

Agreement No.

**THE GOVERNMENT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION**

and

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**SUBSIDY AGREEMENT UNDER THE APPLICATIONS FOR TRIAL  
UNDER THE NEW ENERGY TRANSPORT FUND**

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**(Title of the Trial : )**

**(Application Ref No. : )**

## SUBSIDY AGREEMENT

DATED this                    day of

BETWEEN:

- (1) THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION as represented by the Permanent Secretary for Environment and Ecology (Environment) of 15th Floor & 16th Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong (“**the Government**”); and
- (2)  whose registered office situated at  (“**the Recipient**” which expression shall include its successors in title and assigns).

### Recitals

- (A) **The Government has approved the application made by the Recipient in respect of the “Applications for Trial under the New Energy Transport Fund” and agreed to subsidize the Recipient in accordance with the terms and conditions of this Agreement.**
- (B) **The Recipient has agreed to carry out the Trial as described in Schedule 1 to this Agreement in accordance with the terms and conditions of this Agreement.**

Hereinafter set forth, the parties agree as follows:

### **1. Definition and Interpretation**

1.1 In this Agreement,

“Associate” of any person means –

- (1) a relative or partner of that person; or
- (2) a company, one or more of whose directors is in common with one or more of the directors of that person;

“Associated Person” in relation to another person means—

- (1) any person who has Control, directly or indirectly over the other; or
- (2) any person who is Controlled, directly or indirectly, by another; or
- (3) any person who is Controlled by, or has Control over a person at (1) or (2) above;

“Business Organization” means a sole proprietorship or a partnership or a joint venture (whether incorporated or unincorporated)

“charitable organization” means an institution which is exempt from tax in accordance with section 88 of the Inland Revenue Ordinance (Cap. 112);

“Company Director” means any person occupying the position of director by whatever name called and includes a de facto or shadow director;

“Control, Controlled, Controlling Interest” –

- (1) means the power of a person (including any Associate or Associated Person), directly or indirectly (whether through one or more intermediaries or otherwise) to direct or influence or cause the direction or influence of the management, policies or affairs of another person in one or more of the following ways:
  - (a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or
  - (b) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or
  - (c) by virtue of holding office as a Company Director in that or any other person; or
  - (d) by any other means;
- (2) “influence” for the purpose of this definition includes the holding of 15% or more of the shares or interests or the possession of

voting power in or in relation to any person referred to in (1) (a) immediately above;

“Force Majeure” means acts of God (including, without limitation, typhoons, tornadoes, floods, earthquakes and other forms of inclement weather), acts of the public enemy, government embargo restrictions, labor strikes, or action or inaction on the part of public utilities;

“Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights;

“Ready for Use” in respect of a Subsidized Product which is purchased with the provision of the Subsidy in accordance with this Agreement, means the use of the Subsidized Product will not infringe any laws of the Hong Kong Special Administrative Region and the laws of any other relevant jurisdiction(s) outside Hong Kong where the Subsidized Product will be used;

“Related Companies” mean (i) a holding company which directly owns more than 50% shares of Recipient, (ii) a subsidiary company with more than 50% shares directly owned by the holding company referred to in (i); and (iii) a subsidiary company with more than 50% shares directly owned by the Recipient;

“Subsidized Product” means a brand new subsidized product named in Schedule 2 to this Agreement;

“the Subsidy” means the reimbursement provided by the Government to subsidize the Recipient for the purchase and installation of a Subsidized Product in accordance with this Agreement;

“the Subsidized percentage” in respect of a unit of Subsidized Product which is purchased with the provision of the Subsidy in accordance

with this Agreement, means the actual amount of subsidy provided by the Government divided by the actual payment made by the Recipient for the purchase and installation of that Subsidized Product times 100%;

“the Trial” means the trial which is described in Schedule 1 to this Agreement;

“working day” means a day other than a general holiday (as defined and referred to in the General Holidays Ordinance (Cap. 149)) or a day on which Typhoon Signal No. 8 or above or the black rain storm warning signal is not hoisted in Hong Kong at any time between the hours of 9 a.m. and 5 p.m.

## 1.2 In this Agreement:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include every gender;
- (c) words importing persons include natural persons, firms, companies, corporations and Business Organization;
- (d) references to terms and conditions of this Agreement are references to the relevant terms and conditions set out in relevant clauses of this Agreement and relevant schedules to this Agreement;
- (e) references to Clauses and Schedules are references to the relevant clause in or Schedule to this Agreement;
- (f) the index and headings shall not affect the interpretation of this Agreement;
- (g) references to any obligation on any person to do any act or thing include an obligation to procure that act or thing to be done by another person;

- (h) references to “losses” or “liabilities” include all liabilities, damages, losses, compensation, injuries, costs, disbursements, expenses, claims and proceedings;
- (i) the expressions “including” or “includes” means including or includes without limitation;
- (j) references to any Government authority or official shall include a reference to any other Government authority or official from time to time substituting the first mentioned Government authority or official or performing (in whole or in part) such of the functions performed by the first mentioned Government authority or official on the date of this Agreement as are relevant for the purpose of this Agreement;
- (k) nothing in this Agreement is to be construed as imposing any obligation on the Government not to refuse any consent, approval, permission or authorization unreasonably or to give any consent, approval, permission, or authorization without delay, save where expressly provided in this Agreement. The Government may impose any conditions it deems appropriate to any consent, approval, permission or authorization it gives (if any);
- (l) for the purpose of this Agreement, any act, default, negligence or omission of any contractor, servant, agent, licensee, or employee of the Recipient shall be deemed to be the act, default, negligence or omission of the Recipient;
- (m) where the Recipient comprises more than one person all covenants undertakings and agreements made by the Recipient herein shall be deemed to be made jointly and severally by all the persons the Recipient comprises; and
- (n) all of the Schedules to this Agreement constitute an integral part of this Agreement.

## 2. The Subsidy

- 2.1 In consideration of the Recipient's undertaking to conduct the Trial in accordance with the terms and conditions of this Agreement, the Government shall provide the Subsidy to the Recipient during the trial period of the Trial as stipulated in Schedule 1 to this Agreement in accordance with the terms and conditions of this Agreement.
- 2.2 The approved subsidy for each type of Subsidized Product is set out in the 4<sup>th</sup> column of Schedule 2 to this Agreement ("the Approved Subsidy for the Total Number of Subsidized Products").
- 2.3 The actual subsidy for each unit of Subsidized Product ("the Actual Subsidy for each unit of a Subsidized Product") refers to an amount which is calculated in accordance with the method to calculate the Subsidy for each unit of a Subsidized Product as set out in the 5<sup>th</sup> column of Schedule 2 to this Agreement.
- 2.4 The approved subsidy for the Recipient is set out in Schedule 2 to this Agreement ("the Approved Subsidy for the Recipient") and is equal to the sum of the Approved Subsidy for the Total Number of Subsidized Products as set out in the 4<sup>th</sup> column of Schedule 2 to this Agreement.
- 2.5 The Government shall reimburse the amount paid by the Recipient for settlement of the cost of purchase and installation of all units of Subsidized Products which are purchased with the provision of the Subsidy in accordance with this Agreement upon receipt and verification of documents which are submitted by the Recipient to prove that the Recipient has settled the payment of the cost of purchase and installation of all the units of the Subsidized Products **PROVIDED ALWAYS THAT** (A) the total amount of reimbursement paid by the Government (including that of interim payments) to the Recipient for all units of Subsidized Products which are purchased with the provision of the Subsidy in accordance with this Agreement (including all units of Subsidized Product) shall not exceed the Approved Subsidy for the Recipient; (B) all units of the Subsidized Product have been delivered to the Recipient and are

Ready for Use; and (C) purchase and installation of a support system (such as a charging station) which has been described in the description of the Subsidized Product in Schedule 2 to this Agreement has been completed and the support system can come into operation.

- 2.6 For the avoidance of doubt, the Government will not subsidize the Recipient for any amount in excess of the Approved Subsidy for the Recipient.
- 2.7 Without prejudice to Clause 2.5 and subject to Clause 2.8 of this Agreement, in the event that the cost of purchase and installation of a support system (such as a charging station) the description of which has been described in the description of the Subsidized Product in Schedule 2 to this Agreement and the Recipient is required to pay by interim payments for the cost of purchase and installation of such support system which is purchased with the provision of the Subsidy in accordance with this Agreement, the Government shall reimburse the Recipient an amount which is equal to the amount that has been paid by the Recipient for settlement of an interim payment multiplied by the Subsidized percentage upon receipt and verification of documents which are submitted by the Recipient to prove that the Recipient has settled the interim payment **PROVIDED ALWAYS THAT** the total amount of reimbursement paid by the Government (including that of interim payments) to the Recipient for all units of Subsidized Products which are purchased with the provision of the Subsidy in accordance with this Agreement (including that unit of Subsidized Product) shall not exceed the Approved Subsidy for the Recipient.
- 2.8 If a support system is not described in the description of the Subsidized Product in Schedule 2 to this Agreement, the Government will not reimburse the amount paid by the Recipient for purchasing and installing such support system.
- 2.9 The Recipient shall submit to the Government its request for Subsidy (including reimbursement for interim payments (if any)) together with copies of agreement, invoices and receipts to prove its payment



of the cost of purchase and installation of that unit of a Subsidized Product (including any interim payment(s) made). The Recipient shall submit all documents which are requested by the Government for verification of the settlement made by the Recipient. All copies of agreement, invoices, receipts and other documents as required under this Clause 2.9 must be certified by the Recipient.

### **3. Use of Subsidy**

- 3.1 The Recipient shall only use the Subsidy for the sole purpose of purchase and installation of the Subsidized Product. The Recipient shall not use the Subsidy for any other purposes such as operation, repair and maintenance of the Subsidized Product.

### **4. Purchase of Subsidized Product**

- 4.1 With the objectives of ensuring openness, fairness and value for money, the Recipient shall ensure that Subsidized Product shall only be purchased from suppliers who are not Associates, Associated Persons or Related Companies of the Recipient, unless with the written consent of the Government. The Recipient shall not purchase any Subsidized Product of which the design, development, manufacture, use, operation, custody or possession infringes the Intellectual Property Rights or any other rights of any person. Unless the Government agrees otherwise in writing, the Recipient shall purchase the Subsidized Product in accordance with the following procedures and practices:

- (a) for every purchase of Subsidized Product the aggregate value of which does not exceed or equals to HK\$50,000, quotations from at least two suppliers shall be obtained;
- (b) for every purchase of Subsidized Product the aggregate value of which exceeds HK\$50,000, but does not exceed or equals to HK\$1,400,000, quotations from at least five suppliers should be obtained. If less than five suppliers can be identified

on the market, this shall be recorded on the procurement document; and

- (c) for every purchase of Subsidized Product the aggregate value of which is more than HK\$1,400,000, open tender shall be used by the Recipient.

4.2 The Recipient shall seek the consent from the Government before entering into an agreement with a supplier for the supply of a Subsidized Product. The Government may request and the Recipient shall provide to the Government all information related to the selection of a supplier for the Government's consideration. The Recipient shall propose the supplier that meets the requirements as set out in the quotations and has submitted the lowest bid. If the Recipient does not propose the supplier with the lowest bid, the Recipient must give full justification to the satisfaction of the Government. The Recipient shall not carry out fragmentation of orders or bids with the purpose or effect of avoiding the need to obtain quotations or abusing the procedures and practices to purchase Subsidized Product as provided in Clause 4.1 of this Agreement.

4.3 If there is only one sole supplier supplying the Subsidized Product in the market, the Recipient shall seek the consent from the Government before the Recipient entering into an agreement with the supplier for the supply of Subsidized Product.

4.4 If the Subsidized Product is a new energy vehicle such as hybrid vehicle and electric vehicle, or involves a conversion of in-use conventional vehicle to new energy vehicle, the Recipient shall require the supplier of the Subsidized Product to commit to the following terms in the tender document submitted to the Recipient. The Recipient shall seek the consent from the Government before entering into an agreement with the supplier for the supply of such Subsidized Product.

- (a) The supplier of the Subsidized Product shall have maintenance and repair centre(s) in Hong Kong to provide maintenance and repair services for the Subsidized Product at the date of

delivery of the Subsidized Product to the Recipient.

- (b) The supplier of the Subsidized Product shall specify the warranty of the Subsidized Product, as well as the warranty of the batteries of the Subsidized Product and the level of state of charge (SoC) of the batteries that the supplier will replace these batteries free of charge, in the tender document.
- (c) The supplier of the Subsidized Product shall collect and properly treat and/or dispose of the retired batteries of the Subsidized Product at the supplier's own cost in the event of battery replacement or disposal in accordance with the Waste Disposal (Chemical Waste) (General) Regulation (Cap. 354C).

4.5 If the Subsidized Product is a new energy vessel, such as hybrid vessel and electric vessel, or involves a conversion of in-use conventional vessel to new energy vessel, the Recipient shall require the supplier of the Subsidized Product to commit to the following terms in the tender document submitted to the Recipient. The Recipient shall seek the consent from the Government before entering into an agreement with the supplier for the supply of such Subsidized Product.

- (a) The supplier of the Subsidized Product shall specify the names and the locations of maintenance and repair centre(s) to provide maintenance and repair services for the Subsidized Product at the date of submission of tender document to the Recipient.
- (b) The supplier of the Subsidized Product shall specify the warranty of the Subsidized Product, as well as the warranty of the batteries of the Subsidized Product and the SoC level of the batteries that the supplier will replace these batteries free of charge, in the tender document.
- (c) The supplier of the Subsidized Product shall collect and properly treat and/or dispose of the retired batteries of the Subsidized Product at the supplier's own cost in the event of

battery replacement or disposal in accordance with the Waste Disposal (Chemical Waste) (General) Regulation (Cap. 354C).

- 4.6 If the Subsidized Product is an after-treatment air pollutant emission reduction device or fuel saving device applicable to vehicle or vessel, the Recipient shall require the supplier of the Subsidized Product to commit to the following terms in the tender document submitted to the Recipient. The Recipient shall seek the consent from the Government before entering into an agreement with the supplier for the supply of such Subsidized Product.
- (a) The supplier of the Subsidized Product shall specify the names and the locations of maintenance and repair centre(s) to provide maintenance and repair services for the Subsidized Product at the date of submission of tender document to the Recipient.
  - (b) The supplier of the Subsidized Product shall specify the warranty of the Subsidized Product in the tender document.
- 4.7 If the Government considers necessary, the Government may ask the Recipient within two (2) weeks from the Government's receipt of the Recipient's request for consent submitted under Clause 4.2 of this Agreement to put the Subsidized Product out to re-tender.
- 4.8 If the cost of a purchased unit of Subsidized Product is over HK\$10,000, the Recipient shall make payment by cheque, bank transfer or credit card only.
- 4.9 All quotations and tender documents in relation to or for the purposes of the purchase of a Subsidized Product and all bank statements, invoices and receipts in respect of the payment referred to in Clause 4.8 above shall be kept by the Recipient for a period of no less than three (3) years after the completion of the Trial or three (3) years after the termination of this Agreement, whichever is later and shall be made available for inspection by the Government, the Director of Audit, the Commissioner of the Independent Commission Against Corruption and their authorized representatives at all reasonable

times during the continuation of this Agreement and the abovementioned 3-year period. This Clause shall survive the completion or termination (for whatever reasons) of this Agreement and shall continue in full force and effect notwithstanding such completion or termination (for whatever reasons) of this Agreement.

- 4.10 The Recipient shall not unilaterally change the description of a Subsidized Product set out in Schedule 2 to this Agreement unless written approval from the Government is obtained in advance. The Recipient shall ensure that the supporting documents which are submitted for requesting reimbursement of a product purchased by the Recipient in accordance with Clause 2 of this Agreement show that the description of the purchased product meets the description of a Subsidized Product set out in Schedule 2 to this Agreement. No reimbursement will be made to the Recipient for a product purchased by the Recipient if the product does not meet the description of a Subsidized Product set out in Schedule 2 to this Agreement.
- 4.11 The Recipient shall ensure that its directors, staff and agents will not offer, solicit or accept any advantage (as defined in the Prevention of Bribery Ordinance (Cap. 201)) in connection with the purchase of a Subsidized Product.
- 4.12 The Recipient shall notify the Government immediately in writing when it itself or any of its directors, employees, agents or contractors has any financial, professional, commercial, personal or other interests in the purchase of a Subsidized Product and any service(s) related thereto (such as installation) under consideration.

## **5. Insurance**

- 5.1 If the Trial involves new vehicle(s) or vessel(s) purchased with the provision of the Subsidy in accordance with this Agreement, the Recipient shall complete the purchase of insurance to cover the full market value of such new vehicle(s) or vessel(s) for the first two years in no less than one month prior to the Commencement Date of the Trial as stipulated in Schedule 1 to this Agreement.

5.2 If the Recipient receives insurance compensation for an insured Subsidized Product of new vehicle(s) or vessel(s) due to: (a) damage caused by accident, (b) theft, or (c) any other causes during the trial period of the Trial as stipulated in Schedule 1 to this Agreement rendering the Subsidized Product unusable or not operational for the purpose of the Trial, the Recipient shall forthwith return to the Government an amount which is equal to the insurance compensation received by the Recipient multiplied by the Subsidized percentage of the Subsidized Product.

## **6. The Trial**

6.1 The Recipient shall conduct the Trial for the trial period as stipulated in Schedule 1 to this Agreement in accordance with the terms and conditions of this Agreement unless the Government agrees otherwise in writing.

6.2 The Recipient shall provide the particulars of the Subsidized Products including the registered owners and vehicle(s) / vessel(s) registration numbers to the Government and agree that such information will be disclosed to the relevant Government departments including without limitation to the Transport Department and Marine Department. The Government reserves the right to request for further information if deemed necessary.

6.3 The Recipient is hereby informed and also agrees that the relevant Government departments referred to in Clause 6.2 above to inform other Government departments including without limitation the Environment and Ecology Bureau (Environment Branch) whenever this is any change in the ownership of the Subsidized Product. This Clause shall survive the completion of this Agreement and shall continue in full force and effect notwithstanding such completion of this Agreement.

6.4 The Recipient shall not sell or assign the Subsidized Products which are purchased with the provision of the Subsidy in accordance with

this Agreement before the completion of the trial period of the Trial as stipulated in Schedule 1 to this Agreement without the written consent of the Government. The Government may exercise the right to terminate this Agreement and be entitled to cease to pay any unpaid portions of the Subsidy to the Recipient immediately. The Government shall be entitled to require the Recipient to forthwith return to the Government all the Subsidy it has already received.

- 6.5 The Recipient shall not use the Subsidized Product during the trial period of the Trial as stipulated in Schedule 1 to this Agreement to fulfill the contractual obligations in, arising from or incidental to any government contract(s) which the Recipient or other party has signed or will sign with the Government.
- 6.6 The Recipient shall install an independent meter to record the fuel/energy consumption of each unit of charging or similar support system of Subsidized Product during the trial period of the Trial as stipulated in Schedule 1 to this Agreement.
- 6.7 The Recipient shall ensure that its directors, staff and agents will not offer, solicit or accept any advantage (as defined in the Prevention of Bribery Ordinance (Cap. 201)) in connection with the Trial.

## **7. Prohibition of Applying for and Receiving Other Subsidy**

- 7.1 The Recipient shall not and warrants that it will not receive any other subsidy during the trial period of the Trial as stipulated in Schedule 1 to this Agreement (except the tax incentive from incentive schemes such as the waiving of registration tax for new commercial electric vehicles and tax incentive for environment-friendly commercial hybrid vehicles to encourage the use of electric vehicles and environment-friendly vehicles) from the Government, public bodies or charitable organizations in relation to the Subsidized Product which is purchased with the provision of the Subsidy in accordance with this Agreement.
- 7.2 The Recipient declares that it has not applied for and/or received any

other subsidy (except the tax incentive from incentive schemes such as the waiving of registration tax for new commercial electric vehicles and tax incentive for environment-friendly commercial hybrid vehicles to encourage the use of electric vehicles and environment-friendly vehicles) from the Government, public bodies or charitable organizations in relation to the Subsidized Product which is purchased with the provision of the Subsidy in accordance with this Agreement.

## **8. Termination of the Trial**

8.1 The Government may terminate the Trial under the following circumstances:

- (a) The Recipient fails to commence the Trial within two (2) months from the Commencement Date of the Trial as stipulated in Schedule 1 to this Agreement;
- (b) The Recipient is found to have sold or assigned the Subsidized Product(s) which is (are) purchased with the provision of the Subsidy in accordance with this Agreement before the completion of the trial period of the Trial without the written consent of the Government, in breach of Clause 6 of this Agreement;
- (c) the Recipient is found to have applied for and/or received before or during the trial period of the Trial as stipulated in Schedule 1 to this Agreement any other subsidy (except the tax incentive from incentive schemes to encourage the use of electric vehicles and environment-friendly vehicles) from the Government, public bodies or charitable organizations in relation to the Subsidized Product which is purchased with the provision of the Subsidy in accordance with this Agreement, in breach of Clause 7 of this Agreement;
- (d) the Recipient, its director, staff or its agent is prosecuted under the Prevention of Bribery Ordinance (Cap. 201) in respect of



the purchase of a Subsidized Product or the Trial of a Subsidized Product which is purchased with the provision of the Subsidy in accordance with this Agreement.

8.2 The Government may (but is not obliged to) serve a notice to the Recipient to require the Recipient to remedy the failure and/or breach as stipulated in Clause 8.1 of this Agreement (if such failure/breach is rectifiable) within the timeframe as stated in the notice. If the Recipient fails to remedy the rectifiable failure and/or breach as stipulated in Clause 8.1 of this Agreement within the timeframe specified in the notice, the Government may exercise its right to terminate this Agreement immediately and the Government shall be entitled to cease to pay any unpaid portions of the Subsidy to the Recipient immediately and the Government shall be entitled to require the Recipient to forthwith return to the Government all the Subsidy it has already received.

## **9. Early Termination of the Trial by the Recipient**

9.1 If for whatever reasons, the Recipient wishes to terminate the Trial before the expiration of the trial period of the Trial as stipulated in Schedule 1 to this Agreement, the Recipient shall notify the Government in writing setting out the reasons. Subject to the written consent of the Government to the early termination of the Trial, the Recipient shall dispose of the Subsidized Products which are purchased with the provision of the Subsidy in accordance with the following arrangements:

- (a) The Recipient shall firstly seek a third party in the same transport trade who agrees to take up the Trial for the remaining trial period of the Trial as stipulated in Schedule 1 to this Agreement. The Recipient shall then transfer and assign all Subsidized Products which are purchased with the provision of the Subsidy in accordance with this Agreement for the Trial at its own costs and expenses to the third party and procure the third party to enter into an agreement with the Government on similar terms and conditions of this Agreement;

- (b) If the Recipient fails to procure a third party to take up the Trial for the remaining trial period of the Trial as stipulated in Schedule 1 to this Agreement in respect of a unit of Subsidized Product which has resale value (such as a vehicle or a quick charger) within two (2) months starting from the day on which the Recipient issues a written notice to the Government requesting for the early termination of the Trial, the Recipient shall sell the Subsidized Product by public auction. After the auction, the Recipient shall return to the Government an amount which is equal to the Recipient's net receipt from the auction (i.e. the winning bid price less auction house charges) multiplied by the Subsidized percentage of the Subsidized Product. To ensure due process is followed, the Recipient shall propose its choice of auctioneer for the Government's approval before the Recipient engaging the auctioneer to sell the Subsidized Product; and
- (c) If the Recipient fails to procure a third party to take up the Trial for the remaining trial period of the Trial as stipulated in Schedule 1 to this Agreement in respect of a unit of Subsidized Product which has no resale value within two (2) months starting from the day on which the Recipient issues a written notice to the Government requesting for the early termination of the Trial, subject to the consent of the Government, the Recipient may dispose of the Subsidized Product in the way the Recipient thinks fit.

9.2 Upon receipt of the written notice issued by the Recipient in accordance with Clause 9.1 of this Agreement, the Government shall be entitled to cease to pay any unpaid portions of the Subsidy to the Recipient immediately.

9.3 Notwithstanding anything otherwise provided in this Agreement, this Agreement shall be terminated immediately upon (1) the execution of an agreement by both of the Government and the third party as stipulated in Clause 9.1(a) of this Agreement; or (2) the Government's receipt of the money returned from the Recipient

pursuant to Clause 9.1(b); or (3) the Government's consent to the Recipient to dispose of the Subsidized Product in accordance with Clause 9.1(c).

9.4 The Government shall be entitled to make public the notification made by the Recipient regarding its decision to terminate the Trial before the trial period of the Trial as stipulated in Schedule 1 to this Agreement.

## **10. Disposal of Subsidized Products and Restoration upon completion of the Trial**

10.1 Upon completion of the Trial, the Recipient shall be responsible for restoration and uninstallation of all units of Subsidized Products which are purchased with the provision of the Subsidy in accordance with this Agreement at its own cost.

10.2 Upon completion of the Trial, the Recipient shall try its best endeavour to continue using the Subsidized Product, which is purchased with the provision of the Subsidy in accordance with this Agreement until the end of the usable life of the Subsidized Product as far as it is economically feasible to do so.

10.3 The Recipient shall notify the Government in writing whenever it decides to discontinue to use the Subsidized Product; or to sell or assign the ownership of the Subsidized Product to any third party, which Subsidized Product is purchased with the provision of the Subsidy in accordance with this Agreement, after the trial period of the Trial as stipulated in Schedule 1 to this Agreement. This Clause shall survive the completion of this Agreement and shall continue in full force and effect notwithstanding the completion of this Agreement.

10.4 Subject to Clause 10.5, after completion of the Trial, for any sale or assignment of Subsidized Product (excluding the support system such as the charging station as described in the description of the Subsidized Product in Schedule 2 to this Agreement, if any) the

Recipient shall return to the Government the gain, if any, arising from the sale or assignment. The gain being the selling price stipulated in relevant documents, such as the Notice of Transfer of Ownership of Vehicles of the Transport Department or the Notification of Transfer of Ownership of the Marine Department, excluding any administrative fee incurred, less the actual cost that the Recipient had paid to procure the Subsidized Product; whereas the actual cost being the cost of purchase of the Subsidized Product from the supplier approved by the Government less the disbursement released to the Recipient.

- 10.5 The Recipient shall not sell or assign the ownership of Subsidized Products in Clause 10.4 to any of its Associates, Associated Person or Related Companies.
- 10.6 The Government shall be entitled to make public the notification issued by the Recipient in accordance with Clause 10.3 of this Agreement. This Clause survives the completion of this Agreement and shall continue in full force and effect notwithstanding such completion of this Agreement.

## **11. Independent Monitor and Verification**

- 11.1 The Government may appoint an independent third party assessor (“the assessor”) to monitor the conduct of the Trial and verify its result. The Recipient shall provide to the Government and the assessor the requested data, processed data, compilations of requested data and processed data for assessing the performance of the Subsidized Product (including but not limited to mileage reading of the Subsidized Product before refueling/charging (if applicable), fuel/electricity consumption records, time used for charging (if applicable), costs and downtime associated with scheduled and unscheduled maintenances, and any operational difficulties in using the Subsidized Product) within seven (7) days from the date of the Government’s or the assessor’s written request. The Recipient shall permit the Government and the assessor to attend on site verification checking.

- 11.2 The Recipient shall keep and maintain all the data obtained or collected by the Recipient, the processed data, and the compilations of requested data and processed data for assessing the performance of the Subsidized Product (including but not limited to mileage reading of the Subsidized Product before refueling/charging (if applicable), fuel/electricity consumption records, time used for charging (if applicable), costs and downtime associated with scheduled and unscheduled maintenances, and any operational difficulties in using the Subsidized Product) in good conditions and shall take all reasonable precautions to prevent the loss, damage, deterioration or theft of such data for one (1) year after completion or termination (for whatever reasons) of this Agreement, whichever is earlier. This Clause shall survive the completion or termination (for whatever reasons) of this Agreement and shall continue in full force and effect notwithstanding such completion or termination (for whatever reasons) of this Agreement.
- 11.3 The Recipient, upon the Government's request, shall make available the Subsidized Product (free of charge) for the testing of its emission performance during the trial period of the Trial as stipulated in Schedule 1 to this Agreement and after the completion of the Trial. This Clause shall survive the completion of this Agreement and shall continue in full force and effect notwithstanding such completion of this Agreement.

## **12. Intellectual Property Rights**

- 12.1 All the Intellectual Property Rights subsisting in the compilations of the data, processed data, reports and publications and all other materials created, developed or made by the Recipient, its employees, agents, or sub-contractors pursuant to the Trial ("Deliverables") shall be and remain solely and absolutely vested in the Government immediately upon creation, except for the Third Party Materials as defined in Clause 12.2.
- 12.2 The Recipient hereby grants or in case it is not empowered to do so,

shall at its own costs and expenses procure the grant of, for the benefits of the Government, its authorized users, assigns and successors-in-title an irrevocable, royalty-free, non-exclusive, worldwide, perpetual, transferable and sub-licensable licence to use (including but not limited to doing any of the acts restricted by copyright under sections 22 to 29 of the Copyright Ordinance (Cap. 528)) any works or materials of which the Intellectual Property Rights subsisting therein are vested in third parties and incorporated into the Deliverables (“Third Party Materials”) by any means or in any manner for any purposes provided for or contemplated by the Agreement. The licence shall take effect upon the delivery of the Deliverables to the Government.

- 12.3 The Recipient shall keep the Government informed in writing of any Third Party Materials of which the Recipient is not empowered to grant licence(s) or cannot procure the grant of licence(s) pursuant to Clause 12.2 above and any restrictions whatsoever affecting the use thereof.
- 12.4 If any name, logo, trade mark or service mark of the Recipient is included, shown or displayed on the Deliverables, the Recipient shall grant to the Government, its authorized users, assigns and successors-in-title an irrevocable, non-exclusive, perpetual, transferable, worldwide and sub-licensable licence to use such name, logo, trade mark or service mark of the Recipient for all purposes contemplated under this Agreement, including but not limited to showing or displaying the name, logo, trade mark or service mark by any means or in any manner, whether on its own or in conjunction with other names, logos, trade marks or service marks. The licence shall take effect upon the delivery of the Deliverables to the Government.
- 12.5 The Recipient hereby irrevocably waives and undertakes to procure at its own costs and expenses all authors of the Deliverables or any part thereof to waive all moral rights (whether past, present or future) in the Deliverables. Such waiver shall operate in favour of the Government, its authorized users, assigns and successors-in-title and take effect upon creation of the Deliverables.

12.6 The Recipient warrants to the Government that:

- (a) the Recipient has the full capacity, power and authority to enter into this Agreement and to perform its obligations under this Agreement including without limitation the vesting of the Intellectual Property Rights in the Government according to Clause 12.1 and the grant of the rights and licences in respect of the Intellectual Property Rights to the Government, its authorized users, assigns and successors-in-title referred to in Clauses 12.2 and 12.4 of this Agreement;
- (b) the Deliverables (except for the Third Party Materials) shall be or shall consist of original works created, developed or made by the Recipient for the Government during the course of or in connection with this Agreement;
- (c) prior to the use and incorporation of any Third Party Materials in the Deliverables, the Recipient shall have obtained from the relevant third party Intellectual Property Rights owners the grant of all necessary licences for itself and the Government, its authorized users, assigns, and successors-in-title to use the Third Party Materials in the manner and for any of the purposes contemplated by this Agreement. The costs of the above licences shall be borne by the Recipient; and
- (d) the Intellectual Property Rights or any other rights of any person are not and will not be infringed due to the following:
  - (i) the performance of the Agreement (including the conduct of the Trial and the provision of the Deliverables) by the Recipient, its employees, agents, or sub-contractors;
  - (ii) the use, operation, custody or possession by the Government, its authorized users, assigns and successors-in-title of the Deliverables or any part thereof for any purposes contemplated by or incidental to this Agreement;  
or
  - (iii) the exercise by the Government, its authorized users, assigns and successors-in-title of any of the rights granted under this Agreement.

- 12.7 The Recipient shall at its own costs and expenses do and execute any further things, instruments and document(s) including deeds and licences (or procure that the same be done or executed) as may be required by the Government to give full effect to the provisions in this Agreement and shall provide all such things, instruments and documents to the Government within fourteen (14) days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.
- 12.8 The provisions in Clause 12 of this Agreement shall survive the completion or termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion or termination (for whatever reasons) of this Agreement.

### **13. Indemnity**

- 13.1 The Recipient shall indemnify and keep the Government, its authorized users, assigns, and successors-in-title fully and effectively indemnified against any loss of or damage to any property or injury to or death of any person, all claims, actions, investigations, judgments, proceedings, demands, losses, damages, costs, charges and expenses (including legal fees and expenses and taxes (if any) thereon) or liabilities of whatsoever nature arising from or in connection with any claim caused by any negligent act or omission or wilful misconduct of the Recipient or by any defect in the design, material, workmanship or installation of any part of the Subsidized Product or by the performance of the Trial.
- 13.2 The Recipient shall indemnify and keep the Government, its authorized users, assigns, and successors-in-title fully and effectively indemnified from and against all claims, actions, investigations, judgments, proceedings, demands, losses, damages, costs, charges and expenses (including legal fees and expenses and taxes (if any) thereon) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out of or relating to any allegation and/or claim for infringement of the Intellectual Property Rights or any other rights



of any person arising from or in any way related to the performance of this Agreement.

13.3 The provisions in Clause 13 of this Agreement shall survive the completion or termination (for whatever reasons) of this Agreement and shall continue in full force and effect notwithstanding such completion or termination (for whatever reasons) of this Agreement.

#### **14. Acknowledgement of Support**

14.1 The Recipient shall acknowledge the source of the Subsidy “New Energy Transport Fund” logo in all publicity materials used by the Recipient during the entire trial period of the Trial as stipulated in Schedule 1 to this Agreement.

14.2 The Recipient shall display the “New Energy Transport Fund” logo of a minimum size specified by the Government at a conspicuous location on the Subsidized Product during the entire trial period of the Trial as stipulated in Schedule 1 to this Agreement.

#### **15. Termination of this Agreement**

15.1 Notwithstanding anything provided otherwise in this Agreement, the Government shall be entitled to terminate this Agreement if:

- (a) without prejudice to Clause 6.4 and subject to Clause 8.2 of this Agreement, the Recipient is in breach of any terms and conditions of this Agreement; or
- (b) the Recipient becomes bankrupt or goes into liquidation or a receiving order is made against it; or
- (c) a receiver is appointed in respect of any of the Recipient’s assets or the Recipient makes any composition or arrangement with creditors; or

- (d) possession of any of the Recipient's assets is taken by a chargee or mortgagee; or
- (e) the Recipient enters into a scheme of arrangement with its creditor; or
- (f) the Recipient is prosecuted in respect of non-payment of any money due to Government or any person; or
- (g) the Recipient has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security; or
- (h) the continued engagement of the Recipient or the continued implementation of the trial is contrary to the interest of national security; or
- (i) the Government reasonably believes that any of the events mentioned in (g) and (h) above is about to occur; or
- (j) any other similar event, action or proceeding occurs or is taken in respect of the Recipient in any other jurisdictions.

15.2 Notwithstanding anything to the contrary in this Agreement signed between the Recipient and the Government in respect of the trial, the Government reserves the right to disqualify the Recipient from receiving fund support from the New Energy Transport Fund on the grounds that the Recipient has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

15.3 In any case set out in Clause 15.1 and Clause 15.2 of this Agreement, this Agreement shall absolutely terminate but without prejudice to the rights and remedies of the Government against the Recipient in

respect of any antecedent claim or breach of any terms and conditions of this Agreement and the Government is entitled to cease to pay any unpaid portions of the Subsidy to the Recipient immediately and the Government shall be entitled to require the Recipient to forthwith return to the Government all the Subsidy already paid to the Recipient.

## **16. Force Majeure**

- 16.1 A party prevented by an event or events of Force Majeure is entitled to be excused from fulfilling its obligations under this Agreement for so long as such event or events shall continue. The affected party shall as soon as possible give notice in writing to the other party of the occurrence of the event or events of Force Majeure and the Government shall be entitled to suspend the provision of the Subsidy until the event of Force Majeure discontinues.
- 16.2 Should fulfillment by the Recipient of its obligations under this Agreement be prevented by Force Majeure for twenty-eight (28) days (either consecutive or in the aggregate) or longer, the Government shall be entitled, at the expiration of such period, to terminate this Agreement by not less than fourteen (14) days' notice in writing to the Recipient but without prejudice to the rights and remedies of the Government against the Recipient in respect of any antecedent claim or breach of any terms and conditions of this Agreement and the Government is entitled to cease to pay any unpaid portions of the Subsidy to the Recipient.
- 16.3 Subject to Clause 16.2 of this Agreement, in the event that fulfillment of obligations under this Agreement is delayed by Force Majeure, the trial period of the Trial as stipulated in Schedule 1 to this Agreement shall be extended by the number of days of delay actually caused by such event of Force Majeure unless a different time extension is agreed between the parties. In all other respects the obligations of the parties under this Agreement shall be unaffected.

## 17. Confidentiality

17.1 The Recipient shall keep, and shall procure its employees, agents, sub-contractors or any other persons engaged by the Recipient in the performance of the Recipient's duties and obligations under this Agreement (collectively "Relevant Persons") to keep confidential the Approved Subsidy for the Recipient and the Approved Subsidy for each unit of a Subsidized Product and materials of any nature (in or on whatever media)) accessible by the Recipient under this Agreement or which the Government has for the purposes of or in the course of performing this Agreement disclosed, supplied, made available or communicated to the Recipient (collectively "Confidential Information"). The Recipient and the Relevant Persons shall not disclose the Confidential Information to any person unless the disclosure of Confidential Information:

- (a) is made to the Relevant Persons in circumstances where such disclosure is necessary for the performance of the Recipient's obligations under this Agreement provided that the Recipient has imposed on each Relevant Person an absolute and legally binding obligation to the Recipient to refrain from disclosing the Confidential Information;
- (b) is in circumstances where such disclosure is required pursuant to any laws of Hong Kong or order of a court of Hong Kong;
- (c) is made with the prior written consent of the Government; or
- (d) is necessary for the purpose of making financial arrangements to purchase the Subsidized Product.

17.2 The Recipient shall ensure that each Relevant Person is aware of and comply with the provisions of this Clause 17 and the Official Secrets Ordinance (Cap. 521) and the Recipient shall indemnify and keep the Government, its authorized users, assigns and successors-in-title fully and effectively indemnified against all actions, costs (including without limitation the fees and disbursements of lawyers, agents and experts witnesses), claims, demands, expenses, loss, damage and

liabilities whatsoever which the Government, its authorized users, assigns and successors-in-title may suffer, incur or sustain as a result of any breach of confidence (whether under this Agreement or common law) by the Recipient or any of the Relevant Persons.

- 17.3 The Recipient hereby agrees that it will use the Confidential Information solely for the purposes of this Agreement and that it will not, at any time whether during or after the completion or termination (for whatever reasons) of this Agreement use or allow to be used the same for any other purposes without the Government's prior written consent.
- 17.4 The Recipient undertakes to take all such security measures for the protection of the Confidential Information as it takes for the protection of its own confidential or proprietary information, documentation and materials.
- 17.5 The Recipient undertakes, if so requested by the Government, to sign the Government's separate confidentiality agreement in a form prescribed by the Government and to procure each of the Relevant Persons to whom any Confidential Information is to be disclosed to do so.
- 17.6 The Recipient further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information otherwise than in accordance with this Agreement.
- 17.7 The Recipient shall promptly notify the Government of any breach of confidence by any Relevant Person and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any person(s) pursuant to any of the provisions in this Clause 17.
- 17.8 The provisions in Clause 17 of this Agreement shall survive the completion or termination (for whatever reasons) of this Agreement and shall continue in full force and effect notwithstanding such completion or termination (for whatever reasons) of this Agreement.

## 18. Others

- 18.1 The Government shall bear no responsibility, financial or otherwise, for expenditure or other liabilities arising from the Trial and/or the use of any Subsidized Products which are purchased with the provision of the Subsidy in accordance with this Agreement.
- 18.2 Nothing contained or implied by this Agreement is intended to or will create a partnership, joint venture, or association of any kind between any of the parties. No party shall hold itself out as the agent of any other party except as expressly provided in this Agreement and nothing in this Agreement shall make one party the agent of the other with the power to bind the other in respect of any of the rights and duties in this Agreement.
- 18.3 No failure, delay or other indulgence by any of the parties in exercising any right, power or privilege constitutes a waiver of that right, power or privilege or of that party's right to enforce that or any other provision of this Agreement.
- 18.4 The rights and obligations of the parties do not merge on completion of any transaction contemplated by this Agreement and all representations and warranties survive the completion or termination (for whatever reasons) of this Agreement and shall continue in full force and effect notwithstanding such completion or termination (for whatever reasons) of this Agreement.
- 18.5 Any notice required to be given under this Agreement shall be in writing, addressed to the Recipient and the Government at the following address:

The Recipient

At the address set out at the head of this Agreement

For the attention of: [REDACTED]

Fax no.: (852) [REDACTED]

Email Address: [REDACTED]

The Government  
33/F, Revenue Tower,  
5 Gloucester Road,  
Wanchai, Hong Kong  
For the attention of: New Energy Transport Fund Secretariat,  
Environment and Ecology Bureau (Environment)  
Fax no.: (852) 2838 2155

Notices shall be deemed to have been received:

- (a) where delivered by hand – upon delivery;
- (b) where sent by facsimile transmission – upon despatch (provided that a valid transmission report is received); or
- (c) where sent by post or courier to the address as provided in this Clause 18.5 – be deemed given three (3) working days after posting it.

18.6 This Agreement sets out the entire agreement between the parties and replaces and supersedes all previous arrangements and understandings, representations or agreements between the parties relating to the subject matter hereof, whether expressed or implied in relation to the Subsidy.

18.7 No variation to any terms or conditions of this Agreement may be made unless such variation is agreed in writing and signed by each of the parties to this Agreement.

18.8 The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision of this Agreement, so that each provision is severable from each other provision.

18.9 Save as provided in this Agreement (including sub-clause 18.10 below), the Recipient shall not, either in a single transaction or in a series of transactions, whether related or not, assign, sell, lease, license, sub-license, delegate, transfer, charge, create interests,

options or right of pre-emption in respect of, or destroy or permit to lapse or expire, or dispose of any of its interests, rights, benefits or obligations under this Agreement (whether in whole or in part).

18.10 The Recipient may, subject to the approval of the Government, engage the services of independent contractors to assist it with its duties hereunder provided that the Recipient:

- (a) shall not be relieved from any of its obligations hereunder by engaging any such independent contractor and shall remain fully liable to the Government for the performance of such obligations;
- (b) shall remain liable for any act or omission of any such independent contractor as if such act or omission were its own; and
- (c) shall secure binding obligations from any such independent contractor so as to ensure that the Recipient complies with its obligations under this Agreement.

18.11 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and each party irrevocably submits to the exclusive jurisdiction of the courts of Hong Kong.



AS WITNESS the hands of the parties hereto the day and year first above written.

SIGNED by )  
\_\_\_\_\_)  
for and on behalf of the Government )  
in the presence of :- )  
\_\_\_\_\_)

SIGNED by )  
\_\_\_\_\_)  
Hong Kong identity card number: )  
\_\_\_\_\_)  
\_\_\_\_\_)  
for and on behalf of the Recipient )  
which is a limited company registered )  
under the Companies Ordinance with )  
the registered company number: )  
\_\_\_\_\_)  
in the presence of :- )  
\_\_\_\_\_)  
\_\_\_\_\_) of the Recipient )  
\_\_\_\_\_)