.5 **“D PIK Settlement Date”** means the date on which any and all amounts outstanding under the D PIK Notes are fully repaid in accordance with the terms of the D PIK Notes;
- 37.1.6 **“E PIK Notes”** means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as an *“E PIK Note”*;
- 37.1.7 **“E PIK Settlement Date”** means the date on which any and all amounts outstanding under the E PIK Notes are fully repaid in accordance with the terms of the E PIK Notes;
- 37.1.8 **“Investors”** means collectively, the holders of the E PIK Notes, the D PIK Notes, the C Preference Shares, the B Preference Shares, the A Ordinary Shares and the Ordinary Shares, and **“Investor”** means any one of them as the context may indicate; and
- 37.1.9 **“Payment Waterfall”** means the hierarchy contemplated by Article 37.2 which delineates the order and priority of all Cash Distributions.
- 37.2 All Cash Distributions made by the Company shall be paid to the Investors in accordance with the following Payment Waterfall:
- 37.2.1 before the E PIK Settlement Date, the Company shall only make Cash Distributions in the following proportions:
- 37.2.1.1 85% of the distributed amount shall be distributed as follows: (i) 97% of such amount to the holders of the E PIK Notes for the repayment of any amounts outstanding

under the E PIK Notes; and (ii) 3% of such amount to the holders of the A Ordinary Shares as dividends;

- 37.2.1.2 7% of the distributed amount shall be distributed as follows: (i) 94% of such amount to the holders of the D PIK Notes for the repayment of any amounts outstanding under the D PIK Notes; and (ii) 6% of such amount to the holders of the A Ordinary Shares as dividends;
- 37.2.1.3 5% of the distributed amount shall be distributed as follows: (i) 91% of such amount to the holders of the C Preference Shares in accordance with the terms of the C Preference Share Terms; and (ii) 9% of such amount to the holders of the A Ordinary Shares as dividends;
- 37.2.1.4 2% of the distributed amount shall be distributed as follows: (i) 88% of such amount to the holders of the B Preference Shares in accordance with the terms of the B Preference Share Terms; and (ii) 12% of such amount to the holders of the A Ordinary Shares as dividends;
- 37.2.1.5 1% of the distributed amount to the holders of the Qualifying Shares as dividends, to be allocated between them pro rata to their respective shareholdings as a proportion of the aggregate number of issued Qualifying Shares;
- 37.2.2 after the E PIK Settlement Date, but before the D PIK Settlement Date, the Company shall only make Cash Distributions in the following proportions:
- 37.2.2.1 85% of the distributed amount shall be distributed as follows: (i) 94% of such amount to the holders of the D PIK Notes for the repayment of any amounts outstanding under the D PIK Notes; and (ii) 6% of such amount to the holders of the A Ordinary Shares as dividends;
- 37.2.2.2 7% of the distributed amount shall be distributed as



follows: (i) 91% of such amount to the holders of the C Preference Shares in accordance with the terms of the C Preference Share Terms; and (ii) 9% of such amount to the holders of the A Ordinary Shares as dividends;

37.2.2.3 5% of the distributed amount shall be distributed as follows: (i) 88% of such amount to the holders of the B Preference Shares in accordance with the terms of the B Preference Share Terms; and (ii) 12% of such amount to the holders of the A Ordinary Shares as dividends;

37.2.2.4 3% of the distributed amount to the holders of the Qualifying Shares as dividends, to be allocated between them pro rata to their respective shareholdings as a proportion of the aggregate number of issued Qualifying Shares;

37.2.3 after the D PIK Settlement Date, but before the C Preference Share Settlement Date, the Company shall only make Cash Distributions in the following proportions:

37.2.3.1 85% of the distributed amount shall be distributed as follows: (i) 91% of such amount to the holders of the C Preference Shares in accordance with the terms of the C Preference Share Terms; and (ii) 9% of such amount to the holders of the A Ordinary Shares as dividends;

37.2.3.2 10% of the distributed amount shall be distributed as follows: (i) 88% of such amount to the holders of the B Preference Shares in accordance with the terms of the B Preference Share Terms; and (ii) 12% of such amount to the holders of the A Ordinary Shares as dividends;

37.2.3.3 5% of the distributed amount to the holders of the Qualifying Shares as dividends, to be allocated between them pro rata to their respective shareholdings as a proportion of the aggregate number of issued Qualifying Shares;

- 37.2.4 after the C Preference Share Settlement Date, but before the B Preference Share Settlement Date, the Company shall only make Cash Distributions in the following proportions:
- 37.2.4.1 85% of the distributed amount shall be distributed as follows: (i) 88% of such amount to the holders of the B Preference Shares in accordance with the terms of the B Preference Share Terms; and (ii) 12% of such amount to the holders of the A Ordinary Shares as dividends;
- 37.2.4.2 15% of the distributed amount to the holders of the Qualifying Shares as dividends, to be allocated between them pro rata to their respective shareholdings as a proportion of the aggregate number of issued Qualifying Shares;
- 37.2.5 after the B Preference Share Settlement Date, the Company shall distribute all amounts available from time to time to the holders of the Qualifying Shares as dividends in accordance with Article 63, to be allocated between them pro rata to their respective shareholdings as a proportion of the aggregate number of issued Qualifying Shares.
- 37.3 Notwithstanding anything to the contrary contained in this MOI, the Company shall not make any Distributions except in accordance with the above Payment Waterfall.

## **38. ANNUAL FINANCIAL STATEMENTS**

- 38.1 The Directors shall from time to time, in accordance with sections 61(8) and 29(6) of the Companies Act, cause to be prepared and laid before the Qualifying Shareholders in general meeting such annual financial statements, Accounts, and group reports (if any) as are referred to in those sections.
- 38.2 A copy of any annual financial statements, Accounts and group reports which are to be laid before the Qualifying Shareholders in annual general

meeting shall, not less than 15 (fifteen) Business Days before the date of the meeting, be sent to every Qualifying Shareholder of, and every holder of debentures of, the Company, and also to CIPC: Provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Company is not aware or to more than one of the joint holders of any Shares or debentures.

### 39. PAYMENTS GENERALLY

- 39.1 All amounts (including principal and interest and costs and fees) payable to any party in terms of this MOI shall be made in rand and by transfer of immediately available funds to the relevant party, or as otherwise instructed by the relevant party.
- 39.2 All payments to a party shall be made free of exchange or other deduction and without the right of deferment or avoidance, counterclaim or set-off and the party required to pay irrevocably waives any such rights to the extent permissible by law.

### 40. AMICABLE RESOLUTION

- 40.1 The parties shall seek to resolve amicably any dispute (a “**Dispute**”) arising out of or in connection with this MOI (including any question regarding its existence, enforceability, validity, interpretation or termination (a “**Dispute**”). To that end, any party (the “**Requesting Party**”) may on notice request any one or more of the other parties (each a “**Requested Party**”) to procure that the Requested Party (or if a body corporate, its managing director or other senior officer) attends a meeting with the Requesting Party (or if a body corporate, its managing director or other senior officer) to discuss and seek to resolve the Dispute. If a Requested Party does not (or if a body corporate, does not procure its managing director or other senior officer to) attend the meeting within a reasonable period (not exceeding 28 (twenty-eight) days), after the request or if any party is not satisfied with the outcome of the meeting, then the Requesting Party or any Requested Party may refer the Dispute to arbitration in accordance with Article 41 (**Disputes**).
- 40.2 If at any time in the opinion of any party the Dispute requires resolution

as a matter of urgency then it may refer the Dispute for arbitration in accordance with Article 41 (**Disputes**) notwithstanding Article 40.1 above.

#### **41. DISPUTES**

- 41.1 This MOI is governed by, and all Disputes shall be resolved in accordance with the laws of South Africa.
- 41.2 Subject to Article 40 (**Amicable Resolution**) all Disputes shall be referred to and finally resolved by arbitration under the Arbitration Foundation of South Africa (AFSA) rules (or the rules of any successor body), which rules are deemed to be incorporated by reference into this Article 41.
- 41.3 The arbitral tribunal shall consist of one arbitrator who shall either be an attorney or advocate admitted to practice in South Africa for at least 15 (fifteen) years (the "**Arbitrator**"). The parties to the Dispute shall attempt to agree the Arbitrator within 20 (twenty) days of the commencement of the arbitration failing which AFSA shall appoint the Arbitrator. The seat, or legal place, and the place in which proceedings will be held, shall be at Johannesburg, South Africa (unless the parties to the Dispute agree otherwise). The language of the arbitration shall be in English.
- 41.4 The parties irrevocably submit to the non-exclusive jurisdiction of the South Gauteng High Court (Johannesburg) to support and assist (but not to interfere with) the arbitration process including if necessary the granting of urgent or interlocutory relief pending the outcome of that process.

#### **42. GENERAL TERMS**

- 42.1 No press or other public statement or circular shall be made or issued in connection with the subject matter of this MOI unless previously approved by the Qualifying Shareholders.
- 42.2 The Qualifying Shareholders undertake that they (or their respective nominees) shall, to the extent of their (or their respective nominees)

respective rights from time to time, exercise their votes as Qualifying Shareholders and procure that their appointed Directors (if applicable) so exercise their vote, that no person is registered as holder of any Qualifying Share (whether upon transfer or by issue) except in accordance with this MOI.

42.3 No waiver by any of the parties of any requirements of this MOI or of any of such party's rights under this agreement shall be valid unless such waiver is in writing and signed by or on behalf of each of the parties.

42.4 No failure to exercise and no delay in exercising any right or remedy under this MOI shall operate as a waiver of such right or remedy, nor shall any single or partial exercise of any right or remedy preclude the exercise of any other right or remedy.

42.5 This MOI and the documents to be delivered pursuant to the terms hereof set out the entire agreement and understanding between the parties and supersede all previous agreements and understandings between the parties in respect of the subject matter hereof. This Article 42.5 shall be without prejudice to any rights which have accrued to a Shareholder prior to the date of this MOI.

42.6 It is acknowledged and agreed that no party has entered into this MOI in reliance upon any representation, warranty, indemnity, covenant or undertaking of any other party which is not expressly set out in this MOI.

42.7 The Company and the Shareholders shall procure that each of them and any relevant third party shall execute all such documents and do all such acts and things as may reasonably be required (including the passing of any necessary resolutions) to give effect to each of the rights and obligations of the respective parties under this MOI.

42.8 If at any time any term or provision in this MOI shall be held to be illegal, invalid or unenforceable, in whole or in part, under any rule of law or enactment, such term or provision or art shall to that extent be deemed not to form part of this MOI, but the enforceability of the remainder of this MOI shall not be affected.

- 42.9 The rights and remedies conferred in this MOI are cumulative and in addition to and without prejudice to all other rights and remedies available in any other agreements or in law or equity.
- 42.10 None of the Shareholders or the Company may cede, assign or delegate its rights under this MOI without the prior consent of each of the other Shareholders.

### **43. NOTICES**

- 43.1 Any notice to be given by the Company to any Shareholder shall be in writing in the English language and delivered personally or sent by prepaid courier (being a reputable international courier service) or by fax to the addressee at the addressee's address or fax number as set out in the Company's securities register (or as otherwise notified in writing from time to time) and shall be deemed to be received if delivered personally or by courier at the time of receipt, or if by fax, at the time sent and shown on a confirmation slip (confirming the number of pages transmitted) provided that a notice received on a day other than a Business Day, or after business hours, in the place of receipt shall be deemed to be given on the next following Business Day in such place.
- 43.2 Notwithstanding anything to the contrary contained in this Article 43, a written notice actually received by a Shareholder shall be an adequate written notice to it notwithstanding that it was not sent to or delivered as set out in this Article 43.
- 43.3 Whenever a notice is to be given by the Company, the notice may be given to the joint holders of a Share by giving the notice to the joint holder named first in the register in respect of the Share.
- 43.4 Whenever a notice is to be given by the Company, the notice may be given to the persons entitled to a Share in consequence of the death or insolvency of a Shareholder, or by sending it through the post in a prepaid letter addressed to them by name, or by the title or representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any) in the Republic supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied)

by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

43.5 Notice of every general meeting shall be given in any manner authorized –

43.5.1 to every Qualifying Shareholder of the Company except those Qualifying Shareholders who (having no registered address within the Republic) have not supplied to the Company an address within the Republic for the giving of notices to them;

43.5.2 to every person entitled to a Share in consequence of the death or insolvency of a Qualifying Shareholder who, but for his death or insolvency, would have been entitled to receive notice of the meeting; and

43.5.3 to the Auditors.

43.6 No other person shall be entitled to receive notice of general meetings.

43.7 A notice given to any Shareholder shall be binding on all persons claiming on his death or on any transmission of his interests.

43.8 The signature to any notice given by the Company may be written or printed, or partly written and partly printed.

43.9 When a given number of days' notice or notice extending over any other period is required to be given, the day of service shall not be counted in such number of days or period.

43.10 If the Company has a seal, it shall not be affixed to any instrument except by the authority of a resolution of the Directors, and shall be affixed in the manner and subject to such safeguards as the Directors may from time to time determine.

#### **44. WINDING UP**

44.1 If the company be wound up, the assets remaining after payment of the

debts and liabilities of the Company and the costs of the liquidation shall be applied as follows –

- 44.1.1 to repay to the members the amounts paid up on the Shares respectively held by each of them; and
  - 44.1.2 the balance (if any) shall be distributed among the members in proportion to the number of Shares respectively held by each of them (the “Liquidation Dividend”);
  - 44.1.3 provided that the provisions of this Article shall be subject to the rights of the holders of Shares (if any) issued upon special conditions.
- 44.2 Any part of the assets of the Company, including any shares or securities of other companies may, with the sanction of a special resolution of the Company, be paid to the Shareholders in specie, or may, with the same sanction, be vested in trustees for the benefit of such Shareholders, and the liquidation of the Company may be closed and the Company dissolved.



**SCHEDULE 1 – DEFINITIONS IN THE COMPANIES ACT**

1. **"accounting records"** means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;
2. **"amalgamation or merger"** means a transaction, or series of transactions, pursuant to an agreement between two or more companies, resulting in-
  - 2.1 the formation of one or more new companies, which together hold all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement, and the dissolution of each of the amalgamation or merging companies; or
  - 2.2 the survival of at least one of the amalgamating or merging companies, with or without the formation of one or more new companies, and the vesting in the surviving company or companies, together with such new company or companies, of all of the assets and liabilities that were held by any of the amalgamating or merging companies immediately before the implementation of the agreement;
3. **"annual general meeting"** means the meeting of a public company required by section 61(7);
4. **"audit"** has the meaning set out in the Auditing Profession Act, but does not include an "independent review" of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);
5. **"Auditing Profession Act"** means the Auditing Profession Act, 2005 (Act No. 26 of 2005);
6. **"auditor"** has the meaning set out in the Auditing Profession Act;
7. **"beneficial interest"**, when used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship

or otherwise, alone or together with another person to-

- 7.1 receive or participate in any distribution in respect of the company's securities;
- 7.2 exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- 7.3 dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);

- 8. "**board**" means the board of directors of a company;
- 9. "**business days**" has the meaning determined in accordance with section 5(3);
- 10. "**central securities depository**" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
- 11. "**Commission**" means the Companies and Intellectual Property Commission established by section 185;
- 12. "**Commissioner**" means the person appointed to or acting in the office of that name, as contemplated in section 189;
- 13. "**company**" means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the Effective Date –
  - 13.1 was registered in terms of the –
    - 13.1.1 Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
    - 13.1.2 Close Corporations Act, 1984 (Act No. 69 of 1984), if it has

subsequently been converted in terms of Schedule 2;

- 13.2 was in existence and recognised as an existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- 13.3 was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;
14. "**Competition Act**", means the Competition Act, 1998 (Act No. 89 of 1998);
15. "**consideration**" means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including –
- 15.1 any money, property, negotiable instrument, securities, investment credit facility, token or ticket;
- 15.2 any labour, barter or similar exchange of one thing for another; or
- 15.3 any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;
16. "**convertible**" when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including –
- 16.1 any non-voting securities issued by the company and which will become voting securities –
- 16.1.1 on the happening of a designated event; or
- 16.1.2 if the holder of those securities so elects at some time after acquiring them; and
- 16.2 Options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);

17. **"director"** means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternative director, by whatever name designated;
18. **"distribution"** means a direct or indirect –
- 18.1 transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares or to the holder of a beneficial interest in any such shares, of that company or of another company within the same group of companies, whether-
- 18.1.1 in the form of a dividend;
- 18.1.2 as a payment in lieu of a capitalisation share, as contemplated in section 47;
- 18.1.3 as consideration for the acquisition-
- 18.1.3.1 by the company of any of its shares, as contemplated in section 48; or
- 18.1.3.2 by any company within the same group of companies, of any shares of a company within that group of companies; or
- 18.1.4 otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);
- 18.2 incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or
- 18.3 forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,

but does not include any such action taken upon the final liquidation of the company;

19. "**effective date**", with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;
20. "**electronic communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act;
21. "**Electronic Communications and Transactions Act**" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
22. "**employee share scheme**" has the meaning set out in section 95(1)(c);
23. "**exchange**" when used as a noun, has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
24. "**exercise**", when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;
25. "**ex officio director**" means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's MOI;
26. "**external company**" means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2);
27. "**financial statement**" includes –
  - 27.1 annual financial statements and provisional annual financial statements;
  - 27.2 interim or preliminary reports;
  - 27.3 group and consolidated financial statements in the case of a group of companies; and
  - 27.4 financial information in a circular, prospectus or provisional

announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

28. **"group of companies"** means a holding company and all of its subsidiaries;
29. **"holding company"**, in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);
30. **"incorporator"**, when used –
  - 30.1 with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or
  - 30.2 with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company;
31. **"individual"** means a natural person;
32. **"inter-related"**, when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series;
33. **"juristic person"** includes –
  - 33.1 a foreign company; and
  - 33.2 a trust, irrespective of whether or not it was established within or outside the Republic;
34. **"knowing"**, **"knowingly"** or **"knows"**, when used with respect to a person, and in relation to a particular matter, means that the person either –

- 34.1 Had actual knowledge of the matter; or
- 34.2 Was in a position in which the person reasonably ought to have –
  - 34.2.1 had actual knowledge;
  - 34.2.2 investigated the matter to an extent that would have provided the person with actual knowledge; or
  - 34.2.3 taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;
- 35. "**material**", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is –
  - 35.1 of consequence in determining the matter; or
  - 35.2 might reasonably affect a person's judgement or decision-making in the matter;
- 36. "**nominee**" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);
- 37. "**ordinary resolution**" means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8) –
  - 37.1 at a shareholders meeting; or
  - 37.2 by holders of the company's securities acting other than at a meeting, as contemplated in section 60;
- 38. "**person**" includes a juristic person;
- 39. "**personal financial interest**", when used with respect to any person –
  - 39.1 means a direct material interest of that person, of a financial, monetary

or economic nature, or to which a monetary value may be attributed; but

- 39.2 does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;
40. "**prescribed officer**" means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10);
41. "**present at a meeting**" means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;
42. "**private company**" means a profit company that –
- 42.1 is not a public, personal liability or state-owned company; and
- 42.2 satisfies the criteria set out in section 8(2)(b);
43. "**profit company**" means a company incorporated for the purpose of financial gain for its shareholders;
44. "**public company**" means a profit company that is not a state-owned company, a private company or a personal liability company;
45. "**record date**" means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;
46. "**registered auditor**" has the meaning set out in the Auditing Profession Act;
47. "**registered office**" means the office of a company, or of an external company, that is registered as required by section 23;
48. "**related**", when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to



section (c);

49. **"rules"** and **"rules of a company"** means any rules made by a company as contemplated in section 15(3) to (5);
50. **"securities"** means any shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by a profit company;
51. **"securities register"** means the register required to be established by a profit company in terms of section 50(1);
52. **"share"** means one of the units into which the proprietary interest in a profit company is divided;
53. **"shareholder"**, subject to section 57(1), means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be;
54. **"shareholders meeting"**, with respect to any particular matter concerning a company, means a meeting of those holders of that company's issued securities who are entitled to exercise voting rights in relation to that matter;
55. **"solvency and liquidity test"** means the test set out in section 4 (1);
56. **"special resolution"** means –
  - 56.1 in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10) –
    - 56.1.1 at a shareholders meeting; or
    - 56.1.2 by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or
    - 56.1.3 in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted,

in terms of the relevant law under which that juristic person was incorporated;

57. "**subsidiary**" has the meaning determined in accordance with section 3;
58. "**voting power**", with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights;
59. "**voting rights**", with respect to any matter to be decided by a company, means
- 
- 59.1 the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or
- 59.2 the rights of a member to vote in connection with the matter, in the case of a non- profit company;
60. "**voting securities**", with respect to any particular matter, means securities that
- 
- 60.1 carry voting rights with respect to that matter; or
- 60.2 are presently convertible to securities that carry voting rights with respect to that matter;
61. "**wholly-owned subsidiary**" has the meaning determined in accordance with section 3(1)(b).

**SCHEDULE 2 – INELIGIBLE / DISQUALIFIED IN TERMS OF SECTION 69(7)  
AND (8) OF THE COMPANIES ACT READ WITH REGULATION 39(3)**

1. A person is ineligible to be a Director if the Person –
  - 1.1 is a juristic person;
  - 1.2 is an unemancipated minor, or is under a similar legal disability; or
  - 1.3 does not satisfy any qualification set out in the MOI.
  
2. A person is disqualified to be a Director if –
  - 2.1 a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
  - 2.2 the Person –
    - 2.2.1 is an unrehabilitated insolvent;
    - 2.2.2 is prohibited in terms of any public regulation to be a Director;
    - 2.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
    - 2.2.4 has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence –
      - 2.2.4.1 involving fraud, misrepresentation or dishonesty;
      - 2.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
      - 2.2.4.3 under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the

Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

**SCHEDULE 3 – A ORDINARY SHARE TERMS**

**RIGHTS, PRIVILEGES AND CONDITIONS ATTACHING TO THE A ORDINARY SHARES**

The A ordinary no par value shares in the share capital of the Company shall have the rights, privileges and conditions set out in this Schedule 3.

1. In this Schedule, and except if the context otherwise indicates –
  - 1.1 “**A Dividend Percentage**” means the percentage that the A Ordinary Shares represent as a portion of the aggregate number of Qualifying Shares in issue from time to time multiplied by the percentage of each Distribution allocated to the Qualifying Shares;
  - 1.2 “**A Ordinary Shares**” means the A ordinary shares in the share capital of the Company having the rights and privileges set out in this Schedule 3;
  - 1.3 “**Act**” means the Companies Act, 71 of 2008;
  - 1.4 “**Board**” means the board of directors of the Company;
  - 1.5 “**Business Day**” means any day except a Saturday, Sunday or an official public holiday in the Republic of South Africa;
  - 1.6 “**B Preference Share**” means each perpetual B preference share in the issued share capital of the Company which confers on its holder the rights and privileges set out in Schedule 4 of this MOI (previously known as the Compulsory Convertible Preference Shares);
  - 1.7 “**C Preference Shares**” means the C1 Preference Shares and C2 Preference Shares collectively;
  - 1.8 “**Company**” means Evolution Credit Limited, registration number 1999/020093/06, a company duly registered and incorporated with limited liability in accordance with the company laws of the Republic of South Africa;

- 1.9           **"C1 Preference Share"** means each cumulative perpetual C1 preference share in the issued share capital of the Company which confers on its holder the rights and privileges set out in Schedule 5 of this MOI (previously known as the Cumulative Redeemable "A" Preference Shares);
- 1.10           **"C2 Preference Share"** means each cumulative perpetual C2 preference share in the issued share capital of the Company which confers on its Holder the rights and privileges set out in Schedule 6 of this MOI (previously known as the Cumulative Redeemable "B" Preference Shares);
- 1.11           **"D PIK Note"** means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as a "*D PIK Note*";
- 1.12           **"Distributable Amount"** means, from time to time and in relation to each Dividend Payment Date, the amount of cash held by the Company at that time which the Board in its sole discretion elects, subject to applicable law, to distribute to the holders of the Equity Capital Instruments;
- 1.13           **"Distribution"** means:
- 1.13.1           in relation to the Ordinary Shares, A Ordinary Shares, C Preference Shares and B Preference Shares, a "*distribution*" as contemplated in the Act; and
- 1.13.2           in relation to the D PIK Notes and the E PIK Notes, as applicable, any repayment of principal or accrued interest or any other amount owing under the D PIK Notes or E PIK Notes, as applicable;
- 1.14           **"Distribution Entitlement Percentage"** means a percentage calculated as follows:
- 1.14.1           until all of the E PIK Notes are repaid in full, 3,66% plus the A Dividend Percentage;

- 1.14.2 thereafter, until all of the D PIK Notes are repaid in full, 6,33% plus the A Dividend Percentage;
- 1.14.3 thereafter, until the Company has redeemed all of the C Preference Shares and paid the Redemption Amount on each C Preference Share issued by it, 8,85% plus the A Dividend Percentage;
- 1.14.4 thereafter, until the Company has redeemed all of the B Preference Shares and paid the Redemption Amount on each B Preference Share issued by it, 10,2% plus the A Dividend Percentage; and
- 1.14.5 thereafter, the A Dividend Percentage;
- 1.15 **“Dividend Payment Date”** means each date on which the Company elects to declare and pay a Distribution to any holder of any Equity Capital Instrument;
- 1.16 **“Equity Capital Instrument”** means:
- 1.16.1 each Ordinary Share;
- 1.16.2 each A Ordinary Share;
- 1.16.3 each B Preference Share;
- 1.16.4 each C Preference Share;
- 1.16.5 each D PIK Note; and
- 1.16.6 each E PIK Note;
- 1.17 **“E PIK Note”** means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as a *“E PIK Note”*;
- 1.18 **“Financial Year”** means each financial year of the Company, which

currently ends on the last day of March each year;

- 1.19 **"Holder"** means, at any point in time, a registered holder of an A Ordinary Share at that point in time;
- 1.20 **"Implementation Date"** has the meaning set out in the written agreement entitled "*Implementation Agreement*" concluded amongst, inter alia, the Company and the Management Trust during November 2017;
- 1.21 **"Management Trust"** means The trustees for the time being of the Real People Incentive Trust registered with the Office of the Master of the High Court under reference number IT003155/2017G;
- 1.22 **"Ordinary Shares"** means ordinary shares in the authorized and issued share capital of the Company; and
- 1.23 **"Qualifying Shares"** means the Ordinary Shares and the A Ordinary Shares.

## 2. ALLOTMENT AND ISSUE

The Company has agreed to allot and issue 18 029 362 (eighteen million twenty nine thousand three hundred and sixty two) A Ordinary Shares, which have the preferences, rights, limitations and other terms attached thereto in this Schedule 3.

## 3. RANKING

Other than as set out in this MOI, the A Ordinary Shares rank *pari passu* with the Ordinary Shares.

## 4. ENTITLEMENT TO DIVIDENDS

- 4.1 In respect of each Dividend Payment Date, the Board shall determine the Distributable Amount available for making a Distribution to the holders of Equity Instruments at its sole discretion.



- 4.2 The Company records that the holders of the various Equity Capital Instruments are entitled to receive a portion of the Distributable Amount on each Dividend Payment Date in accordance with the percentages set out in the table below, noting that until the E PIK Notes are redeemed in full, the 1<sup>st</sup> priority set out below will be applied to determining the Distribution Entitlement Percentage. Once the E PIK Notes are redeemed in full, the next priority referred to below will apply, which principle shall continue to apply until all of the E PIK Notes, D PIK Notes, C Preference Shares and B Preference Shares have been redeemed in full:

Class	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>
E PIK Notes and A Ordinary Share Allocation of 3%	85%	0	0	0	0
D PIK Notes and A Ordinary Share Allocation of 6%	7%	85%	0	0	0
C Preference Shares and A Ordinary Share Allocation of 9%	5%	7%	85%	0	0
B Preference Shares and A Ordinary Share Allocation of 12%	2%	5%	10%	85%	0
Ordinary Shares and A Ordinary Shares	1%	3%	5%	15%	100%

- 4.3 Accordingly, each time the Company makes a Distribution, the Company shall be obliged to pay to the Holders of the A Ordinary Shares the amount equal to the Distribution Entitlement Percentage multiplied by the Distributable Amount.

- 4.4 The Company shall declare and shall pay dividends for the A Ordinary Shares and the Ordinary Shares on the same day and shall on the day of such declaration and payment, deliver a copy of the resolution passed by the Company resolving to declare and pay such dividends, to the Holders.

## 5. **WINDING-UP**

On a winding-up of the Company the A Ordinary Shares shall rank alongside the Ordinary Shares.

## 6. NOTICES, MEETINGS AND VOTING

- 6.1 The Holders shall have the right to receive notice of and to attend any meeting of the Company and shall be entitled to vote alongside the holders of Ordinary Shares, either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the A Ordinary Shares.
- 6.2 Separate class meetings of the Holders shall be convened and held *mutatis mutandis* in the manner prescribed by this MOI for general meetings of the Company.

## 7. ABROGATION OF RIGHTS

Notwithstanding anything to the contrary contained in this MOI:

- 7.1 the rights and privileges attaching to the A Ordinary Shares may not be modified, altered, varied, added to or abrogated; and/or
- 7.2 no shares, other than the Equity Capital Instruments, in the capital of the Company ranking, as regards rights to dividend, or, on a winding-up, return of capital, in priority or *pari passu* with the A Ordinary Shares shall be created or issued; and/or
- 7.3 no further A Ordinary Shares shall be issued by the Company,
- without the prior written consent of the Holders of three quarters of the A Ordinary Shares.

## 8. DISPOSAL

- 8.1 Notwithstanding anything to the contrary in this MOI, no Holder may Dispose of an A Ordinary Share unless such Disposal is in accordance with the terms of the trust deed of the Management Trust.

**SCHEDULE 4 – B PREFERENCE SHARE TERMS**  
**RIGHTS, PRIVILEGES AND CONDITIONS ATTACHING TO THE CUMULATIVE**  
**PERPETUAL B PREFERENCE SHARES**

The B cumulative perpetual preference no par value shares in the share capital of the Company shall have the rights, privileges and conditions set out in this Schedule 4.

1. In this Schedule, and except if the context otherwise indicates –
  - 1.1 “**A Ordinary Shares**” means the A ordinary shares in the share capital of the Company having the rights and privileges set out in Schedule 3;
  - 1.2 “**A Ordinary Share Allocation**” means, that portion of the Distributable Amount which the holders of the A Ordinary Shares are entitled to receive as a distribution on the relevant Dividend Payment Date as determined in accordance with the rights and privileges attaching to the A Ordinary Shares;
  - 1.3 “**Account Bank**” means The Standard Bank of South Africa Limited or any replacement Account Bank approved in writing by the Holders;
  - 1.4 “**Act**” means the Companies Act, 71 of 2008;
  - 1.5 “**Accumulated Preference Dividends**” means any and all Preference Dividends, whether declared or not, which remain unpaid at any time;
  - 1.6 “**Allocated Issue Price**” means ZAR1,496 per B Preference Share;
  - 1.7 “**B Account**” means the account opened or to be opened in accordance with paragraph 1.6 (Opening and Maintenance of Accounts) below in the name of the Company with the Account Bank, for the purpose of the receipt of each B Amount, the details of which will be notified in writing by the Company to the Holders within 5 (five) Business Days of the Implementation Date;
  - 1.8 “**B Amount**” has the meaning set out in paragraph 5.3 below;
  - 1.9 “**Board**” means the board of directors of the Company;

- 1.10        "**Business Day**" means any day except a Saturday, Sunday or an official public holiday in the Republic of South Africa;
- 1.11        "**B Preference Share**" means each perpetual B preference share in the issued share capital of the Company which confers on its holder the rights and privileges set out in this Schedule 4 of this MOI;
- 1.12        "**C Preference Shares**" means the C1 Preference Shares and C2 Preference Shares collectively;
- 1.13        "**Company**" means Evolution Credit Limited, registration number 1999/020093/06, a company duly registered and incorporated with limited liability in accordance with the company laws of the Republic of South Africa;
- 1.14        "**C1 Preference Share**" means each cumulative perpetual C1 preference share in the issued share capital of the Company which confers on its holder the rights and privileges set out in Schedule 5 of this MOI (previously known as the Cumulative Redeemable "A" Preference Shares);
- 1.15        "**C2 Preference Share**" means each cumulative perpetual C2 preference share in the issued share capital of the Company which confers on its Holder the rights and privileges set out in Schedule 6 of this MOI (previously known as the Cumulative Redeemable "B" Preference Shares);
- 1.16        "**Capital Redemption Amounts**" means the amount(s) by which any Distribution made to the holder of a B Preference Share in accordance with the Distribution Entitlement Percentage exceeds any Accumulated Preference Dividends in respect of that B Preference Share at the time at which the Distribution is made;
- 1.17        "**D PIK Note**" means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as a "*D PIK Note*";
- 1.18        "**Discharge Date**" means the date upon which all of the obligations

of the Company to the Holders under this Schedule 4 are fully and finally discharged in accordance with the terms hereof (including, without limitation, the redemption in full of all the B Preference Shares);

1.19           **“Distributable Amount”** means, from time to time and in relation to each Dividend Payment Date, the amount of cash held by the Company at that time which the Board in its sole discretion elects, subject to applicable law, to distribute to the holders of the Equity Capital Instruments;

1.20           **“Distribution”** means:

1.20.1           in relation to the Ordinary Shares, A Ordinary Shares, C Preference Shares and B Preference Shares, a “*distribution*” as contemplated in the Act; and

1.20.2           in relation to the D PIK Notes and the E PIK Notes, as applicable, any repayment of principal or accrued interest or any other amount owing under the D PIK Notes or E PIK Notes, as applicable;

1.21           **“Distribution Entitlement Percentage”** means a percentage calculated as follows:

1.21.1           until all of the E PIK Notes are repaid in full, 88% of 2%;

1.21.2           thereafter, until all of the D PIK Notes are repaid in full, 88% of 5%; and

1.21.3           thereafter, until the Company has redeemed all of the C Preference Shares and paid the Redemption Amount on each C Preference Share issued by it, 88% of 10%;

1.21.4           thereafter, until the Company has redeemed all of the B Preference Shares and paid the Redemption Amount on each B Preference Share issued by it, 88% of 85%; and

- 1.21.5                    once the Company has redeemed all of the B Preference Shares and paid the Redemption Amount on each B Preference Share issued by it, 0%;
- 1.22                    “**Dividend Payment Date**” means each date on which the Company elects to declare and pay a Distribution to any holder of any Equity Capital Instrument;
- 1.23                    “**Dividend Period**” means consecutive periods of 12 months, with the first period commencing on the Implementation Date and ending the day before the first anniversary of the Implementation Date;
- 1.24                    “**Dividend Rate**” means a fixed rate of 3% (three percent) per annum, nominal annual compounded annually;
- 1.25                    “**Equity Capital Instrument**” means:
- 1.25.1                    each Ordinary Share;
- 1.25.2                    each A Ordinary Share;
- 1.25.3                    each B Preference Share;
- 1.25.4                    each C Preference Share;
- 1.25.5                    each D PIK Note; and
- 1.25.6                    each E PIK Note;
- 1.26                    “**E PIK Note**” means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as a “*E PIK Note*”;
- 1.27                    “**Financial Year**” means each financial year of the Company, which currently ends on the last day of March each year;
- 1.28                    “**Holder**” means, at any point in time, a registered holder of a B Preference Share at that point in time;

- 1.29            **"Implementation Date"** has the meaning set out in the written agreement entitled "*Implementation Agreement*" concluded amongst, inter alia, the Company and certain Holders during November 2017;
- 1.30            **"Issue Date"** means, in relation to a B Preference Share, the date upon which that B Preference Share was actually allotted and issued by the Company to a Holder in accordance with the provisions of the corresponding Subscription Agreement;
- 1.31            **"Outstanding Capital Amount"** means, in respect of each B Preference Share, the Allocated Issue Price less the Capital Redemption Amounts paid to the Holders from time to time;
- 1.32            **"Ordinary Shares"** means ordinary shares in the authorized and issued share capital of the Company;
- 1.33            **"Preference Dividends"** means, for each Dividend Period, the cumulative preferential cash dividend on each B Preference Share, calculated in accordance with paragraph 4.1 below;
- 1.34            **"Principal Amount"** means, without double counting, in relation to any B Preference Share and for each Dividend Period, the aggregate of:
- 1.34.1            the Outstanding Capital Amount of that B Preference Share; and
- 1.34.2            any Accumulated Preference Dividends which have accumulated since the Implementation Date;
- 1.35            **"Redemption Amount"** means, without double counting, in relation to each B Preference Share, an amount equal to the sum of:
- 1.35.1            the Outstanding Capital Amount for that B Preference Share;  
plus
- 1.35.2            any Accumulated Preference Dividend in respect of that B Preference Share; plus

- 1.35.3 any pro-rata Preference Dividends which have accrued in terms of any provision of this Schedule 4 in respect of any Dividend Period not yet completed, which as at the date on which the B Preference Shares in question are to be redeemed, are unpaid, whether declared or not;
- 1.36 **“Respective Shareholding”** means, in respect of a Holder, the ratio that the aggregate number of B Preference Shares held by such Holder bears to the total number of issued B Preference Shares;
- 1.37 **“Restricted Period”** means, in relation to a B Preference Share, the period commencing on the Implementation Date and ending on the day after the third anniversary of the Implementation Date; and
- 1.38 **“Subscription Agreement”** means, in relation to a B Preference Share issued to a Holder, the written subscription agreement executed between the Company and that Holder relating to its subscription for such B Preference Share.

## 2. **ALLOTMENT AND ISSUE**

The Company previously allotted and issued 34 626 (thirty four thousand six hundred and twenty six) “Compulsory Convertible” Preference Shares. The preferences, rights, limitations and other terms and the distinguishing designation of the “Compulsory Convertible” Preference Shares have been amended to constitute these B Preference Shares and have the preferences, rights, limitations and other terms attached thereto in this Schedule 4.

## 3. **RANKING**

Other than as set out in this MOI, the B Preference Shares shall rank in priority in all respects (including without limitation as to the payment of dividends, redemption prices and other amounts) to the Ordinary Shares and the A Ordinary Shares, but shall rank behind the D PIK Notes, the E PIK Notes and the C Preference Shares.



#### 4. PREFERENCE DIVIDENDS

- 4.1 Each issued B Preference Share shall accrue Preference Dividends in respect of each Dividend Period in an amount equal to the amount represented by the symbol 'a' in the formula set out hereunder:

$$a = b \times c \times d$$

in which formula:

- a the Preference Dividend to be calculated, expressed in Rand;
- b the Principal Amount in respect of the applicable B Preference Share on the first day of the applicable Dividend Period;
- c the Dividend Rate;
- d the number of days in the applicable dividend Period divided by 365 (three hundred and sixty five) or 366 (three hundred and sixty-six) in the case of a leap year;

provided that any unpaid Preference Dividends shall be accumulated to the Principal Amount.

- 4.2 Each B Preference Share shall confer the right on the Holder to have Preference Dividends declared and paid in accordance with the provisions of paragraph 5 below.

#### 5. PAYMENT OF PREFERENCE DIVIDENDS AND REDEMPTION

- 5.1 In respect of each Dividend Payment Date, the Board shall determine the Distributable Amount available for making a Distribution to the holders of Equity Instruments at its sole discretion.

- 5.2 The Company records that the holders of the various Equity Capital Instruments are entitled to receive a portion of the Distributable Amount on each Dividend Payment Date in accordance with the percentages set out in the table below, noting that until the E PIK Notes are

redeemed in full, the 1<sup>st</sup> priority set out below will be applied to determining the Distribution Entitlement Percentage. Once the E PIK Notes are redeemed in full, the next priority referred to below will apply, which principle shall continue to apply until all of the E PIK Notes, D PIK Notes, C Preference Shares and B Preference Shares have been redeemed in full:

Class	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>
E PIK Notes and A Ordinary Share Allocation of 3%	85%	0	0	0	0
D PIK Notes and A Ordinary Share Allocation of 6%	7%	85%	0	0	0
C Preference Shares and A Ordinary Share Allocation of 9%	5%	7%	85%	0	0
B Preference Shares and A Ordinary Share Allocation of 12%	2%	5%	10%	85%	0
Ordinary Shares and A Ordinary Shares	1%	3%	5%	15%	100%

5.3 Accordingly, until the B Preference Shares are redeemed in full, the Company shall be obliged to apply a portion (as calculated in accordance with the formula below) of each Distributable Amount in accordance with the provisions of paragraph 6.6.3 (*Waterfall*) below, with such portion being calculated as follows (the **B Amount**):

**B Amount – DE x DA**

Where:

B Amount = that portion of the relevant Distributable Amount relating to a Dividend Payment Date which the Company is required to apply to paying Preference Dividends on the B Preference Shares and redeeming, either partially or in full, the B Preference Shares in accordance with this Schedule 4;

DE = the Distribution Entitlement Percentage applicable to the B preference Shares at that time;

DA = the Distributable Amount at that time.

- 5.4 Subject to the requirements of the Act, on each Dividend Payment Date on which the Company makes a Distribution on any other Equity Capital Instrument, the Company shall be obliged to apply the B Amount allocated to the B Preference Shares in accordance with the provisions of paragraph 6.6.3 (*Waterfall*) below.
- 5.5 Preference Dividends shall be declared on a date determined by the Board, provided that no dividends will be declared and paid on Ordinary Shares in the Company unless on the same date Preference Dividends are declared and paid to the B Preference Shares in accordance with the Distribution Entitlement Percentage.
- 5.6 The Company shall declare and shall pay the Preference Dividend for all the B Preference Shares on the same day and shall on the day of such declaration and payment, deliver a copy of the resolution passed by the Company resolving to declare and pay such Preference Dividend, to the Holders.

## 6. ACCOUNTS

### 6.1 Opening and maintenance of Accounts

- 6.1.1 As from the date falling 15 (fifteen) Business Days after the Implementation Date, the Company shall maintain the B Account with the Account Bank, in the name of the Company.
- 6.1.2 The Company must open and maintain the B Account with the Account Bank (or its Affiliate) and operate same solely in accordance with the provisions of this MOI.
- 6.1.3 The Company undertakes to comply with all of the requirements of the Account Bank which apply to account holders of the Account Bank generally in opening and maintaining the B Account.

## 6.2 **Operating Procedures**

- 6.2.1 The Company shall procure that the mandates and operating procedures for the B Account shall be in accordance with the provisions of this MOI and to the reasonable satisfaction of the Holders.

## 6.3 **Currencies**

The B Account shall be ZAR denominated.

## 6.4 **No waiver**

- 6.4.1 The restrictions contained in this MOI on the withdrawal of the amounts from the B Account shall not affect the obligations of the Company to make all payments required to be made to the Holders on the due date for payment in accordance with this MOI.
- 6.4.2 Neither the ability of the Company to make any withdrawal from the B Account in accordance with this Agreement nor any such withdrawal shall be construed as a waiver by any Holder of any of its rights or remedies under this MOI.

## 6.5 **Access to books and records**

The Company irrevocably grants to any Holder and any of its authorised representatives the right, at any time prior to the Discharge Date, to review all books and records (including computer records) held by the Account Bank relating to the B Account. The Company hereby irrevocably instructs and authorises the Account Bank to provide any Holder and any of its authorised representatives unrestricted access during normal business hours to review such books and records held by the Account Bank and any such information relating to the B Account as such Holder may at any time and from time to time, on reasonable written notice, request. The Company irrevocably waives any right of confidentiality, which may exist to the extent necessary to allow

disclosure of such books, records and information to any Holder and its authorised representative.

## 6.6 **Company Accounts**

### 6.6.1 Deposits

The Company shall, upon each Dividend Payment Date, pay the B Amount into the B Account.

### 6.6.2 Permitted withdrawals

6.6.2.1 The Company shall ensure that, until the Discharge Date, no withdrawals or transfers shall be made from the B Account other than:

6.6.2.1.1 to make the Distributions and payments contemplated in paragraph 6.6.3 (*Waterfall*) below, in the manner and order set out in that paragraph; or

6.6.2.1.2 as otherwise agreed between the Company and the Holders in writing.

6.6.2.2 No withdrawal, payment or transfer shall be made from the B Account to the extent that the B Account would become overdrawn.

### 6.6.3 Waterfall

6.6.3.1 Prior to the redemption of all of the B Preference Shares pursuant to paragraph 10 (*Redemption*) below:

6.6.3.1.1 the Company shall, upon the Dividend Payment Date, after paying the B Amount into the B Account pursuant to paragraph 6.6.1 above, pay any Accumulated Preference Dividends in respect of the B Preference Shares to the Holders in accordance with their Respective Shareholding from the B Account; and

6.6.3.1.2 following the payment of all Accumulated Preference Dividends,

all amounts remaining in the B Account:

6.6.3.1.2.1 during the Restricted Period:

(a) may be applied, at the Company's election, to the voluntary redemption of the B Preference Share Terms in accordance with each Holder's Respective Shareholding, in terms of the provisions of paragraph 10 (*Redemption*) below; or

(b) must be retained in the B Account; or

6.6.3.1.2.2 after the expiry of the Restricted Period, shall be applied to the mandatory redemption of the B Preference Shares in accordance with each Holder's Respective Shareholding in terms of the provisions of paragraph 10 (*Redemption*) below.

6.6.3.2 Following the Discharge Date, all monies left standing to the credit of the B Account may be utilised as the Company deems fit.

## 7. WINDING-UP

The following terms shall apply to the B Preference Shares on a winding-up of the Company:

7.1 the Holders shall be paid out of the assets of the Company and in priority to the holders of all other classes of shares in the capital of the Company, other than the D PIK Notes, E PIK Notes and C Preference Shares which rank ahead of the B Preference Shares, any amount of the Redemption Amount in respect of each B Preference Share; and

7.2 such repayment shall be in priority to any payment to the holders of any other class of shares in the capital of the Company (other than the D PIK Notes, E PIK Notes and C Preference Shares which rank ahead of the B Preference Shares) not ranking prior to or *pari passu* with the B Preference Shares.

## 8. NOTICES, MEETINGS AND VOTING

- 8.1 The Holders shall have the right to receive notice of and to attend any meeting of the Company but shall not be entitled to vote, either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the B Preference Shares.
- 8.2 Separate class meetings of the Holders shall be convened and held *mutatis mutandis* in the manner prescribed by this MOI for general meetings of the Company.

## 9. ABROGATION OF RIGHTS

Notwithstanding anything to the contrary contained in this MOI:

- 9.1 the rights and privileges attaching to the B Preference Shares may not be modified, altered, varied, added to or abrogated; and/or
- 9.2 no shares, other than the Equity Capital Instruments, in the capital of the Company ranking, as regards rights to dividend, or, on a winding-up, return of capital, in priority or *pari passu* with the B Preference Shares shall be created or issued; and/or
- 9.3 no further B Preference Shares shall be issued by the Company, without the prior written consent of the Holders of three quarters of the B Preference Shares.

## 10. REDEMPTION

- 10.1 Notwithstanding anything to the contrary contained in this MOI the Company shall be entitled to, by giving a Holder two days written notice to that effect, apply the B Amount, or a portion thereof, on any Dividend Payment Date to redeeming all or a portion of the B Preference Shares held by any Holder for the Redemption Amount, which Redemption Amount shall be paid in South African Rand.
- 10.2 The redemption of any B Preference Shares shall, save as otherwise

agreed in writing by the Company and the Holders, be effected by the Company paying the Redemption Amount, on the relevant Dividend Payment Date, to the Holders, in cash, against delivery to the Company at its registered office of the share certificates in respect of the B Preference Shares redeemed.

- 10.3 In addition to the redemption rights set out in paragraph 10.1 above, the Company shall be entitled to redeem the B Preference Shares at the times and in the circumstances contemplated in the MOI.



## SCHEDULE 5 – C1 PREFERENCE SHARE TERMS

### RIGHTS, PRIVILEGES AND CONDITIONS ATTACHING TO THE CUMULATIVE PERPETUAL C1 PREFERENCE SHARES

The C1 cumulative perpetual preference no par value shares in the share capital of the Company shall have the rights, privileges and conditions set out in this Schedule 5.

1. In this Schedule, and except if the context otherwise indicates –

- 1.1 “**A Ordinary Shares**” means the A ordinary shares in the share capital of the Company having the rights and privileges set out in Schedule 3 of this MOI;
- 1.2 “**A Ordinary Share Allocation**” means, that portion of the Distributable Amount which the holders of the A Ordinary Shares are entitled to receive as a distribution on the relevant Dividend Payment Date as determined in accordance with the rights and privileges attaching to the A Ordinary Shares;
- 1.3 “**Account Bank**” means The Standard Bank of South Africa Limited or any replacement Account Bank approved in writing by the Holders;
- 1.4 “**Act**” means the Companies Act, 71 of 2008;
- 1.5 “**Accumulated Preference Dividends**” means any and all Preference Dividends, whether declared or not, which remain unpaid at any time;
- 1.6 “**Allocated Issue Price**” means ZAR1,547 per C1 Preference Share;
- 1.7 “**Board**” means the board of directors of the Company;
- 1.8 “**Breach Redemption Amount**” an amount equal to the Fair Market Value of the C1 Preference Shares at the time of the redemption resulting from a breach of the Social Purpose;
- 1.9 “**Business Day**” means any day except a Saturday, Sunday or an

official public holiday in the Republic of South Africa;

- 1.10 **"B Preference Share"** means each perpetual B preference share in the issued share capital of the Company which confers on its holder the rights and privileges set out in Schedule 4 of this MOI (previously known as the Compulsory Convertible Preference Shares);
- 1.11 **"C Preference Shares"** means the C1 Preference Shares and C2 Preference Shares collectively;
- 1.12 **"Company"** means Evolution Credit Limited, registration number 1999/020093/06, a company duly registered and incorporated with limited liability in accordance with the company laws of the Republic of South Africa;
- 1.13 **"C1 Preference Share"** means each cumulative perpetual C1 preference share in the issued share capital of the Company which confers on its holder the rights and privileges set out in this Schedule 5 of this MOI (previously known as the Cumulative Redeemable "A" Preference Shares);
- 1.14 **"C2 Preference Share"** means each cumulative perpetual C2 preference share in the issued share capital of the Company which confers on its Holder the rights and privileges set out in Schedule 6 of this MOI (previously known as the Cumulative Redeemable "B" Preference Shares);
- 1.15 **"C1 Account"** means the account opened or to be opened in accordance with paragraph 6.1 (Opening and Maintenance of Accounts) below in the name of the Company with the Account Bank, for the purpose of the receipt of each C1 Amount, the details of which will be notified in writing by the Company to the Holders within 5 (five) Business Days of the Implementation Date;
- 1.16 **"C1 Amount"** has the meaning set out in paragraph 5.3 below;
- 1.17 **"Capital Redemption Amounts"** means the amount(s) by which any Distribution made to the holder of a C1 Preference Share in accordance

with the Distribution Entitlement Percentage exceeds any Accumulated Preference Dividends in respect of that C1 Preference Share at the time at which the Distribution is made;

- 1.18            **“D PIK Note”** means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as a *“D PIK Note”*;
- 1.19            **“Discharge Date”** means the date upon which all of the obligations of the Company to the Holders under this Schedule 5 are fully and finally discharged in accordance with the terms hereof (including, without limitation, the redemption in full of all the C1 Preference Shares);
- 1.20            **“Distributable Amount”** means, from time to time and in relation to each Dividend Payment Date, the amount of cash held by the Company at that time which the Board in its sole discretion elects, subject to applicable law, to distribute to the holders of the Equity Capital Instruments;
- 1.21            **“Distribution”** means:
- 1.21.1            in relation to the Ordinary Shares, A Ordinary Shares, C Preference Shares and B Preference Shares, a *“distribution”* as contemplated in the Act; and
- 1.21.2            in relation to the D PIK Notes and the E PIK Notes, as applicable, any repayment of principal or accrued interest or any other amount owing under the D PIK Notes or E PIK Notes, as applicable;
- 1.22            **“Distribution Entitlement Percentage”** means a percentage calculated as follows:
- 1.22.1            until all of the E PIK Notes are repaid in full, 91% of 5%;
- 1.22.2            thereafter, until all of the D PIK Notes are repaid in full, 91% of 7%;

- 1.22.3           thereafter, until the Company has redeemed all of the C Preference Shares and paid the Redemption Amount on each C Preference Share issued by it, 91% of 85%; and
- 1.22.4           once the Company has redeemed all of the C Preference Shares and paid the Redemption Amount on each C Preference Share issued by it, 0%;
- 1.23            **“Dividend Payment Date”** means each date on which the Company elects to declare and pay a Distribution to any holder of any Equity Capital Instrument;
- 1.24            **“Dividend Period”** means consecutive periods of 12 months, with the first period commencing on the Implementation Date and ending the day before the first anniversary of the Implementation Date;
- 1.25            **“Dividend Rate”** means a fixed rate of 6% (six percent) per annum, nominal annual compounded annually;
- 1.26            **“Equity Capital Instrument”** means:
- 1.26.1           each Ordinary Share;
- 1.26.2           each A Ordinary Share;
- 1.26.3           each B Preference Share;
- 1.26.4           each C Preference Share;
- 1.26.5           each D PIK Note; and
- 1.26.6           each E PIK Note;
- 1.27            **“E PIK Note”** means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as a *“E PIK Note”*;

- 1.28           **"Fair Market Value"** means the price that an independent third party would reasonably pay for a C1 Preference Share on an arms-length basis and determined in accordance with paragraph 10 below;
- 1.29           **"Financial Year"** means each financial year of the Company, which currently ends on the last day of March each year;
- 1.30           **"Holder"** means, at any point in time, a registered holder of a C1 Preference Share at that point in time;
- 1.31           **"Implementation Date"** has the meaning set out in the written agreement entitled "*Implementation Agreement*" concluded amongst, inter alia, the Company and the Holder during November 2017;
- 1.32           **"Issue Date"** means, in relation to a C1 Preference Share, the date upon which that C1 Preference Share was actually allotted and issued by the Company to a Holder in accordance with the provisions of the corresponding Subscription Agreement;
- 1.33           **"Outstanding Capital Amount"** means, in respect of each C1 Preference Share, the Allocated Issue Price less the Capital Redemption Amounts paid to the Holders from time to time;
- 1.34           **"Ordinary Shares"** means ordinary shares in the authorized and issued share capital of the Company;
- 1.35           **"Preference Dividends"** means, for each Dividend Period, the cumulative preferential cash dividend on each C1 Preference Share, calculated in accordance with paragraph 4.1 below;
- 1.36           **"Principal Amount"** means, without double counting, in relation to any C1 Preference Share and for each Dividend Period, the aggregate of:
- 1.36.1                   the Outstanding Capital Amount of that C1 Preference Share;  
  and
- 1.36.2                   any Accumulated Preference Dividends which have accumulated since the Implementation Date;

- 1.37           **"Redemption Amount"** means, without double counting, in relation to each C1 Preference Share, an amount equal to the sum of:
- 1.37.1           the Outstanding Capital Amount for that C1 Preference Share;  
plus
- 1.37.2           any Accumulated Preference Dividend in respect of that C1 Preference Share; plus
- 1.37.3           any pro-rata Preference Dividends which have accrued in terms of any provision of this Schedule 5 in respect of any Dividend Period not yet completed, which as at the date on which the C1 Preference Shares in question are to be redeemed, are unpaid, whether declared or not;
- 1.38           **"Respective Shareholding"** means, in respect of a Holder, the ratio that the aggregate number of C1 Preference Shares held by such Holder bears to the total number of issued C1 Preference Shares;
- 1.39           **"Restricted Period"** means, in relation to a C1 Preference Share, the period commencing on the Implementation Date and ending on the day after the third anniversary of the Implementation Date;
- 1.40           **"Social Purpose"** means, in relation to the Soros Economic Development Fund, the alleviation of poverty and community deterioration by providing loans to the Target Class (as defined in the Subscription Agreement) to improve their homes and livelihoods and to Small and Medium Enterprises in East and South Africa that provide jobs to the Target Class (as defined in the Subscription Agreement);  
and
- 1.41           **"Subscription Agreement"** means, in relation to a C1 Preference Share issued to a Holder, the written subscription agreement executed between the Company and that Holder relating to its subscription for such C1 Preference Share.

## 2. ALLOTMENT AND ISSUE

The Company previously allotted and issued 34 626 (thirty four thousand six hundred and six) "A" Preference Shares to the Holders. The preferences, rights, limitations and other terms and the distinguishing designation of the "A" Preference Shares have been amended to constitute these C1 Preference Shares and have the preferences, rights, limitations and other terms attached thereto in this Schedule 5.

## 3. RANKING

Other than as set out in this MOI, the C1 Preference Shares and the C2 Preference Shares shall rank in priority in all respects (including without limitation as to the payment of dividends, redemption prices and other amounts) to all other classes of shares (including without limitation the Ordinary Shares and the A Ordinary Shares), but shall rank behind the D PIK Notes and the E PIK Notes.

## 4. PREFERENCE DIVIDENDS

- 4.1 Each issued C1 Preference Share shall accrue Preference Dividends in respect of each Dividend Period in an amount equal to the amount represented by the symbol 'a' in the formula set out hereunder:

$$a = b \times c \times d$$

in which formula:

- a the Preference Dividend to be calculated, expressed in Rand;
- b the Principal Amount in respect of the applicable C1 Preference Share on the first day of the applicable Dividend Period;
- c the Dividend Rate;
- d the number of days in the applicable dividend Period divided by 365 (three hundred and sixty five) or 366 (three hundred and sixty-six) in the case of a leap year;

provided that any unpaid Preference Dividends shall be accumulated to the Principal Amount.

- 4.2 Each C1 Preference Share shall confer the right on the Holder to have Preference Dividends declared and paid in accordance with the provisions of paragraph 5 below.

## 5. PAYMENT OF PREFERENCE DIVIDENDS AND REDEMPTION

- 5.1 In respect of each Dividend Payment Date, the Board shall determine the Distributable Amount available for making a Distribution to the holders of Equity Instruments at its sole discretion.

- 5.2 The Company records that the holders of the various Equity Capital Instruments are entitled to receive a portion of the Distributable Amount on each Dividend Payment Date in accordance with the percentages set out in the table below, noting that until the E PIK Notes are redeemed in full, the 1<sup>st</sup> priority set out below will be applied to determining the Distribution Entitlement Percentage. Once the E PIK Notes are redeemed in full, the next priority referred to below will apply, which principle shall continue to apply until all of the E PIK Notes, D PIK Notes, C Preference Shares and B Preference Shares have been redeemed in full:

Class	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>
E PIK Notes and A Ordinary Share Allocation of 3%	85%	0	0	0	0
D PIK Notes and A Ordinary Share Allocation of 6%	7%	85%	0	0	0
C Preference Shares and A Ordinary Share Allocation of 9%	5%	7%	85%	0	0
B Preference Shares and A Ordinary Share Allocation of 12%	2%	5%	10%	85%	0
Ordinary Shares and A Ordinary Shares	1%	3%	5%	15%	100%

- 5.3 Accordingly, until the C1 Preference Shares are redeemed in full, the Company shall be obliged to apply a portion (as calculated in



accordance with the formula below) of each Distributable Amount in accordance with the provisions of paragraph 6.6.3 (*Waterfall*) below, with such portion being calculated as follows (the **C1 Amount**):

$$\mathbf{C1\ Amount = (DE \times DA \times (C1RA \div CRA))}$$

Where:

C1 Amount	=	that portion of the relevant Distributable Amount relating to a Dividend Payment Date which the Company is required to apply to paying Preference Dividends on the C1 Preference Shares and redeeming, either partially or in full, the C1 Preference Shares in accordance with this Schedule 5;
DE	=	the Distribution Entitlement Percentage applicable to the C Preference Shares at that time;
DA	=	the Distributable Amount at that time;
C1RA	=	the aggregate Redemption Amount that would apply to the C1 Preference Shares as at the date of determination;
CRA	=	the aggregate redemption amount that would apply to all C Preference Shares as at the date of determination.

5.4 Subject to the requirements of the Act, on each Dividend Payment Date on which the Company makes a Distribution on any other Equity Capital Instrument, the Company shall be obliged to apply the C1 Amount allocated to the C1 Preference Shares in accordance with the provisions of paragraph 6.6.3 (*Waterfall*) below.

5.5 Preference Dividends shall be declared on a date determined by the Board, provided that no dividends will be declared and paid on Ordinary Shares or B Preference Shares in the Company unless on the same date Preference Dividends are declared and paid to the C1 Preference Shares and the C2 Preference Shares in accordance with the Distribution Entitlement Percentage.

- 5.6 The Company shall declare and shall pay the Preference Dividend for all the C1 Preference Shares and C2 Preference Shares on the same day and shall on the day of such declaration and payment, deliver a copy of the resolution passed by the Company resolving to declare and pay such Preference Dividend, to the Holders.

## 6. ACCOUNTS

### 6.1 Opening and maintenance of Accounts

- 6.1.1 As from the date falling 15 (fifteen) Business Days after the Implementation Date, the Company shall maintain the C1 Account with the Account Bank, in the name of the Company.
- 6.1.2 The Company must open and maintain the C1 Account with the Account Bank (or its Affiliate) and operate same solely in accordance with the provisions of this MOI.
- 6.1.3 The Company undertakes to comply with all of the requirements of the Account Bank which apply to account holders of the Account Bank generally in opening and maintaining the C1 Account.

### 6.2 Operating Procedures

The Company shall procure that the mandates and operating procedures for the C1 Account shall be in accordance with the provisions of this MOI and to the reasonable satisfaction of the Holders.

### 6.3 Currencies

The C1 Account shall be ZAR denominated.

### 6.4 No waiver

- 6.4.1 The restrictions contained in this MOI on the withdrawal of the amounts from the C1 Account shall not affect the obligations of the Company to make all payments required to be made to the

Holders on the due date for payment in accordance with this MOI.

- 6.4.2 Neither the ability of the Company to make any withdrawal from the C1 Account in accordance with this Agreement nor any such withdrawal shall be construed as a waiver by any Holder of any of its rights or remedies under this MOI.

6.5 **Access to books and records**

The Company irrevocably grants to any Holder and any of its authorised representatives the right, at any time prior to the Discharge Date, to review all books and records (including computer records) held by the Account Bank relating to the C1 Account. The Company hereby irrevocably instructs and authorises the Account Bank to provide any Holder and any of its authorised representatives unrestricted access during normal business hours to review such books and records held by the Account Bank and any such information relating to the C1 Account as such Holder may at any time and from time to time, on reasonable written notice, request. The Company irrevocably waives any right of confidentiality, which may exist to the extent necessary to allow disclosure of such books, records and information to any Holder and its authorised representative.

6.6 **C1 Account**

6.6.1 Deposits

The Company shall, upon each Dividend Payment Date, pay the C1 Amount into the C1 Account.

6.6.2 Permitted withdrawals

- 6.6.2.1 The Company shall ensure that, until the Discharge Date, no withdrawals or transfers shall be made from the C1 Account other than:

- 6.6.2.1.1 to make the Distributions and payments contemplated in article

6.6.3 (*Waterfall*), in the manner and order set out in that paragraph; or

6.6.2.1.2 as otherwise agreed between the Company and the Holders in writing.

6.6.2.2 No withdrawal, payment or transfer shall be made from the C1 Account to the extent that the C1 Account would become overdrawn.

6.6.3 Waterfall

6.6.3.1 Prior to the redemption of all of the C1 Preference Shares pursuant to paragraph 11 (*Redemption*) below:

6.6.3.1 the Company shall, upon the Dividend Payment Date, after paying the C1 Amount into the C1 Account pursuant to paragraph 6.6.1 above, pay any Accumulated Preference Dividends in respect of the C1 Preference Shares to the Holders in accordance with their Respective Shareholding from the C1 Account; and

6.6.3.2 following the payment of all Accumulated Preference Dividends, all amounts remaining in the C1 Account:

6.6.3.2.1 during the Restricted Period:

(a) may be applied, at the Company's election, to the voluntary redemption of the C1 Preference Share Terms in accordance with each Holder's Respective Shareholding, in terms of the provisions of paragraph 11 (*Redemption*) below; or

(b) must be retained in the C1 Account; or

6.6.3.2.2 after the expiry of the Restricted Period, shall be applied to the mandatory redemption of the C1 Preference Shares in accordance with each Holder's Respective Shareholding in terms of the provisions of paragraph 11

(Redemption) below.

- 6.6.3.3 Following the Discharge Date, all monies left standing to the credit of the C1 Account may be utilised as the Company deems fit.

## 7. WINDING-UP

The following terms shall apply to the C1 Preference Shares on a winding-up of the Company:

- 7.1 the Holders shall be paid out of the assets of the Company and in priority to the holders of all other classes of shares in the capital of the Company (other than the C2 Preference Shares which rank *pari passu* with the C1 Preference Shares on a winding-up and return of capital and as to distributions) other than the D PIK Notes and E PIK Notes which rank ahead of the C Preference Shares, any amount of the Redemption Amount in respect of each C1 Preference Share; and
- 7.2 such repayment shall be in priority to any payment to the holders of any other class of shares in the capital of the Company (other than the D PIK Notes and E PIK Notes which rank ahead of the C Preference Shares) not ranking prior to or *pari passu* with the C1 Preference Shares.

## 8. NOTICES, MEETINGS AND VOTING

- 8.1 The Holders shall have the right to receive notice of and to attend any meeting of the Company but shall not be entitled to vote, either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the C1 Preference Shares.
- 8.2 Separate class meetings of the Holders shall be convened and held *mutatis mutandis* in the manner prescribed by this MOI for general meetings of the Company.

## 9. ABROGATION OF RIGHTS

Notwithstanding anything to the contrary contained in this MOI:

- 9.1 the rights and privileges attaching to the C1 Preference Shares may not be modified, altered, varied, added to or abrogated; and/or
- 9.2 no shares, other than the Equity Capital Instruments, in the capital of the Company ranking, as regards rights to dividend, or, on a winding-up, return of capital, in priority or *pari passu* with the C1 Preference Shares shall be created or issued (other than the C2 Preference Shares); and/or
- 9.3 no further C1 Preference Shares shall be issued by the Company, without the prior written consent of the Holders of three quarters of the C1 Preference Shares.

## 10. DETERMINATION OF FIAR MARKET VALUE

Fair Market Value shall be determined by the Board of the Company and agreed with SEDF. If an agreement cannot be reached within 30 days from the date that SEDF provides written notice requesting the redemption then, the Fair Market Value shall be determined by an independent appraiser selected by the Company and approved by SEDF. The fees and expenses of such independent appraiser shall be borne by the Company.

## 11. REDEMPTION

- 11.1 Notwithstanding anything to the contrary contained in this MOI, the Company shall be entitled to, by giving a Holder 2 (two) days written notice to that effect, apply the C1 Amount, or a portion thereof, on any Dividend Payment Date to redeeming all or a portion of the C1 Preference Shares held by any Holder for the Redemption Amount, which Redemption Amount shall be paid in South African Rand.
- 11.2 Unless the C1 Preference shares are redeemed in accordance with paragraph 12 below, the redemption of any C1 Preference Shares shall,

save as otherwise agreed in writing by the Company and the Holders, be effected by the Company paying the Redemption Amount, on the relevant Dividend Payment Date, to the Holders, in cash, against delivery to the Company at its registered office of the share certificates in respect of the C1 Preference Shares redeemed.

- 11.3 In addition to the redemption rights set out in paragraph 11.1 above, the Company shall be entitled to redeem the C Preference Shares at the times and in the circumstances contemplated in this MOI.

## 12. **REDEMPTION FOLLOWING BREACH OF SOCIAL PURPOSE**

Subject to section 46 of the Companies Act, notwithstanding anything to the contrary contained in this MOI, if the Company violates the Social Purpose, the Holder of a C1 Preference Share shall be entitled, by giving the Company 5 (five) days written notice to that effect, to require the Company to redeem all of the C1 Preference Shares held by such holder for the Breach Redemption Amount, which Breach Redemption Amount shall be paid in South African Rand.

**SCHEDULE 6 – C2 PREFERENCE SHARE TERMS**

**RIGHTS, PRIVILEGES AND CONDITIONS ATTACHING TO THE CUMULATIVE PERPETUAL C2 PREFERENCE SHARES**

The C2 cumulative perpetual preference no par value shares in the share capital of the Company shall have the rights, privileges and conditions set out in this Schedule 6.

1. In this Schedule, and except if the context otherwise indicates –
  - 1.1 “**A Ordinary Shares**” means the A ordinary shares in the share capital of the Company having the rights and privileges set out in Schedule 3 of this MOI;
  - 1.2 “**A Ordinary Share Allocation**” means, that portion of the Distributable Amount which the holders of the A Ordinary Shares are entitled to receive as a distribution on the relevant Dividend Payment Date as determined in accordance with the rights and privileges attaching to the A Ordinary Shares;
  - 1.3 “**Account Bank**” means The Standard Bank of South Africa Limited or any replacement Account Bank approved in writing by the Holders;
  - 1.4 “**Act**” means the Companies Act, 71 of 2008;
  - 1.5 “**Accumulated Preference Dividends**” means any and all Preference Dividends, whether declared or not, which remain unpaid at any time;
  - 1.6 “**Allocated Issue Price**” means ZAR8,288.24 per C2 Preference Share;
  - 1.7 “**Board**” means the board of directors of the Company;
  - 1.8 “**Business Day**” means any day except a Saturday, Sunday or an official public holiday in the Republic of South Africa;
  - 1.9 “**B Preference Share**” means each perpetual B preference share in the issued share capital of the Company which confers on its holder the rights and privileges set out in Schedule 4 of this MOI (previously known as the Compulsory Convertible Preference Shares);



- 1.10        **“C Preference Shares”** means the C1 Preference Shares and C2 Preference Shares collectively;
- 1.11        **“Company”** means Evolution Credit Limited, registration number 1999/020093/06, a company duly registered and incorporated with limited liability in accordance with the company laws of the Republic of South Africa;
- 1.12        **“C1 Preference Share”** means each cumulative perpetual C1 preference share in the issued share capital of the Company which confers on its holder the rights and privileges set out in Schedule 5 of this MOI (previously known as the Cumulative Redeemable “A” Preference Shares);
- 1.13        **“C2 Preference Share”** means each cumulative perpetual C2 preference share in the issued share capital of the Company which confers on its Holder the rights and privileges set out in this Schedule 6 of this MOI (previously known as the Cumulative Redeemable “B” Preference Shares);
- 1.14        **“C2 Account”** means the account opened or to be opened in accordance with paragraph 6.1 (Opening and Maintenance of Accounts) below in the name of the Company with the Account Bank, for the purpose of the receipt of each C2 Amount, the details of which will be notified in writing by the Company to the Holders within 5 (five) Business Days of the Implementation Date;
- 1.15        **“C2 Amount”** has the meaning set out in paragraph 5.3 below;
- 1.16        **“Capital Redemption Amounts”** means the amount(s) by which any Distribution made to the holder of a C2 Preference Share in accordance with the Distribution Entitlement Percentage exceeds any Accumulated Preference Dividends in respect of that C2 Preference Share at the time at which the Distribution is made;
- 1.17        **“D PIK Note”** means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as a “*D PIK Note*”;

- 1.18           **“Discharge Date”** means the date upon which all of the obligations of the Company to the Holders under this Schedule 6 are fully and finally discharged in accordance with the terms hereof (including, without limitation, the redemption in full of all the C2 Preference Shares);
- 1.19           **“Distributable Amount”** means, from time to time and in relation to each Dividend Payment Date, the amount of cash held by the Company at that time which the Board in its sole discretion elects, subject to applicable law, to distribute to the holders of the Equity Capital Instruments;
- 1.20           **“Distribution”** means:
- 1.20.1           in relation to the Ordinary Shares, A Ordinary Shares, C Preference Shares and B Preference Shares, a *“distribution”* as contemplated in the Act; and
- 1.20.2           in relation to the D PIK Notes and the E PIK Notes, as applicable, any repayment of principal or accrued interest or any other amount owing under the D PIK Notes or E PIK Notes, as applicable;
- 1.21           **“Distribution Entitlement Percentage”** means a percentage calculated as follows:
- 1.21.1           until all of the E PIK Notes are repaid in full, 91% of 5%;
- 1.21.2           thereafter, until all of the D PIK Notes are repaid in full, 91% of 7%; and
- 1.21.3           thereafter, until the Company has redeemed all of the C Preference Shares and paid the Redemption Amount on each C Preference Share issued by it, 91% of 85%; and
- 1.21.4           once the Company has redeemed all of the C Preference Shares and paid the Redemption Amount on each C Preference Share issued by it, 0%;

- 1.22            **“Dividend Payment Date”** means each date on which the Company elects to declare and pay a Distribution to any holder of any Equity Capital Instrument;
- 1.23            **“Dividend Period”** means consecutive periods of 12 months, with the first period commencing on the Implementation Date and ending the day before the first anniversary of the Implementation Date;
- 1.24            **“Dividend Rate”** means a fixed rate of 6% (six percent) per annum, nominal annual compounded annually;
- 1.25            **“Equity Capital Instrument”** means:
- 1.25.1            each Ordinary Share;
- 1.25.2            each A Ordinary Share;
- 1.25.3            each A Ordinary Share;
- 1.25.4            each C Preference Share;
- 1.25.5            each D PIK Note; and
- 1.25.6            each E PIK Note;
- 1.26            **“E PIK Note”** means each instrument in the form of a note issued or to be issued by the Company on the Implementation Date which by its terms is referred to as a *“E PIK Note”*;
- 1.27            **“Financial Year”** means each financial year of the Company, which currently ends on the last day of March each year;
- 1.28            **“Holder”** means, at any point in time, a registered holder of a C2 Preference Share at that point in time;
- 1.29            **“Implementation Date”** has the meaning set out in the written agreement entitled *“Implementation Agreement”* concluded amongst, inter alia, the Company and the Holder during November 2017;

- 1.30            **"Issue Date"** means, in relation to a C2 Preference Share, the date upon which that C2 Preference Share was actually allotted and issued by the Company to a Holder in accordance with the provisions of the corresponding Subscription Agreement;
- 1.31            **"Outstanding Capital Amount"** means, in respect of each C2 Preference Share, the Allocated Issue Price less the Capital Redemption Amounts paid to the Holders from time to time;
- 1.32            **"Ordinary Shares"** means ordinary shares in the authorized and issued share capital of the Company;
- 1.33            **"Preference Dividends"** means, for each Dividend Period, the cumulative preferential cash dividend on each C2 Preference Share, calculated in accordance with paragraph 4.1 below;
- 1.34            **"Principal Amount"** means, without double counting, in relation to any C2 Preference Share and for each Dividend Period, the aggregate of:
- 1.34.1            the Outstanding Capital Amount of that C2 Preference Share;  
and
- 1.34.2            any Accumulated Preference Dividends which have accumulated since the Implementation Date;
- 1.35            **"Redemption Amount"** means, without double counting, in relation to each C2 Preference Share, an amount equal to the sum of:
- 1.35.1            the Outstanding Capital Amount for that C2 Preference Share;  
plus
- 1.35.2            any Accumulated Preference Dividend in respect of that C2 Preference Share; plus
- 1.35.3            any pro-rata Preference Dividends which have accrued in terms of any provision of this Schedule 6 in respect of any Dividend Period not yet completed, which as at the date on which the C2 Preference Shares in question are to be redeemed, are unpaid,

whether declared or not;

- 1.36        **“Respective Shareholding”** means, in respect of a Holder, the ratio that the aggregate number of C2 Preference Shares held by such Holder bears to the total number of issued C2 Preference Shares;
- 1.37        **“Respective Shareholding”** means, in respect of a Holder, the ratio that the aggregate number of C2 Preference Shares held by such Holder bears to the total number of issued C2 Preference Shares;
- 1.38        **“Restricted Period”** means, in relation to a C2 Preference Share, the period commencing on the Implementation Date and ending on the day after the third anniversary of the Implementation Date; and
- 1.39        **“Subscription Agreement”** means, in relation to a C2 Preference Share issued to a Holder, the written subscription agreement executed between the Company and that Holder relating to its subscription for such C2 Preference Share.

## 2.    **ALLOTMENT AND ISSUE**

The Company previously allotted and issued 9 045 (nine thousand and forty five) “B” Preference Shares to the Holders. The preferences, rights, limitations and other terms and the distinguishing designation of the “B” Preference Shares have been amended to constitute these C2 Preference Shares and have the preferences, rights, limitations and other terms attached thereto in this Schedule 6.

## 3.    **RANKING**

Other than as set out in this MOI, the C2 Preference Shares and the C1 Preference Shares shall rank in priority in all respects (including without limitation as to the payment of dividends, redemption prices and other amounts) to all other classes of shares (including without limitation the Ordinary Shares and the A Ordinary Shares), but shall rank behind the D PIK Notes and the E PIK Notes.

#### 4. PREFERENCE DIVIDENDS

- 4.1 Each issued C2 Preference Share shall accrue Preference Dividends in respect of each Dividend Period in an amount equal to the amount represented by the symbol 'a' in the formula set out hereunder:

$$a = b \times c \times d$$

in which formula:

- a the Preference Dividend to be calculated, expressed in Rand;
- b the Principal Amount in respect of the applicable C2 Preference Share on the first day of the applicable Dividend Period;
- c the Dividend Rate;
- d the number of days in the applicable dividend Period divided by 365 (three hundred and sixty five) or 366 (three hundred and sixty-six) in the case of a leap year;

provided that any unpaid Preference Dividends shall be accumulated to the Principal Amount.

- 4.2 Each C2 Preference Share shall confer the right on the Holder to have Preference Dividends declared and paid in accordance with the provisions of paragraph 5 below.

#### 5. PAYMENT OF PREFERENCE DIVIDENDS AND REDEMPTION

- 5.1 In respect of each Dividend Payment Date, the Board shall determine the Distributable Amount available for making a Distribution to the holders of Equity Instruments at its sole discretion.

- 5.2 The Company records that the holders of the various Equity Capital Instruments are entitled to receive a portion of the Distributable Amount on each Dividend Payment Date in accordance with the percentages set out in the table below, noting that until the E PIK Notes are

redeemed in full, the 1<sup>st</sup> priority set out below will be applied to determining the Distribution Entitlement Percentage. Once the E PIK Notes are redeemed in full, the next priority referred to below will apply, which principle shall continue to apply until all of the E PIK Notes, D PIK Notes, C Preference Shares and B Preference Shares have been redeemed in full:

Class	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>
E PIK Notes and A Ordinary Share Allocation of 3%	85%	0	0	0	0
D PIK Notes and A Ordinary Share Allocation of 6%	7%	85%	0	0	0
C Preference Shares and A Ordinary Share Allocation of 9%	5%	7%	85%	0	0
B Preference Shares and A Ordinary Share Allocation of 12%	2%	5%	10%	85%	0
Ordinary Shares and A Ordinary Shares	1%	3%	5%	15%	100%

5.3 Accordingly, until the C2 Preference Shares are redeemed in full, the Company shall be obliged to apply a portion (as calculated in accordance with the formula below) of each Distributable Amount in accordance with the provisions of paragraph 6.6.3 (*Waterfall*) below, with such portion being calculated as follows (the **C2 Amount**):

$$\mathbf{C2\ Amount = (DE \times DA \times (C2RA \div CRA))}$$

Where:

C2 Amount = that portion of the relevant Distributable Amount relating to a Dividend Payment Date which the Company is required to apply to paying Preference Dividends on the C2 Preference Shares and redeeming, either partially or in full, the C2 Preference Shares in accordance with this Schedule 6;

DE = the Distribution Entitlement Percentage applicable to the C Preference Shares at that

		time;
DA	=	the Distributable Amount at that time;
C2RA	=	the aggregate Redemption Amount that would apply to the C2 Preference Shares as at the date of determination;
CRA	=	the aggregate redemption amount that would apply to all C Preference Shares as at the date of determination.

- 5.4 Subject to the requirements of the Act, on each Dividend Payment Date on which the Company makes a Distribution on any other Equity Capital Instrument, the Company shall be obliged to apply the C2 Amount allocated to the C2 Preference Shares in accordance with the provisions of paragraph 6.6.3 (*Waterfall*) below.
- 5.5 Preference Dividends shall be declared on a date determined by the Board, provided that no dividends will be declared and paid on Ordinary Shares or B Preference Shares in the Company unless on the same date Preference Dividends are declared and paid to the C1 Preference Shares and the C2 Preference Shares in accordance with the Distribution Entitlement Percentage.
- 5.6 The Company shall declare and shall pay the Preference Dividend for all the C1 Preference Shares and C2 Preference Shares on the same day and shall on the day of such declaration and payment, deliver a copy of the resolution passed by the Company resolving to declare and pay such Preference Dividend, to the Holders.

## 6. ACCOUNTS

### 6.1 Opening and maintenance of Accounts

- 6.1.1 As from the date falling 15 (fifteen) Business Days after the Implementation Date, the Company shall maintain the C2 Account with the Account Bank, in the name of the Company.
- 6.1.2 The Company must open and maintain the C2 Account with the Account Bank (or its Affiliate) and operate same solely in



accordance with the provisions of this MOI.

- 6.1.3 The Company undertakes to comply with all of the requirements of the Account Bank which apply to account holders of the Account Bank generally in opening and maintaining the C2 Account.

6.2 **Operating Procedure**

The Company shall procure that the mandates and operating procedures for the C2 Account shall be in accordance with the provisions of this MOI and to the reasonable satisfaction of the Holders.

6.3 **Currencies**

The C2 Account shall be ZAR denominated.

6.4 **No waiver**

- 6.4.1 The restrictions contained in this MOI on the withdrawal of the amounts from the C2 Account shall not affect the obligations of the Company to make all payments required to be made to the Holders on the due date for payment in accordance with this MOI.

- 6.4.2 Neither the ability of the Company to make any withdrawal from the C2 Account in accordance with this Agreement nor any such withdrawal shall be construed as a waiver by any Holder of any of its rights or remedies under this MOI.

6.5 **Access to books and records**

The Company irrevocably grants to any Holder and any of its authorised representatives the right, at any time prior to the Discharge Date, to review all books and records (including computer records) held by the Account Bank relating to the C2 Account. The Company hereby irrevocably instructs and authorises the Account Bank to provide any Holder and any of its authorised representatives unrestricted access

during normal business hours to review such books and records held by the Account Bank and any such information relating to the C2 Account as such Holder may at any time and from time to time, on reasonable written notice, request. The Company irrevocably waives any right of confidentiality, which may exist to the extent necessary to allow disclosure of such books, records and information to any Holder and its authorised representative.

## 6.6 **Company Accounts**

### 6.6.1 Deposits

The Company shall, upon each Dividend Payment Date, pay the C2 Amount into the C2 Account.

### 6.6.2 Permitted withdrawals

6.6.2.1 The Company shall ensure that, until the Discharge Date, no withdrawals or transfers shall be made from the C2 Account other than:

6.6.3.1 to make the Distributions and payments contemplated in paragraph 6.6.3 (*Waterfall*) below, in the manner and order set out in that Clause; or

6.6.3.2 as otherwise agreed between the Company and the Holders in writing.

6.6.2.2 No withdrawal, payment or transfer shall be made from the C2 Account to the extent that the C2 Account would become overdrawn.

### 6.6.3 Waterfall

6.6.3.1 Prior to the redemption of all of the C2 Preference Shares pursuant to paragraph 10 (*Redemption*) below:

6.6.3.1 the Company shall, upon the Dividend Payment Date, after paying the C2 Amount into the C2 Account pursuant to paragraph 6.6.1 above, pay any Accumulated Preference Dividends in respect of

the C2 Preference Shares to the Holders in accordance with their Respective Shareholding from the C2 Account; and

6.6.3.2 following the payment of all Accumulated Preference Dividends, all amounts remaining in the C2 Account:

6.6.3.2.1 during the Restricted Period:

(a) may be applied, at the Company's election, to the voluntary redemption of the C2 Preference Share Terms in accordance with each Holder's Respective Shareholding, in terms of the provisions of paragraph 10 (*Redemption*) below; or

(b) must be retained in the C2 Account; or

6.6.3.2.2 after the expiry of the Restricted Period, shall be applied to the mandatory redemption of the C2 Preference Shares in accordance with each Holder's Respective Shareholding in terms of the provisions of paragraph 10 (*Redemption*) below.

6.6.3.2 Following the Discharge Date, all monies left standing to the credit of the C2 Account may be utilised as the Company deems fit.

## 7. WINDING-UP

The following terms shall apply to the C2 Preference Shares on a winding-up of the Company:

7.1 the Holders shall be paid out of the assets of the Company and in priority to the holders of all other classes of shares in the capital of the Company (other than the C1 Preference Shares which rank *pari passu* with the C2 Preference Shares on a winding-up and return of capital and as to distributions) other than the D PIK Notes and E PIK Notes which rank ahead of the C Preference Shares, any amount of the Redemption Amount in respect of each C2 Preference Share; and

7.2 such repayment shall be in priority to any payment to the holders of any

other class of shares in the capital of the Company (other than the D PIK Notes and E PIK Notes which rank ahead of the C Preference Shares) not ranking prior to or *pari passu* with the C2 Preference Shares.

## 8. NOTICES, MEETINGS AND VOTING

- 8.1 The Holders shall have the right to receive notice of and to attend any meeting of the Company but shall not be entitled to vote, either in person or by proxy, at any meeting of the Company, by virtue of or in respect of the C2 Preference Shares.
- 8.2 Separate class meetings of the Holders shall be convened and held *mutatis mutandis* in the manner prescribed by this MOI for general meetings of the Company.

## 9. ABROGATION OF RIGHTS

- 9.1 Notwithstanding anything to the contrary contained in this MOI:
- 9.2 the rights and privileges attaching to the C2 Preference Shares may not be modified, altered, varied, added to or abrogated; and/or
- 9.3 no shares, other than the Equity Capital Instruments, in the capital of the Company ranking, as regards rights to dividend, or, on a winding-up, return of capital, in priority or *pari passu* with the C2 Preference Shares shall be created or issued (other than the C1 Preference Shares); and/or
- 9.4 no further C2 Preference Shares shall be issued by the Company,
- without the prior written consent of the Holders of three quarters of the C2 Preference Shares.

## 10. REDEMPTION

- 10.1 Notwithstanding anything to the contrary contained in this MOI the Company shall be entitled to, by giving a Holder two days written notice to that effect, apply the C2 Amount, or a portion thereof, on any Dividend

Payment Date to redeeming all or a portion of the C2 Preference Shares held by any Holder for the Redemption Amount, which Redemption Amount shall be paid in South African Rand.

- 10.2 The redemption of any C2 Preference Shares shall, save as otherwise agreed in writing by the Company and the Holders, be effected by the Company paying the Redemption Amount, on the relevant Dividend Payment Date, to the Holders, in cash, against delivery to the Company at its registered office of the share certificates in respect of the C2 Preference Shares redeemed.
- 10.3 In addition to the redemption rights set out in paragraph 10.1 above, the Company shall be entitled to redeem the C Preference Shares at the times and in the circumstances contemplated in the MOI.