

**DATED**

**WARRANTY DEED**

between

**[NAME OF BORROWER]**

and

**CB GROWTH FUND LIMITED**

THIS DEED is dated

## **PARTIES**

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Borrower**).
- (2) **CB GROWTH FUND LIMITED** incorporated and registered in Mauritius with company number C122645 whose registered office is at 4<sup>th</sup> Floor, Raffles Tower, 19 Cybercity, Ébène, Mauritius (**Funder**).

## **BACKGROUND**

The Funder has agreed to provide funding of £[AMOUNT] (**Loan Note Amount**) to the Borrower (as defined below) and the Borrower has agreed to issue a Loan Note (as defined below) for the Loan Note Amount to the Funder in reliance upon (amongst other things) the Borrower entering into this deed for the purpose of undertaking certain obligations, making certain representations and warranties and giving certain covenants to the Funder.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

The following definitions apply in this deed.

**Adverse Effect:** any event or circumstance which, in the Funder's opinion of the Funder is likely to:

- (a) adversely affect the Borrower's ability to perform or otherwise comply with all or any of its obligations under the Finance Documents;
- (b) adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Borrower; or
- (c) result in any Finance Document not being legal, valid and binding on, and enforceable in accordance with its terms against, the Borrower.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England.

**Event of Default:** has the meaning given to it in the Loan Note Instrument.

**Finance Documents:** this deed, the Loan Note Instrument, the Loan Note Certificate, any guarantee or other security granted by or in respect of the Borrower.

**Loan Note:** the loan note created by the Loan Note Instrument and issued by the Borrower to the Funder on or around the date of this deed as certified by the Loan Note Certificate.

**Loan Note Certificate:** the loan note certificate issued by the Borrower to the Funder on or around the date of this deed.

**Loan Note Instrument:** the loan note instrument entered into by the Borrower on or around the date of this deed.

**Potential Event of Default:** has the meaning given to it in the Loan Note Instrument.

**Yes Growth:** Yes Growth Ltd (a company incorporated and registered in England and Wales with company number 08540463 whose registered office is at 264 Banbury Road, Oxford, Oxfordshire, OX2 7DY, England), the representative of the Funder.

**Security:** a mortgage, charge, pledge, lien or other security interest securing any obligation of any person, or any other agreement having a similar effect.

**Tax:** all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or Mauritius or any other jurisdiction and any penalty, fine, surcharge, interest, charges or costs relating to them.

## 2. FUNDING

### 2.1 Arrangement Fee

- (a) The Borrower shall pay an arrangement fee of 2% (two percent) of the Loan Note Amount (without deduction for, or on an account of, any Tax) to the Funder (**Arrangement Fee**).
- (b) The Arrangement Fee will be retained by the Funder from the Loan Note Amount.
- (c) The Borrower shall pay any Tax arising in respect of the Arrangement Fee at the same time as it pays the Arrangement Fee.

### 2.2 Payments to the Funder

The Borrower shall pay any amounts due to the Funder under the Finance Documents in immediately available cleared funds and in accordance with the terms of the Finance Documents to the following account (or such other account as the Funder may notify the Borrower from time to time):

<b>NAME OF BANK:</b>	
<b>ACCOUNT NAME:</b>	
<b>ACCOUNT NUMBER:</b>	
<b>SORT CODE:</b>	

### 2.3 Payments to the Borrower

The Funder shall pay any amounts due to the Borrower under the Finance Documents in immediately available cleared funds and in accordance with the terms of the Finance Documents to the following account:

<b>NAME OF BANK:</b>	
<b>ACCOUNT NAME:</b>	
<b>ACCOUNT NUMBER:</b>	
<b>SORT CODE:</b>	

### **3. REPRESENTATIONS AND WARRANTIES**

The Borrower makes the representations and warranties in clause 3.1 to clause 3.11 to the Funder on the date of this deed.

#### **3.1 Due incorporation**

It is a duly incorporated validly existing under the laws of England and Wales, and has the power to own its assets and carry on its business as it is being conducted.

#### **3.2 Powers**

It has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Finance Documents and/or the transactions contemplated by them.

#### **3.3 Non-contravention**

The entry into and performance by it of the Finance Documents do not and will not contravene or conflict with its constitutional documents, any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or any law or regulation or judicial or official order, applicable to it.

#### **3.4 Authorisations**

It has obtained all required authorisations to enable it to enter into and comply with its obligations in the Finance Documents and any such authorisations are in full force and effect.

#### **3.5 No default**

- (a) No Event of Default and, on the date of this deed, no Potential Event of Default, is continuing or might reasonably be expected to result from the entry into of the Finance Documents and the transactions contemplated by them.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on it or to which any of its assets is subject which has or is likely to have an Adverse Effect.

### 3.6 **No further borrowing**

The Borrower:

- (a) has disclosed the existence of any subsisting indebtedness to the Funder and/or Yes Growth;
- (b) has not incurred any indebtedness or incurred any obligation to incur any indebtedness (other than to the Funder) which has not been disclosed to the Funder and/or Yes Growth;
- (c) has not entered into negotiations or taken any other step with a view to incurring any indebtedness (other than to the Funder); and
- (d) does not propose or intend to enter into negotiations or take any other step with a view to incurring any indebtedness (other than to the Funder) whilst the Borrower remains indebted to the Funder.

### 3.7 **Information**

The information, in written or electronic format, supplied by, or on behalf of, the Borrower to the Funder and/or Yes Growth or their representatives in connection with the Finance Documents and/or the transactions contemplated by them (including, without limitation, any information given to any of them in relation its or their (as appropriate) due diligence enquiries) was, at the time it was supplied or at the date it was stated to be given:

- (a) if it was factual information, complete, true and accurate in all respects;
- (b) if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration;
- (c) if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
- (d) not misleading in any respect, nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Borrower to the Funder and/or Yes Growth.

### 3.8 **Financial statements**

Each set of financial statements delivered to the Funder and/or Yes Growth by the Borrower was prepared in accordance with consistently applied accounting principles, standards and practices generally accepted in the United Kingdom and gives a true and fair view of the Borrower's financial condition and operations during the relevant accounting period and was approved by the Borrower's directors in compliance with section 393 of the Companies Act 2006.

**3.9 No adverse change**

There has been no adverse change in the Borrower's business, assets, financial condition, trading position or prospects since the date it published its most recent financial statements.

**3.10 No litigation**

No litigation, arbitration or administrative proceedings (including, for the avoidance of doubt but without limitation, debt enforcement actions, winding up or bankruptcy processes or Court proceedings) are taking place, pending or, to the Borrower's knowledge, threatened against it, any of its directors or any of its assets.

**3.11 No breach of law**

The Borrower has not breached any law or regulation which breach has or is likely to have an Adverse Effect.

**4. GENERAL COVENANTS**

The Borrower covenants with the Funder as set out in clause 4.1 to clause 4.10 and undertakes to comply with those covenants.

**4.1 Continuing obligations**

The covenants given by the Borrower in this clause 4 shall remain in force from the date of this deed until the Borrower has repaid the full amount of the Loan Note Amount plus interest to the Funder.

**4.2 Prohibition against further borrowing**

The Borrower shall not (without the prior written consent of the Funder or Yes Growth) borrow any further money from any person other than the Funder.

**4.3 Negative pledge**

The Borrower shall not (without the prior written consent of the Funder or Yes Growth):

- (a) create, or permit to subsist, any Security on or over any of its assets (other than in favour of the Funder);
- (b) increase its borrowings or indebtedness;
- (c) enter into any other preferential arrangement having a similar effect;
- (d) sell, assign, lease, transfer or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, its assets other than trading stock in the ordinary course of business.

**4.4 Notification of default**

The Borrower shall notify the Funder of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.

**4.5 Authorisations**

The Borrower shall promptly obtain all consents and authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability and admissibility in evidence of the Finance Documents in England and Wales.

**4.6 Compliance with law**

The Borrower shall comply, in all respects, with all laws, if failure to do so has or is likely to have an Adverse Effect.

**4.7 Change of business**

The Borrower shall not make any substantial change to the general nature or scope of its business as carried on at the date of this deed.

**4.8 Financial statements**

The Borrower shall supply to the Funder and/or Yes Growth (as they may specify):

- (a) within 10 Business Days of each month end, its monthly cash flow statement, monthly management accounts and a statement of the cash held at the bank;
- (b) within 90 days of their financial year end, copies of its annual accounts (approved by its accountants or auditors).

**4.9 Further information**

The Borrower shall promptly supply to the Funder and/or Yes Growth:

- (a) details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower or any of its directors as soon as it becomes aware of them, and which might, if adversely determined, have an Adverse Effect; and
- (b) any further information about the financial condition, business and operations of the Borrower (including any notices or other documents dispatched by the Company to its shareholder (or any class of them) or to its creditors generally) that the Funder and/or Yes Growth may reasonably request.

4.10 **Know your customer**

If the Funder and/or Yes Growth is obliged for any reason to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall, promptly on the request of the Funder and/or Yes Growth, supply (or procure the supply of) such documentation and other evidence as is reasonably requested in order for the Funder and/or Yes Growth to carry out, and be satisfied that it has complied with, all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**5. COUNTERPARTS**

This document may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.

**6. ASSIGNMENT AND THIRD PARTY RIGHTS**

6.1 This deed is freely assignable or transferable by the Funder.

6.2 The Borrower may not assign any of its rights or transfer any of its obligations under this deed or enter into any transaction which would result in any of those rights or obligations passing to another person.

6.3 The Funder has appointed Yes Growth as its representative authorised (in addition to or instead of the Funder), on the Funder's behalf to enforce all or any of the Funder's rights and remedies under this document and to take any other actions on behalf of the Funder under this deed or any of the Finance Documents.

6.4 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this deed.

**7. NOTICES**

7.1 Any notice or other communication given to a party under or in connection with this deed shall be:

- (a) in writing;
- (b) delivered by hand, pre-paid first-class post, air-mail or other equivalent delivery service (but not by email); and
- (c) sent to the address set out in the Background to this deed or to any other address as in notified in writing by one party to the other from time to time.



7.2 Any notice or other communication that the Borrower gives to the Funder shall be deemed to have been received:

- (a) if delivered by hand, at the time it is left at the relevant address; or
- (b) if posted by pre-paid first-class post, air-mail or other equivalent delivery service, on the second Business Day after posting.

7.3 A notice or other communication given on a day that is not a Business Day, or after normal business hours in the place it is received, shall be deemed to have been received on the next Business Day. Any notice or other communication given to the Funder shall be deemed to have been given only on actual receipt by the Funder.

**8. GOVERNING LAW AND JURISDICTION**

8.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

8.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims)..

**This document has been executed as a DEED and is delivered and takes effect on the date stated at the beginning of it.**

Executed by [NAME OF COMPANY] .....  
acting by [NAME OF FIRST DIRECTOR], Director  
a director and [NAME OF SECOND DIRECTOR/SECRETARY], [a director .....  
**OR** its secretary] Director/Secretary

**OR**

Executed as a DEED by [NAME OF COMPANY] .....  
acting by [NAME OF DIRECTOR], a director, in the presence of: [SIGNATURE OF DIRECTOR]  
..... Director  
[SIGNATURE OF WITNESS]  
[NAME, ADDRESS [AND  
OCCUPATION] OF WITNESS]

Executed as a DEED by **CB Growth Fund** .....  
**Limited** acting by , a director Director  
and [NAME OF SECOND DIRECTOR/SECRETARY], [a director OR .....  
its secretary]] Director/Secretary