

DATED •, 2020

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**ENTERPRISE GROWTH FUND LIMITED**

*(for the Government of Barbados)*

AND

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**DEED OF GRANT AND EQUITY INVESTMENT  
AGREEMENT**

RELATING TO THE GRANT AND THE FURTHER EQUITY INVESTMENT  
BY THE GOVERNMENT OF BARBADOS  
UNDER THE **BARBADOS EMPLOYMENT AND  
SUSTAINABLE TRANSFORMATION PROGRAMME**

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**THIS DEED OF GRANT AND EQUITY INVESTMENT AGREEMENT**  
[“INVESTMENT AGREEMENT”] is made as of the ● day of ●, 2020.

**BETWEEN:**            **ENTERPRISE GROWTH FUND LIMITED** for an on behalf of itself as Trustee of the BEST Fund (and each of its designates or nominees appointed to own the Investment Shares as referenced herein), and as the designated agent for and on behalf of the **Government of Barbados** (in such capacity, the “**Investor**”)

**AND:**                    ●, a company incorporated under the *Companies Act*, which has been approved in accordance with the terms of its funding application under the **Barbados Employment and Sustainable Transformation Programme** (the “**Company**”)

**WHEREAS:**

- A.        The Investor has formulated the BEST Programme (as hereinafter defined) in response to the socio-economic impact of COVID-19 and has sought thereunder to offer grants to tourism enterprises and an equity investment by way of subscribing for redeemable preference shares in tourism enterprises.
- B.        The Company has been approved to receive funding under the BEST Programme.
- C.        The Company is desirous of accepting funding by way of a grant and an equity investment from the Investor for the specific purpose of covering expenses and costs related to the re-engagement of workers, participating in the VSEP (as hereinafter defined) and any transformational investments, and other approved expenses of the Company pursuant to the terms and conditions set out in this Investment Agreement.
- D.        The Investor proposes to make an investment to the Company through a grant to the Company and the subscription for the Investment Shares (as defined herein) in the capital of the Company subject to the terms and conditions set out in this Investment Agreement.

NOW THIS DEED WITNESSES and each party **HEREBY AGREES** as follows:

**ARTICLE I  
DEFINITIONS AND INTERPRETATION**

**1.1 DEFINITIONS**

1.1 In this Investment Agreement unless the context otherwise requires the following expressions shall bear the following respective meanings:

***“Accounting Standards”*** means the generally accepted accounting principles as applicable in Barbados together with their pronouncements thereon from time to time, and applied on a consistent basis;

***“Assets”*** means all property or assets of any nature or kind, whether real or personal, tangible or intangible, corporeal or incorporeal, and includes any interest therein;

***“BEST Investment Documents”*** means the specific investment and financing documents related to the BEST Programme as executed by the Company and including, specifically:

- (a) the letter of commitment issued by Enterprise Growth Fund Limited and the Company related to an initial funding Advance made by or on behalf of the Investor (the “Commitment Letter”),
- (b) the Application filed by the Company with the Government of Barbados, seeking financing under the BEST Programme (the “BEST Application”),
- (c) the undertaking and covenant issued by the Company to and in favour of the Investor giving an unconditional commitment for the re-engagement of employees of the Company (the “Company Undertaking”),

- (c) this Investment Agreement,
  - (d) such other further additional, ancillary and collateral documents, necessary or incidental to the transactions as contemplated under each and any of the foregoing documents, and
  - (d) the Corporate Instruments of the Company as amended to include the share rights provisions of the Investment Shares,
- each as amended and supplemented from time to time;

**“BEST Programme”**

means the investment programme initiated by the Government of Barbados, and titled for reference the ***Barbados Employment and Sustainable Transformation Programme***, and involving *inter alia* the subscription for and issue of a special class of preference shares together with alternative forms of investment with published terms (as such terms may be modified and supplemented from time to time);

**“BEST Programme Terms”**

means the BEST Programme Terms contained in Schedule II of this Investment Agreement;

**“Business Day”**

means a day that is not a Saturday, Sunday or any other day on which commercial banks located in Barbados are authorised or required by law to be closed for business;

**“Companies Act”**

means (a) the *Companies Act* Cap. 308 of the laws of Barbados as from time to time amended and every statute substituted therefor, and (b) the *Companies Regulations* made under the *Companies Act*, and all regulations substituted therefor, and any references in the Articles of the Company to provisions of the *Companies Act* or to specific provisions of the *Companies Act*, shall be

	read as references to the provisions as amended or substituted therefor in the amendment or the new statute or statutes;
<b>“Conversion Date”</b>	has the meaning ascribed thereto in the Terms and Conditions for Preference Shares;
<b>“Corporate Instruments”</b>	means: (a) the Articles of Incorporation of the Company, (together with each and every Schedule annexed thereto and incorporated therein) as may be further amended, restated or revived from time to time (the “Articles”), and (b) any by-law, or other rule or regulation with regard to the administration of the affairs of the Company having the force of a by-law in accordance with the <i>Companies Act</i> , from time to time in force (the “By-Laws”);
<b>“Event of Default”</b>	has the meaning ascribed thereto in Section 8.1;
<b>“Expected Remuneration”</b>	means the remuneration which an employee of the Company was receiving as at December 2019 and for the previous 12 months, or at such other appropriate date as determined by the Investor;
<b>“Financial Statements”</b>	means the audited non-consolidated financial statements of the Company for the period required in the BEST Programme Terms;
<b>“Governmental Authorisations”</b>	has the meaning ascribed thereto in Section 7.1;
<b>“Governmental Authorities”</b>	has the meaning ascribed thereto in Section 7.1;
<b>“Greening and Digitisation Investment Plan”</b>	means ●
<b>“Investment Shares”</b>	means the <i>[insert amount of shares]</i> (■) <b>convertible, fixed rate, non-cumulative, redeemable preference shares of a class</b> designated the BEST Redeemable Preference Shares that the

Company is authorised to issue in the capital of the Company.

***“person”***

means any individual or any body of persons corporate or unincorporate, and includes individuals, companies, bodies corporate, limited liability companies, societies with restricted liability, partnerships (whether limited or general), firms, syndicates, joint ventures, trusts, un-incorporated associations, governmental authorities and agencies, and any legal entity or any other association of persons;

***“Subscription Amount”***

has the meaning ascribed thereto in Section 3.2.1;

***“Subscription Period”***

has the meaning ascribed thereto in Section 3.2.1;

***“Terms and Conditions for Preference Shares”***

means the terms and conditions governing the issuance of the Investment Shares contained in Schedule I of this Investment Agreement;

***“Transformational Investments”***

means [•]

***“Transformational Activities”***

has the meaning ascribed thereto in Section 3.3;

***“VSEP”***

means the Voluntary Separation Programme which the Company may offer to a small number of people who cannot reasonably return to work given their medical or personal circumstances. Whether or not an employee of the Company is eligible for VSEP depends on an independent assessment of their potential vulnerability; provided that this assessment must follow the published guidance from the Ministry of Health and Wellness on assessment of vulnerability to COVID-19.

1.2 **INTERPRETATION AND RULES OF CONSTRUCTION**

- 1.2.1 Terms defined elsewhere in this Investment Agreement, unless otherwise indicated, shall have such meaning in every section herein.
- 1.2.2 Unless the context clearly requires otherwise, the words “hereof” “herein” and “hereunder” and words of similar import, when used in this Investment Agreement, shall refer to this Investment Agreement as a whole and not to any particular section; wherever the word “include” “includes” or “including” is used in any provision of this Investment Agreement, it shall be deemed to be followed by the words “without limitation” unless clearly indicated otherwise.
- 1.2.3 Reference to any statute or statutory provision includes a reference to (a) that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated; and (b) all statutory instruments or orders made pursuant to it.
- 1.2.4 The singular includes the plural and the plural includes the singular; and the masculine gender includes the feminine and neuter genders.
- 1.2.5 The division of this Investment Agreement into sections, sections, articles and Sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

**ARTICLE II**  
**GRANT**

- 2.1 In accordance with the BEST Programme Terms and the BEST Investment Documents, and subject to the receipt by the Investor of a valid and binding Company Undertaking, the Investor hereby grants to the Company the amount of BBD [X] (the “**Grant Amount**”) which shall be paid in such amounts and at such time as the Investor in his sole discretion may determine.
- 2.2 The Grant Amount shall be applied exclusively for the following purposes:
- (a) re-engagement of employees of the Company;
  - (b) Transformational Investments;
  - (c) VSEP; and
  - (d) ●.
- 2.3 The Company may only use and apply the Grant Amount as authorised under the BEST Programme Terms and the BEST Investment Documents.

**ARTICLE III**  
**SUBSCRIPTION FOR INVESTMENT SHARES**

- 3.1. Subject to the terms and conditions of the BEST Investment Documents, the Investor hereby subscribes for and agrees to purchase the Investment Shares.
- 3.2.1 For the period commencing at the date hereof and ending twenty-four (24) calendar months after the date hereof (the “**Subscription Period**”), the Investor shall subscribe for the Investment Shares with an aggregate value of BBD [§•] (the “**Subscription Amount**”).
- 3.2.2 The Subscription Amount shall be paid to the Company in such amounts and at such time as the Investor in his sole discretion may determine but in no event shall the Company be entitled to require the Investor to make any subscription prior to the end of the Subscription Period.
- 3.3 The Subscription Amount shall be applied exclusively for the following purposes:
- (a) re-engagement of employees;
  - (b) Transformational Investments;
  - (c) VSEP; and
  - (d) ●.  
collectively, the “**Transformation Activities**”.
- 3.4 In the event that after the payment of the Grant Amount, the Investor does not (and is not required to), pay any further amounts to the Company as a Subscription Amount during the Subscription Period, the Investor may (by issue of notice to the Company) elect to have that the Grant Amount immediately after the date of such notice be deemed as the payment of a Subscription Amount for BEST Shares, pursuant to Section 3.2.1 of this Agreement. In the event of any such election by the Investor, the Company shall immediately issue BEST Shares in accordance with Article IV of this Agreement to the Investor.

**ARTICLE IV**  
**ISSUE OF INVESTMENT SHARES**

- 4.1. Prior to or immediately upon receipt of the Subscription Amount (or any part thereof), the Company shall by resolution of the Board of Directors issue the Investment Shares, to the Investor and as evidence thereof shall issue any one or more share certificates representing such shares in the name of the Investor, and deliver the same to the Investor.

**ARTICLE V  
AUTHORISATION FOR ISSUE OF INVESTMENT SHARES**

- 5.1. Prior to the receipt of the Grant Amount or the Subscription Amount (or any part thereof), and as a condition to the entitlement to receive the same, the Corporate Instruments of the Company shall be amended in accordance with the Terms and Conditions for Preference Shares.

**ARTICLE VI  
COVENANTS**

- 6.1 For the duration of this Agreement, the Company covenants and agrees as set out in this Article VI, each of which shall be read and construed as a separate and independent covenant.
- 6.1.1 The Company shall observe and comply with the provisions of the Terms and Conditions for Preference Shares.
- 6.1.2 The Company shall provide the Investor with all other information which might be reasonably requested from time to time.
- 6.1.3 The Company shall preserve and maintain all of its permits, licenses, approvals, authorisations, registrations, certificates and similar rights obtained or required to be obtained from Governmental Authorities.
- 6.1.4 The Company shall maintain separate records and accounts adequate to identify the goods and services financed with the proceeds of the Grant Amount and the Subscription Amount. In addition, the Company shall facilitate, upon the Investor's request and reasonable notice, the Investor's designated representatives' visits to any of the premises where the business of the Company is conducted, and to have access to the Company's books of account and records and access to its employees and agents.
- 6.1.5 The Company shall not cancel, terminate, amend or otherwise modify any of its Corporate Instruments, or other constitutive documents without the prior consent of the Investor.
- 6.1.6 The Company shall deliver to the Investor deeds of subordination and postponement for all intra-group financial assistance provided to the Applicant (and its designated affiliates (if any)), by any if the direct, indirect and beneficial shareholders of the Applicant (or their designated respective affiliates (if any)).

*General Reporting*

- 6.2.1 Not later than thirty (30) calendar days after the end of each quarter of each calendar year, the Company shall provide a report on the Company's activities in connection with the Transformation Activities for such quarter. The report shall include:
- (a) a detailed description of the status and progress of the Transformation Activities; and
  - (b) an unaudited statement of account with respect to the use of the proceeds of the Grant Amount and the Subscription Amount, each in respect of the period covered by the report.
- 6.2.2 As soon as possible, but not later than ninety (90) calendar days after the end of each financial year the Company shall provide:
- (a) a copy of the Company's complete financial statements for such financial year, audited by a reputable independent external auditor in accordance with the Accounting Standards, together with a statement by the auditor (which may be included as part of its report) that the Grant Amount and the Subscription Amount have been used for the Transformation Activities;
  - (b) any management letter from the auditors with respect to that financial year; and
  - (c) the management report which reviews annual operations of the Company.
- 6.2.3 The Company shall promptly (and in any event within fifteen (15) calendar days of becoming aware of the occurrence) consult with the Investor if anything occurs that has or could have a material adverse effect on the Company's business or operations or on the implementation of the Transformational Activities or the proposed utilisation of the Grant Amounts or Subscription Amounts.

*Grant Amount*

- 6.3.1 The Company shall contribute the sum of \$● towards the re-engagement of employees for the period of [twenty-four (24) months] from the date of this Agreement.

*Redemption*

- 6.4.1 The Company shall use its best efforts to redeem the issued and outstanding Investment Shares, as soon as reasonably practicable, so as to facilitate the full redemption of all issued and outstanding Investment Shares.

*Employee Re-Engagement*

- 6.5.1 The Company shall re-engage the employees of the Company (i) whose terms of employment were altered and/or (ii) who were laid off pursuant to the *Severance Payments Act* as a result of the COVID-19 pandemic at a level of 80% of their Expected Remuneration up to the NIS maximum insurable amount [which is currently \$4,880 per month]; provided that the Investor and Company may agree a higher maximum level in specific individual cases.
- 6.5.2 The re-engagement of employees in accordance with Section 6.6.1 hereof shall take place no later than two (2) weeks following the date of this Investment Agreement.

*Transformational Investments*

- 6.6.1 The Company hereby covenants that in respect of any Transformational Investments it:
- (a) may submit a Greening and Digitisation Investment Plan within twelve (12) weeks of the date of this Investment Agreement to the Investor.
  - (b) shall make all reasonable adjustments to any Greening and Digitisation Investment Plan requested by the Investor and confirmed in writing.
- 6.6.2 The Company shall commence the improvements outlined in the Greening and Digitisation Investment Plan no later than twenty-four (24) weeks following the approval by the Investor of the Greening and Digitisation Investment Plan.

*Restriction on Distributions*

- 6.7.1 The Company shall notify the Investor of all normal course dividends and distributions made by the Company. From and after the date hereof, the Company shall not pay any dividends, or make any distributions from profits (whether as commission, fee or otherwise), except for *bona fide* pre-existing contractual obligations relating to employee share schemes or pension allocation or similar.

*Remittance of Foreign Currency*

- 6.8.1 All amounts received by the Company in foreign currency and which are to be applied towards satisfaction of any payment obligations under this Investment Agreement shall be sold to the Central Bank of Barbados, and the Barbados Dollar equivalent received on the exchange shall be applied towards satisfaction of such obligations.

*Additional Covenants*

6.9.1 The Company shall:



**ARTICLE VII  
REPRESENTATIONS AND WARRANTIES**

- 7.1 The Company hereby makes and gives the following representations and warranties, each of which the Investor has relied upon in entering into this Investment Agreement, and shall be deemed to have relied upon in the grant of the Grant Amount and the subscription of the Investment Shares hereunder, which representations and warranties are true as of the date hereof and shall remain true at all times while this Agreement remains in force:
- 7.2 The Company is duly incorporated, validly existing and in good standing under the laws of Barbados and has all the necessary corporate powers, legal rights, authority and capacity and possesses all authorisations, approvals, orders, licenses, permits, waivers and consents of any governmental authority (collectively, “**Governmental Authorisations**”) of Barbados or any other governmental authority, regulatory body or agency of any competent jurisdiction, including any governmental department, commission, bureau, board or administrative agency or court (collectively, “**Governmental Authorities**”) necessary to enable it to own its Assets and to carry on its business as presently conducted and to authorise, create, execute, enter into, deliver and to perform all of its obligations under this Investment Agreement and to receive the Grant Amount.
- 7.3 This Investment Agreement has been duly and validly authorised, created, executed and delivered by the Company and this Agreement constitutes a valid and binding obligation of the Company enforceable in accordance with its terms, subject to bankruptcy, insolvency and other similar laws affecting the enforceability of the rights and remedies of creditors generally.
- 7.4 The Company is not in default (nor has any event occurred which, after notice or lapse of time, or both, would constitute a default) under any obligation or under any license or authorisation, which default might have consequences which would materially and adversely affect its business, property, prospects or financial condition or the conduct of the operations of the Company.

## INVESTMENT AGREEMENT

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- 7.5 There is no action, suit or proceeding pending or, to the knowledge of the Company, threatened against it before any court or other tribunal, nor is there any existing judgment or order outstanding against it, which might adversely affect its business, prospects or financial condition or the conduct of the operations or make illegal or unenforceable any of the transactions contemplated hereby.
- 7.6 The Company has all necessary powers and authorisations, in accordance with applicable law, to issue, purchase and redeem all Investment Shares.
- 7.7 The Company is not a party to, bound by or subject to any indenture, mortgage, material lease, material agreement, instrument, statute, regulation, order, judgement, decree or law which would be violated, contravened or breached by, require any consent or payment under, give any third party the right to terminate or accelerate any obligation under, or under which any default would occur, as a result of the execution and delivery by the Company of this Investment Agreement or the performance by the Company of any of the terms thereof;
- 7.8 No Governmental Authorisations, and no consent, notice, registration, declaration or filing by the Company with any Person is required in order for the Company:
- (i) to consummate the transactions contemplated by this Investment Agreement,
  - (ii) to execute and deliver all of the documents and instruments to be delivered by the Company under this Investment Agreement,
  - (iii) to duly perform and observe the terms and provisions of this Agreement, and
  - (iv) to render this Investment Agreement legal, valid, binding and enforceable.
- 7.9 The Financial Statements present fairly the financial position of the Company as at the dates thereof. The Financial Statements have been prepared in accordance with the Accounting Standards applied on a consistent basis throughout the period involved. The Company maintains a standard system of accounting established and administered in accordance with the Accounting Standards.
- 7.10 Each of the Investment Shares, upon issuance, shall be validly issued, and upon payment of the Subscription Amount, shall be fully paid and non-assessable.

## **ARTICLE VIII CONVERSION OF INVESTMENT SHARES**

- 8.1 In the event of the exercise by the Investor of the conversion rights granted under the Corporate Instruments of the Company (as required to be amended in accordance with Article V. the Investment Shares shall be converted into another class of authorised voting shares of the Company, calculated as follows:

The aggregate number of shares of the class to be issued on conversion], which when represented as a percentage, *is equal to* [the stated capital of the Investor Shares related to that exercise of conversion] *divided by* [the net book value of the Company with fair value adjustment] *represented as a percentage*.

- 8.2 The Company shall make available the full number of authorised and unissued shares as will permit the exercise in full of the conversion of the Investment Shares as requested by the Investor on every exercise of conversion.

### **ARTICLE IX RIGHT OF FIRST REFUSAL**

- 9.1 In the event that (a) the Investor proposes to sell or transfer the whole or any part of the Investor Shares which have been converted into authorised voting shares of the Company (the “**Conversion Shares**”) or (b) in response to a *bona fide* offer to purchase all or part of its Conversion Shares from a third party, the Investor proposes to sell or transfer the whole or any part of the Conversion Shares, it shall notify the Company in writing thereof, providing the details of the purchaser(s) of the Conversion Shares, and the price at which and the terms upon which it desires to sell the Conversion Shares.
- 9.2 The Company and/or its controlling shareholder(s) shall, within thirty (30) days of receipt of the notice, notify Investor in writing whether it wishes to purchase the Conversion Shares at the price and on the terms set forth in the notice.
- 9.3 If Company and/or its controlling shareholder(s) elects to purchase the Conversion Shares at the price and on the terms set forth in the notice, the Investor shall be bound to sell and transfer the Conversion Shares to the persons designated in the notice issued by the Company under Section 9.2.
- 9.4 In the event that the Company fails to give notice of its intention within the 30-day period under Section 9.2, the Investor shall be free to sell and transfer the Conversion Shares to any third party; provided that such transfer shall not be at a price less than, or on more favourable terms than those stated in the notice issued by the Investor under Section 9.1.
- 9.5 Notwithstanding any transfer of the Conversion Shares from the Investor to a third-party, the obligations under this Article IX shall survive and bind any subsequent transferee of the Conversion Shares.

**ARTICLE X  
EVENTS OF DEFAULT**

- 10.1 This Agreement shall terminate automatically on any of the following events (each an “Event of Default”):
- (a) a breach or non-fulfilment of any agreement, term, covenant or obligation on the part of the Company made or to be observed or performed under the BEST Investment Documents;
  - (b) a breach, inaccuracy in or failure to perform any representation or warranty made by the Company in the BEST Investment Documents;
  - (c) use of the Subscription Amount or the Grant Amount for any other purpose than the Transformational Activities;
  - (d) any adverse actions are taken by the Company which cause employees to be laid off or put on short-time;
- 10.2 If the Agreement has terminated as a result of an Event of Default:
- (a) the Investor must give notice to the Grantor as soon as it becomes aware that an Event of Default has occurred (“Notice of Default”).
  - (b) the Grant Amount and the Subscription Amount shall be returned to the Investor within ● days of the Notice of Default;
  - (c) the Investor shall be entitled to claim and recover from the Company, damages (and in addition to all other amounts the Investor is entitled to recover under this Investment Agreement, including any liquidated damages accrued prior to such termination) for all direct and consequential loss arising out of, in connection with, or as a result of the Event of Default.

**ARTICLE XI  
INDEMNITIES**

- 11.1 The Investor shall not be responsible or liable for the implementation or administration of the Transformational Activities, nor for any liabilities, damages, and/or consequences of any sort arising from its implementation or administration or otherwise in connection with this Investment Agreement or the Transformational Activities.

- 11.2 The Company agrees that the Investor shall have no liability whatsoever for or in connection with things done or omitted to be done by the Company pursuant to this Agreement and that the Company will not make any claim against the Investor or any employee or agent of the Investor in connection with this Agreement, the Grant Amount, the Subscription Amount or the Transformational Activities.
- 11.3 The Company will fully indemnify the Investor and its directors, staff members and agents against any cost, loss or liability incurred by any of them as a result of the carrying out of the Transformational Activities or providing the Subscription Amount or Grant Amount.

**ARTICLE XII  
GOVERNING LAW AND DISPUTE RESOLUTION**

- 12.1 Governing Law:  
This Investment Agreement shall be governed by, and interpreted and construed in accordance with the laws of Barbados, without regard to conflicts of laws principles.
- 12.2 Facility for Mediation and Conciliation:  
Where, in the event of a disagreement or dispute arising out of or relating to this Investment Agreement, the parties wish to seek an amicable settlement of that disagreement or dispute, the parties shall make all attempts in good faith to settle the dispute by conciliation, which shall take place in accordance with the Mediation Rules of The Arbitration and Mediation Court of the Caribbean Inc. (“AMCC”).
- 12.3 Submission to Arbitration:  
In the event that a disagreement or dispute, is not settled by conciliation under clause 12.2, and except as expressly provided herein, any disagreement, dispute or claim arising out of or relating to this Investment Agreement, or the transactions contemplated hereby, or the breach or non-performance hereof (including the validity, scope and enforceability of this Investment Agreement with respect to arbitration, or any question as to the interpretation of this Investment Agreement, or construction of any terms herein) that cannot be resolved by the parties hereto shall be resolved solely and finally by arbitration in accordance with the Arbitration Rules of AMCC (as then in force), and subject to the provisions of this Section 12.

12.4 Place of Arbitration:

The place of arbitration, and all arbitration proceedings shall be conducted in Barbados. All proceedings, notices of proceedings and other notices in connection with or to give effect to the arbitration shall be served by air courier or registered mail upon the parties at their principal place of business.

12.5 Composition of Tribunal:

The arbitration proceedings shall be conducted by a single arbitrator with commercial knowledge and experience in business similar to the arrangements the subject of this Investment Agreement to be appointed by AMCC (in accordance with its Arbitration Rules). The single arbitrator shall act as the Tribunal for the purposes of the Arbitration Rules of AMCC.

12.6 Applicable Law:

In rendering the award, the Tribunal shall determine the rights and obligations of the parties according to the substantive and procedural laws of the governing law under clause 12.1 of this Investment Agreement.

12.7 Award:

The award of the Tribunal shall be final and binding on the parties, and shall dispose finally of any disagreement, dispute or claim between the parties arising out of or related to this Investment Agreement, or the transactions contemplated hereby, or any question relating to the breach, or non-performance hereof (including the validity, scope and enforceability of this Investment Agreement with respect to arbitration, or any question as to the interpretation of this Investment Agreement, or construction of any terms herein).

12.8 Exclusion of Judicial Process:

With the intention that any disagreement, dispute, controversy or claim arising out of or related to this Investment Agreement, or the transactions contemplated hereby, or any question relating to the breach, or non-performance hereof (including the validity, scope and enforceability of this Investment Agreement with respect to arbitration), shall be determined finally by the Tribunal, each party agrees (on its own behalf as well as on behalf of its successors in action, assigns and affiliates), to exclude any right of application or appeal to the courts of Barbados (or to any other court, which claims jurisdiction over the dispute, controversy or claim or over the parties) concerning:

- (a) the validity of the agreement to submit disputes to arbitration under this clause 12 or the extent hereof,

- (b) any question of law arising in the course of the arbitration, (including without limitation any question as to the interpretation hereof, or the construction of terms herein),
  - (c) the appointment of the arbitrator, and
  - (d) any award made by the Tribunal;
- provided however that any party may apply to the courts of Barbados for injunctive or other equitable relief, or for any other remedy or order to which such party is entitled under this Investment Agreement, and which the Tribunal is not authorised to make or is prohibited from making under the substantive or procedural laws applicable to the arbitration.

### **ARTICLE XIII REVIEW OF INVESTMENT AND MODIFICATION OF TERMS**

- 13.1 Either (a) at the election of the Company, or (b) at the direction of the Investor in the event that upon the Company' achieves revenues of at least 90% of the 2019 revenues as reflected in the Financial Statements, the parties shall enter re-negotiation of the terms of this Investment Agreement, with the intention of reducing the investment in the Investment Shares.
- 13.2.1 No modification or waiver of any provisions of this Agreement nor consent to any departure by the Company from any of its obligations hereunder shall be effective unless the same shall be in writing and signed on behalf of the Investor and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.
- 13.2.2 Notwithstanding any transfer of the Investment Shares from the Investor to a third-party, the rights of the Investor under this Article XIII are personal, and shall be exercisable by the Investor only, at all times during the term of this Investment Agreement.

### **ARTICLE XIV NOTICES**

- 14.1 Any notice or other writing required or permitted to be given hereunder or for the purposes hereof shall be sufficiently given if by personal delivery, by express courier, by registered or certified mail with return receipt requested, or by e-mail to the parties at the addresses shown below, or to such other address as may be designated by written notice given by any party to the other parties at:

If to the Company at:

●  
Attention: ●

Telephone: ●  
eMail: ●

If to the Investor at:

Enterprise Growth Fund Limited  
Westgate  
Monteith Gardens  
Barbarees Hill  
St. Michael  
Attention: ●

Telephone: ●  
eMail: ●

or at such other address as the party to whom such writing is to be given shall have last notified to the party giving the same in the manner provided in this clause.

- 14.2 A notice is deemed to have been received: (a) if delivered by hand or by express courier, on signature of a delivery receipt, (b) if sent by registered or certified mail providing proof of postage to an address outside the country from which it is sent, at 9:00 am on the fifth Business Day after posting, or (c) if sent by e-mail, at the time of transmission, provided that if deemed receipt would occur outside of usual business hours (i.e. 9:00 am to 5:30 pm local time on any Business Day), the notice shall be deemed to have been received when usual business hours next recommence.

## ARTICLE XV GENERAL

- 15.1 Entire Investment Agreement: This Investment Agreement constitutes the entire agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes any prior agreements and understanding relating to the subject matter hereof.
- 15.2 Counterparts: This Investment Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which collectively

shall constitute one and the same instrument representing this Investment Agreement between the parties hereto and it shall not be necessary for the proof of this Investment Agreement that any party produce or account for more than one such counterpart.

- 15.3 Invalid Provisions: If any provision of this Investment Agreement is held to be illegal, or invalid, such provision shall be fully severable, and this Investment Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Investment Agreement, and the remaining provisions of this Investment Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Investment Agreement. Further, in lieu of each illegal, invalid or unenforceable provision there shall be substituted automatically as part of this Investment Agreement a provision closest to the commercial intent of the parties at the commencement of this Investment Agreement.
- 15.4 Inapplicable Provisions: If any agreement or covenant in this Investment Agreement, ceases to be enforceable, either by reason of change in circumstances, waiver, or otherwise, all other covenants, agreements and undertakings shall continue in full force and effect, and shall be binding upon the Company.
- 15.5 Binding Effect and Assignment: This Investment Agreement shall be binding upon and inure to the benefit of the Investor and its successors and assigns. The Company shall not be entitled to assign or transfer the benefit of this Investment Agreement, the Subscription Amount or the Grant Amount paid or to be paid hereunder or any of its rights or obligations hereunder, any such transfer or assignment being, without prejudice to any other right or recourse of hereunder, null and void.
- 15.6 Good Faith and Fair Dealing: The Company (for and on behalf of itself, and each of its affiliates and the directors and shareholders of each of them), as an independent and collateral undertaking and agreement, covenants and agrees that it will act in good faith in connection with the performance of its obligations and the exercise of any right granted to it under this Investment Agreement with the intention to give full effect to the BEST Programme and the arrangements contemplated by the BEST Investment Documents. The Company shall not (and shall ensure that each of its affiliates and the directors and shareholders of each of them, and each of its associates shall not), enter into a transaction which would, directly or indirectly, result in (a) the avoidance of any covenant or obligation under this Investment Agreement, or (b) which could not reasonably be regarded as having been undertaken or arranged for a purpose other than the mitigation or

reduction or avoidance of the performance of any covenant or agreement contemplated by the BEST Investment Documents, or (c) constitute an abuse of any judicial, regulatory or other legal process to effect a result which could reasonably be regarded as having been undertaken or arranged for a purpose of mitigation or reduction or avoidance of the performance of any covenant or agreement contemplated by the BEST Investment Documents, or (d) seek to apply, interpret or enforce any law, regulation, administrative ruling or third-party obligation in any manner would result in the mitigation or reduction or avoidance of the performance of any covenant or agreement contemplated by the BEST Investment Documents.

15.7 Further Assurances: The parties shall with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Investment Agreement, and each party shall provide such further documents or instruments required by the other party as may be reasonably necessary or desirable to give effect to the purpose of this Investment Agreement and carry out its provisions.

15.8 Failure or Delay Not Affecting Rights: No failure or delay on the part of the Investor in exercising any power or right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right or power preclude any other or future exercise thereof, nor the exercise of any other right or power hereunder.

**[SIGNATURE PAGE FOLLOWS]**



**SCHEDULE I**

*Terms and Conditions for Preference Shares*

**SCHEDULE II**

***Best Programme Terms***