

Agreement No. \_\_\_\_\_

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

and

**The \_\_\_\_\_ ]**

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**SUBSIDY AGREEMENT UNDER THE PILOT GREEN TRANSPORT FUND**  
**(DRAFT OF 3 August 2011)**

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**(Title of the Trial : \_\_\_\_\_)**

**(Application Ref No. : \_\_\_\_\_)**

## **SUBSIDY AGREEMENT**

DATED this                      day of                      2011

BETWEEN:

- (1) THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION as represented by the Director of Environmental Protection of 33/F., Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong (**“the Government”**); and
- (2)                      of                      (**“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 **“Pilot Green Transport Fund”** and agreed to subsidize the Recipient in accordance with the terms of this Agreement.
- (B) The Recipient has agreed to carry out the Trial as described in the schedule of this Agreement in accordance with the terms 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 exempted from tax in accordance with section 88 of the Inland Revenue Ordinance (Cap112);

“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 (1 (a)) 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 Hong Kong Special Administrative Region and the laws of relevant jurisdiction outside Hong Kong where the Subsidized Product will be used;

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

“the Subsidy” means the reimbursement made by the Government for the payment made by 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 firms, companies, corporations and Business Organization and vice versa;
- (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 comprising the Recipient;
- (n) all of the Schedules to this Agreement constitute an integral part of this Agreement; and
- (o) in the event that there is any conflict, contradiction or ambiguity between the terms and conditions of any clauses in this Agreement and special terms and conditions of Schedule 3 to this Agreement, special terms and conditions of Schedule

3 to this Agreement shall prevail over the terms and conditions of any clauses in this Agreement.

## **2. Government 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 in accordance with the terms and conditions of this Agreement.
- 2.2 The approved subsidy for each unit of Subsidized Product is set out in Schedule 2 of this Agreement ("the Approved Subsidy for each unit of a Subsidized Product").
- 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 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").
- 2.5 The Government shall reimburse the amount paid by the Recipient for settlement of the cost of purchase and installation of a unit of a Subsidized Product which is 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 that unit of the Subsidized Product **PROVIDED ALWAYS THAT** (A) the total amount of reimbursement paid by the Government (including reimbursement of interim payments) for that unit of the Subsidized Product shall not exceed the Approved Subsidy for each unit of the Subsidized Product and shall not exceed the Actual Subsidy for each unit of the Subsidized Product, (B) the total amount of reimbursement paid by

the Government (including reimbursement 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, and (C) that unit of the Subsidized Product has been delivered to the Recipient and is Ready for Use.

- 2.6 For the avoidance of doubt, the Government will not reimburse the Recipient for any amount in excess of the Approved Subsidy for the Recipient.
- 2.7 Without prejudice to Clause 2.5 of this Agreement, provided that the cost of 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 and the Recipient is required to pay by interim payments for the cost of purchase and installation of a support system (such as a charging station) which is purchased with the provision of the Subsidy in accordance with this Agreement, the Government shall reimburse the amount paid by the Recipient multiplied by the Subsidized percentage for settlement of an interim payment 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** (A) the total amount of reimbursement paid by the Government (including reimbursement of interim payments) for that unit of the Subsidized Product shall not exceed the Approved Subsidy for each unit of the Subsidized Product and shall not exceed the Actual Subsidy for each unit of the Subsidized Product, and (B) the total amount of reimbursement paid by the Government (including reimbursement 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 For the avoidance of doubt, without prejudice to Clause 2.5 and Clause 2.7 of this Agreement 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 settlement of interim payments for the purchase of a unit of the Subsidized Product.

- 2.9 The Recipient shall submit to the Government its request for reimbursement of the cost of purchase and installation of a unit of a Subsidized Product which is purchased with the provision of the Subsidy in accordance with this Agreement and/or its interim payment(s) 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 and/or its interim payment(s). 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 purchase and installation of the Subsidized Product. The Recipient shall not use the Subsidy to pay for any other purpose 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 or Associated Persons of the Recipient, unless the Government agrees otherwise. The Recipient shall pay due attention in relation to the Intellectual Property Rights of the Subsidized Product to be purchased. Unless the Government agrees otherwise, 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 HK\$50,000, quotations from at least two suppliers shall be obtained (verbal quotation is acceptable for value below HK\$10,000 with proper documentation);
- (b) for every purchase of Subsidized Product the aggregate value of which exceeds HK\$50,000, but does not exceed HK\$1,430,000, 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\$1,430,000, open tendering process shall be used by the Recipient.

4.2 The Recipient shall seek the consent from the Government before the Recipient enters into an agreement with a supplier for the supply of 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 lowest bid is not proposed by the Recipient, the Recipient must give full justification to meet 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 to supply the Subsidized Product, the Recipient shall seek the consent from the Government before the Recipient enters into an agreement with the supplier for the supply of Subsidized Product.

- 4.4 If the Government consider necessary, the Government may ask the Recipient within two weeks from the Government's receipt of the Recipient's request to consent as submitted under Clause 4.2 of this Agreement to re-tender the Subsidized Product.
- 4.5 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.
- 4.6 All quotations and tendering documents in relation to or for the purposes of the purchase of Subsidized Product and all bank statements, invoices and receipts in respect of the payment referred to in Clause 4.5 above shall be kept by the Recipient for a period of at least three (3) years after the completion of the Trial or termination of this Agreement, whichever is the 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.
- 4.7 The description of a Subsidized Product provided in the Schedule 2 to this Agreement shall not be changed unless the written approval from the Government is obtained. 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 provided in the Schedule 2 to this Agreement. No subsidy 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 provided in the Schedule 2 to this Agreement.
- 4.8 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.

- 4.9 The Recipient shall notify the Government immediately in writing when they themselves or any of their directors, employees, agents or contractors has any financial, professional, commercial, personal or other interests in the procurement of the Subsidized Product and its relevant service (such as installation) under consideration.

## **5. Insurance**

- 5.1 If the Trial involves new vehicle(s) purchased with the provision of the Subsidy in accordance with this Agreement, the Recipient shall purchase insurance to cover the full market value of the new vehicle(s) for the first three years.
- 5.2 If the Recipient receives insurance compensation for insured Subsidized Product including damaged by accident, being stolen, or other causes during the trial period of the Trial which made the Subsidized Product not available to complete the Trial, the Recipient shall forthwith refund to the Government an amount which is equal to the insurance compensation received by the Recipient multiplied the Subsidized percentage of the Subsidized Product.
- 5.3 If the Recipient receives insurance compensation for insured new vehicles including damaged by accident, being stolen, or other causes during the first three years which made the vehicles not operational, the Recipient shall forthwith refund to the Government an amount which is equal to the insurance compensation received by the Recipient multiplied the Subsidized percentage of the vehicles.

## **6. The Trial**

- 6.1 The Recipient shall conduct the Trial for the trial period as provided in Schedule 1 in accordance with the terms and conditions of this Agreement.
- 6.2 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 expiration of the trial period of the Trial without the consent of the Government.
- 6.3 The Recipient shall install an independent metering to record fuel/energy consumption of each unit of charging or similar support system of Subsidized Product during the trial period of the Trial.
- 6.4 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 Other Subsidy**

- 7.1 The Recipient shall not receive any other subsidy during the trial period of the Trial (except the subsidy from the incentive scheme for replacing Euro II diesel commercial vehicles and the tax incentive from incentive schemes to encourage the use of 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 represents and declares that the Recipient has not received any other subsidy (except the subsidy from the incentive scheme for replacing Euro II diesel commercial vehicles and the tax incentive from incentive schemes to encourage the use of environment-friendly vehicles) from the Government, public bodies or charitable organizations in relation the Subsidized Product which is purchased with the provision of the Subsidy in accordance with this Agreement.

- 7.3 The Recipient warrants that the Recipient will not receive any other subsidy during the trial period of the Trial (except the subsidy from the incentive scheme for replacing Euro II diesel commercial vehicles and the tax incentive from incentive schemes to encourage the use of 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 conditions:
- (a) The Recipient fails to commence the Trial within two months from the Commencement Date of the Trial as provided in Schedule 1;
  - (b) the Recipient is found to have received before or during the trial period of the Trial any other subsidy (except the subsidy from the incentive scheme for replacing Euro II diesel commercial vehicles and the tax incentive from incentive schemes to encourage the use of 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;
  - (c) the Recipient breaches any terms and conditions of this Agreement; or
  - (d) the Recipient, its director, staff or its agent suffers prosecution 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 provided in Clause 8.1 of this Agreement within the timeframe as stated in the notice. If the Recipient fails to remedy the failure and/or breach as provided in Clause 8.1 of this Agreement within the timeframe specified in the notice, the Government may exercise its right to terminate the Trial. If the Government exercises its right to terminate the Trial, this Agreement shall be terminated immediately and the Government shall be entitled to cease to pay the Subsidy to the Recipient immediately and the Government shall be entitled to require the Recipient to forthwith refund to the Government all the Subsidy already paid to the Recipient.

## **9. Premature Termination of the Trial**

9.1 If for whatever reasons, the Recipient wishes to terminate the Trial before the expiration of the trial period of the Trial, the Recipient shall notify the Government in writing with reasons. Subject to the consent of the Government of the termination of the Trial, the Recipient shall dispose 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 to carry out the Trial for the remaining period. If the third party agrees to carry out the Trial for the remaining period of the Trial, the Recipient shall 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 the similar terms and conditions of this Agreement;
- (b) If the Recipient fails to procure a third party to carry out the

Trial for the remaining period in respect of a unit of Subsidized Product which has resell value (such as a vehicle or a quick charger) within two months, 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 engages the auctioneer to sell the Subsidized Product; and.

- (c) If the Recipient fails to procure a third party to carry out the Trial for the remaining period in respect of a unit of Subsidized Product which has no resell value within two months, subject to the consent of the Government, the Recipient may dispose the Subsidized Product in the way the Recipient thinks fit.

- 9.2 Upon receipt of the written notice sent by the Recipient as provided under Clause 9.1 of this Agreement, the Government shall be entitled to cease to pay the Subsidy to the Recipient immediately.
- 9.3 Notwithstanding anything provided otherwise 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 provided in Clause 9.1(a) of this Agreement, or (2) the Government's receipt of the return of money as provided in Clause 9.1(b), or (3) the Government's consent to the Recipient for disposing the Subsidized Product as provided in Clause 9.1(c), whichever is the earlier.
- 9.4 The Government shall be entitled to make public the notification made by the Recipient on his decision to terminate the Trial before the expiration of the trial period of the Trial.



## **10. Disposal of Subsidized Items and Restoration**

- 10.1 The Recipient shall be responsible for restoration and uninstalling of all units of Subsidized Products which are purchased with the provision of the Subsidy in accordance with this Agreement at his own cost.
- 10.2 The Recipient shall ensure using the Subsidized Product, which is purchased with the provision of the Subsidy in accordance with this Agreement after the trial period of the Trial 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 of its discontinuance to use the Subsidized Product, which is purchased with the provision of the Subsidy in accordance with this Agreement, after the trial period of the Trial.
- 10.4 The Government shall be entitled to make public the notification made by the Recipient for discontinuance to use the Subsidized Products, which is purchased with the provision of the Subsidy in accordance with this Agreement, after the trial period of the Trial. This Clause survives 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. 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 permit the Government and the assessor to attend on site verification checking. The Government or the assessor may write to request the Recipient to provide the data obtained or collected by the Recipient, the processed data, and the compilations of data and processed data. The Recipient shall provide to the Government and the assessor the requested data,

processed data, compilations of data and processed data within seven days from the date of the Government's or the assessor's written request.

11.2 The Recipient shall keep and maintain all the data obtained or collected by the Recipient, the processed data, and the compilations of data and processed data. in good conditions and shall take all reasonable precautions to prevent their loss, damage, deterioration or theft for six months after completion or termination (for whatever reasons) of this Agreement, whichever is the 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 provide the Subsidized Product, free of charge, for testing the emission performance of the Subsidized Product during the trial period of the Trial or after the completion of the Trial.

## **12. Use of Trial Information**

12.1 The ownership of the Intellectual Property Rights subsisting in the compilations of the data obtained by the Recipient from the Trial and the processed data would be vested in the Government immediately upon their creation.

12.2 The Recipient hereby waives and undertakes to procure all authors of the compilations of data, reports and/or other publications produced under this Agreement to waive all moral rights (whether past present or future) therein, such waiver to take effect upon the vesting of the Intellectual Property Rights in the Government pursuant to Clause 12.1 of this Agreement.

12.3 The Recipient warrants that:

(a) all the compilations of data, reports and/or other publications

provided by the Recipient under this Agreement to the Government, its authorized users, assigns, licensees and/or successors-in-title do not and will not infringe the Intellectual Property Rights of any party; and

- (b) the use and possession by the Government, its authorized users, assigns, licensees and/or successors-in-title of all the compilations of data, reports and/or other publications produced under this Agreement provided by the Recipient do not and will not infringe any Intellectual Property Rights of any party.

12.4 The provisions in Clause 12.1, Clause 12.2, and Clause 12.3 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.

### **13. Indemnity**

13.1 The Recipient shall indemnify the Government and keep the Government 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 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) or liabilities of whatsoever nature arising


directly or indirectly as a result of or relating to any allegation of or claim for infringement of the Intellectual Property Rights of any persons arising from or in any way related to the performance of this Agreement.

- 13.3 The provisions in Clause 13.1, and Clause 13.2 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 “Pilot

Green Transport Fund” logo:[  ] and the

Environmental Protection Department logo:[  ] in all publicity materials used by the Recipient during the entire trial period of the Trial.

- 14.2 The Recipient shall display the “Pilot Green 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.

#### **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) the Recipient becomes bankrupt or goes into liquidation or a receiving order is made against it; or

- (b) a receiver is appointed in respect of any of the Recipient's assets or the Recipient makes any composition or arrangement with creditors; or
- (c) possession of any of the Recipient's assets is taken by a chargee or mortgagee; or
- (d) the Recipient enters into a scheme of arrangement with its creditor; or
- (e) the Recipient suffers prosecution in respect of non-payment of any money due to Government or any person; or
- (f) any other similar event, action or proceeding occurs or is taken in respect of the Recipient in any jurisdiction.

15.2 In any case set out in Clause 15.1 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 the Subsidy to the Recipient immediately and the Government shall be entitled to require the Recipient to forthwith refund 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 performance of the 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 performance 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 the Subsidy to the Recipient.
- 16.3 Subject to Clause 16.2 of this Agreement, in the event that performance of obligations under this Agreement is delayed by Force Majeure, the trial period of the Trial shall be extended by the number of days of delay actually caused by such event of Force Majeure unless a different extension shall be agreed between the parties. In all other respects the obligations of the parties under this Agreement shall be unaffected.

## **17. Others**

- 17.1 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.
- 17.2 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.
- 17.3 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.

17.4 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.

17.5 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]

The Government

At the address set out at the head of this Agreement

For the attention of: The Secretariat of Pilot Green Transport Fund

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 17.5 – be deemed given three (3) working days after posting it.

17.6 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.

- 17.7 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.
- 17.8 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.
- 17.9 Save as provided in this Agreement (including sub-clause 17.10 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).
- 17.10 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 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.
- 17.11 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.

17.12 This Agreement has been translated into a Chinese version. If there is any conflict or inconsistency between the English version and the Chinese version of this Agreement, the English version of this Agreement shall prevail.

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 :- )

[If the Recipient is a sole proprietor]

SIGNED by )  
\_\_\_\_\_)  
, the Recipient being a sole )  
Proprietor carrying out business )  
with the business registration )  
number: )  
\_\_\_\_\_)  
in the presence of :- )

[If the Recipient is a partnership]

SIGNED by )  
 )  
 , a partner of the Recipient for )  
 and on behalf of the Recipient )  
 which is a partnership carrying )  
 out its business with the )  
 registered business registration )  
 number: )  
 )  
 )  
 in the presence of :- )

[If the Recipient is a company registered under the Companies Ordinance]

SIGNED by )  
 )  
 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 :- )

## Schedule 1 – The Trial

A. The title of the Trial: \_\_\_\_\_

B. The trial period of the Trial is:

From \_\_\_\_\_ (“the Commencement Date of the Trial”)  
To \_\_\_\_\_ .

C. The detail of the Trial:

\_\_\_\_\_

SAMPLE

## Schedule 2 – Subsidized Product

The name of a Subsidized Product	Description of a Subsidized Product	The approved subsidy for a Subsidized Product	The method to calculate the Subsidy for a Subsidized Product ##
(1) <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
(2)			
(3)			
...			

The approved subsidy for the Recipient	HK\$ <input type="text"/>
--	---------------------------

## If an application is approved, please fill in the method to calculate the Subsidy for each Subsidized Product in this column in accordance with the method to calculate “Subsidy level” for the type of “Green and innovative technology product” to which the Subsidized Product belongs as provided in Section 3.5 of the Guide to Application.

### Schedule 3 – Special Terms and Conditions



SAMPLE