

Agreement No.

-01

BETWEEN

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

and

[NAME of RECIPIENT]

Initial Subsidy Agreement for
Installation of Electric Vehicle Charging-enabling Infrastructure
under the EV-charging at Home Subsidy Scheme
at Name of the car park applying for the Subsidy Scheme as
printed on the approval-in-principle letter

(Application Number : _____)

**THIS AGREEMENT is made this
2022**

day of

BETWEEN:

- (1) The Government of the Hong Kong Special Administrative Region as represented by the Director of Environmental Protection of 15/F & 16/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong (“Government”); and
- (2) [Name of the OC/ Registered Address of OC]_, __[Name of the DMC Manager/ Registered Address of DMC Manager], [Name of representative 1 of All Owner, his/her HKID and address of the building/ housing estate of the building.] [Name of representative 2 of All Owners, his/her HKID and address of the building/ housing estate of the building. (“the Recipient” [which expression shall include its successors in title and assigns]).

RECITALS:

- (A) To promote installation of EVCEI (as defined in Clause 1.1 below) in car parks of existing private residential buildings, the Government established a funding scheme entitled: “EV-charging at Home Subsidy Scheme” (“EHSS”). EHSS aims to help car parks of existing private residential buildings with multiple ownership resolve technical and financial difficulties in retrofitting EVCEI and further facilitate installation of EV chargers or EV supply equipment at such car parks in the future.
- (B) Under EHSS, the Government will provide a subsidy (as subject to the Ceiling of Subsidy) to the Recipient for:
 - (i) the procurement of services from a consultant to carry out a feasibility assessment on the installation and design of the EVCEI, and monitor the installation works of the EVCEI to be carried out by a contractor;
 - (ii) the procurement of services from a contractor to carry out the installation works of the EVCEI;
 - (iii) the costs of the EVCEI installation works, including any

modification works to existing charging facilities to integrate with the newly installed EVCEI under EHSS as may be confirmed by the Government;

(iv) installation of a fire detection system as may be confirmed by the Government; and

(v) any building alterations and/or additions works as may be confirmed by the Government.

(C) The Recipient submitted an application for financial assistance under EHSS for carrying out and completing the Project (as defined in Clause 1.1 below), and the Government agrees to provide financial assistance, in the form of subsidy, to the Recipient subject to and upon the terms and conditions of this Agreement and the Further Subsidy Agreement.

Hereinafter set forth, the parties agree as follows:

1. Definition and Interpretation

1.1 In this Agreement,

“Agreement” means this Agreement and the Annexes.

“Application” means the application submitted by the Recipient to the Government to apply for subsidy under the EHSS, including the signed Application Form, attachments and any supplementary documents submitted with Application Number _____, a copy of the Application is attached as Annex I.

“Application Form” means the application form submitted by the Recipient to the Government to apply for subsidy under EHSS.

“Application Notes” means the “EV-charging at Home

Subsidy Scheme – Application Notes” issued by EPD, a copy of which is attached as Annex II.

“approval-in-principle letter” means the approval letter of the Application issued by the Government to the Recipient, and a copy of which is attached as Annex III.

“Approved Application” means the Application in which the Government has approved in principle and an approval-in-principle letter was issued by the Government to the Recipient.

“Associate” in relation to any person means:
(a) a relative or partner of that person;
or
(b) 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:
(a) any person who has control, directly or indirectly over the other; or
(b) any person who is controlled, directly or indirectly, by the other; or
(c) any person who is controlled by, or has control over, a person at (a) or (b) above.

“Car Park” means the car park with name shown in the Application Form which is/are ancillary to name of the building / development which the car park is

ancillary to at address of building / development which the car park is ancillary to.

“Ceiling of Subsidy” means the ceiling of subsidy as described in Paragraph 6 of the Application Notes.

“Completion Date” means the date on which the Project must be completed to the satisfaction of the Recipient. The Completion Date must not be later than 12 calendar months counting from the date of this Agreement, unless otherwise approved by the Government.

“Completion of the Project” means completion of the Project and all the requirements, tasks and objectives as set out in this Agreement and the Installation Works Contract to the satisfaction of the Recipient and the Government.

“Consultancy Services” means those services, tasks and objectives to be performed or achieved by the Consultant in accordance with the requirements of the Contract.

“Consultant” means the consultant specified in the Contract.

“Consultant Subsidy” means that part of the Subsidy to be paid to the Recipient by the Government in respect of the Contract Price, to be in the maximum amount set out in Clause 8.1.

“Contract” means the contract entered into

between the Recipient and the Consultant dated e.g. 01 January 2022.

“Contract Price”

means HK\$● being the contract price for engaging the services of the Consultant under the Contract which relates to the installation works of the EVCEI.

“Contractor”

means the contractor specified in the Installation Works Contract and engaged to carry out the installation works of the EVCEI.

“Contractor Contract Price”

means the contract price for engaging the services of the Contractor under the Installation Works Contract.

“Contractor Subsidy”

means the part of the Subsidy to be paid to the Recipient by the Government, subject to the terms and conditions of this Agreement and the Further Subsidy Agreement.

“control”

in relation to another person means holding office as a director or the power of a person to secure:

- (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 that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.

“Design Guidelines”	means the “Design Guidelines for Electric Vehicle Charging-enabling Infrastructure under the EV-charging at Home Subsidy Scheme” issued by EPD and as attached in Annex IV.
“Designated Bank Account”	means an interest-bearing HK\$ account established and maintained with a licensed bank in Hong Kong under the Banking Ordinance (Cap. 155) solely and exclusively for the purpose of the Project.
“director”	means any person occupying the position of director by whatever name called and includes without limitation a de facto or shadow director.
“DMC”	means the deed of mutual covenant of a building / development.
“EHSS”	means the EV-charging at Home Subsidy Scheme.
“EPD”	means the Environmental Protection Department of the Government.
“EV”	means electric vehicle.
“EVCEI”	means EV charging-enabling infrastructure and associated installations which are designed by the Consultant according to the Design

Guidelines and specified in the Installation Works Contract.

“Further Subsidy Agreement” means the further subsidy agreement to be signed by the Government and the Recipient after the Recipient has awarded the Installation Works Contract to the Contractor.

“Government” means the Government of Hong Kong.

“Government Representative” means the Director of Environmental Protection or any officer authorised to act on his or her behalf for the purpose of this Agreement.

“Guidance on Specifications” means the Guidance on Preparation of Specifications for Employment of Consultants and Contractors for Installation Works under the EV-charging at Home Subsidy Scheme as attached in Annex V.

“Guide to Procurement of Services” means the “Guide to Procurement of Services of Consultants and Contractors for Installation of Electric Vehicle Charging-enabling Infrastructure under the EV-charging at Home Subsidy Scheme” at Annex 2 of the Application Notes.

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China.

“Installation Works Contract” means the contract for the installation works of EVCEI to be entered into between the Recipient and the

Contractor.

“Material Adverse Effect” means (a) a material adverse effect on the business, assets, operations or condition (financial or otherwise) of any material member of the group of companies relating to the Recipient; (b) a material impairment of the ability of the Recipient to perform any of its obligations under the Agreement; or (c) a material impairment of the rights of, or benefits available to, the Government under the Agreement.

“PDPO” means the Personal Data (Privacy) Ordinance (Cap. 486).

“Project” means the installation of EVCEI in the Car Park, including the services to be provided by the Consultant and the Contractor.

“Subsidy” means collectively, the aggregate of the Consultant Subsidy and the Contractor Subsidy or any part thereof, subject to the terms and conditions of this Agreement and the Further Subsidy Agreement.

1.2 Any references to the “Applicant” in the Application Notes and Annexes shall mean “the Recipient”.

1.3 In this Agreement, except where the context otherwise requires,

- (a) words denoting any one gender shall include the other genders;
- (b) any reference to a “person” shall be construed as a reference to any individual, corporation, firm or any body of persons, corporate or unincorporated and includes any public body;

- (c) words denoting the singular shall include the plural and vice versa;
- (d) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as replaced, amended, modified, substituted or re-enacted from time to time, and shall include all subordinate legislation made thereunder;
- (e) any reference in this Agreement or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented;
- (f) words importing the whole shall be treated as including a reference to any part of the whole;
- (g) “or” is a reference to “and/or”;
- (h) whenever the expression “including” is used in this Agreement, it shall be deemed to mean “including without limitation”;
- (i) if there is any inconsistency, ambiguity, repugnance or conflict between the main body of this Agreement and the Annexes, the main body of this Agreement shall prevail;
- (j) any reference to Clause and Annex shall be construed as a reference to a Clause and Annex of this Agreement;
- (k) the Index, Clause and Schedule and Annex headings are for ease of reference only and shall not affect, limit or extend in any way the interpretation or construction of this Agreement;
- (l) 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;
- (m) references to “losses” or “liabilities” include all liabilities, damages, losses, compensation, injuries, costs, disbursements, expenses, claims and proceedings;
- (n) 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;

- (o) nothing in this Agreement is to be construed as imposing any obligation on the Government not to refuse any consent, approval, permission or authorisation unreasonably or to give any consent, approval, permission, or authorisation without delay, save where expressly provided in this Agreement. The Government may impose any conditions it deems appropriate to any consent, approval, permission or authorisation it gives (if any);
- (p) for the purpose of this Agreement, any act, default, negligence or omission of any Consultant, Contractor, servant, agent, licensee, or employee of the Recipient shall be deemed to be the act, default, negligence or omission of the Recipient;
- (q) 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; and
- (r) any agreement, consent or approval to be given by the Government may be given or withheld in its discretion, and subject to any conditions as the Government may consider appropriate, must be in writing, must be given before the act or matter or thing for which agreement, consent or approval is required and must be signed by the Government or a duly authorised person on its behalf to be effective. Failure by the Government to give any agreement, consent or approval shall be deemed a denial or refusal.

2. Subsidy, Commencement and Term

- 2.1 Subject to the Ceiling of Subsidy and the Recipient's implementation of the Project to the satisfaction of the Government and the Recipient's compliance with the terms and conditions of this

Agreement and the Further Subsidy Agreement, the Government agrees to provide a Subsidy to the Recipient for the implementation and completion of the Project in accordance with this Agreement and the Further Subsidy Agreement (including without limitation the Approved Application).

- 2.2 The Recipient is required to commence and complete the Project before the Completion Date or within such time as determined and specified by the Government.
- 2.3 The Subsidy shall be used to cover for the costs of the Project as set out in Paragraph 5 of the Application Notes.
- 2.4 The following items will not be funded under EHSS:
 - (a) supply or installation of EV chargers or EV supply equipment to be connected to the EVCEI installed under the Project;
 - (b) load management system for the EVCEI installed under the Project;
 - (c) operation, maintenance and insurance costs of the EVCEI installed under the Project;
 - (d) where applicable, operation, maintenance and insurance costs of fire detection system installed under the Project;
 - (e) any EVCEI or charging facilities previously installed in the Car Park prior to the Application;
 - (f) any costs of installing the EVCEI which have exceeded the Subsidy amount;
 - (g) any additional costs of demolishing, modifying all or any part of the installed EVCEI or any costs for installation works associated with the installed EVCEI after Completion of the Project;

- (h) where applicable, any amount in excess of the Contract Price incurred by the Recipient in engaging another consultant pursuant to Clause 3.2 below to complete the uncompleted services under the Contract and all costs and expenses incurred in making the arrangements for the same including conducting tender for the uncompleted services under the Contract; and
- (i) any items in the Contract which are outside the scope of EHSS or not stated as included in the Design Guidelines.

2.5 The Government's decision as to whether it would fund any of the items in the Contract shall be final and the Government is not obliged to give any reasons to the Recipient or any other persons for its decision.

2.6 Subject to earlier termination as provided in this Agreement, this Agreement shall commence on the date when this Agreement is duly signed by both parties and shall expire on the Completion of the Project or such other date as may be specified by the Government in writing.

3. Recipient's Obligations

General Obligations

3.1 In consideration of the Government agreeing to provide the Subsidy or any part thereof for the Project in accordance with this Agreement, the Recipient shall:

- (a) carry out and complete the Project in accordance with this Agreement (including without limitation the Approved Application) and any requirements or directives relating to the Project as may from time to time be prescribed by the Government in writing;
- (b) submit the detailed works specifications and associated drawings of the EVCEI to be installed in the Car Park for the Government's review and confirmation before inviting

tenders from contractors pursuant to Clause 3.1(d) below. The detailed works specifications and associated drawings of the EVCEI shall be prepared by the Consultant in accordance with the Design Guidelines and shall include without limitation: the coverage of eligible parking spaces; modification to existing charging facilities to integrate with the installation works of EVCEI; and installation of fire detection system (if needed);

- (c) where applicable, revise the works specifications and associated drawings of the tender document for procurement of the contractor for the installation works in accordance with the Government Representative's instructions;
- (d) after review and confirmation of the detailed works specifications and associated drawings of the EVCEI by the Government and incorporating the provided comments if needed, invite tenders from contractors and select the contractor for the installation works according to the Guide to Procurement of Services. The Recipient shall follow all tendering procedures as set out in Paragraphs 8.5 to 8.8 of the Application Notes;
- (e) inform the Government the name of the selected contractor and the Contractor Contract Price to be paid to the Contractor for the Installation Works Contract within two weeks after the Contractor is awarded the contract;
- (f) sign a Further Subsidy Agreement with the Government after awarding the Installation Works Contract to the Contractor for the installation works;
- (g) pay the Consultant from the Designated Bank Account according to the terms of payment in the Contract or within one month after receipt of any portion of the Consultant Subsidy, and notify the Government with proofs of payments within fourteen (14) days after payments are made to the Consultant;

- (h) within six (6) weeks after receipt of any portion of the Consultant Subsidy from the Government, inform the Government in writing of the reasons for not paying the Consultant according to Clause 3.1(g), where applicable;
- (i) make it a condition of its contracts with any third parties concerning the Project that the contracts and any information contained therein and in relation thereto may be disclosed to the Government, the Director of Audit and the Commissioner of the Independent Commission Against Corruption and their authorised representatives; and can be disclosed to any person in circumstances where such disclosure is necessary for the performance of the Recipient's duties and obligations under this Agreement including (but not limited to) the Executive Council and its committees, and the Legislative Council and its committees, by the Government or the Recipient without any third parties' consent;
- (j) resolve all or any disputes and complaints of the owners or residents of the building/development of the Car Park to the satisfaction of the Government; and
- (k) comply with any other terms and conditions of this Agreement.

Re-tendering of Consultancy Services

3.2 In the event that the Consultant abandons or terminates the Contract for whatever reason, the Recipient shall be entitled to invite tenders from other consultants and select a new consultant to complete the remaining Consultancy Services according to the Guide to Procurement of Services. The Recipient shall notify the Government in writing within fourteen (14) days upon the Consultant's abandonment or termination of the Contract, and with the reasons thereof. The Recipient shall obtain the Government's prior consent before commencing the re-tendering exercise of the Consultancy Services. The Recipient shall follow all tendering procedures as set out in the relevant paragraphs of the Application Notes.

- 3.3 The Recipient shall only re-tender pursuant to Clause 3.2 **once**. All costs and expenses, including any amount in excess of the Contract Price incurred by the Recipient in engaging a new consultant to complete the Consultancy Services and all costs and expenses incurred in making the arrangements for the same including the re-tendering exercise shall be borne by the Recipient.
- 3.4 The new consultant selected (“Second Consultant”) shall recommence the Consultancy Services within five (5) months from the date of the Government’s written consent issued pursuant to Clause 3.2.
- 3.5 In the event that the Second Consultant also abandons or terminates the contract with the Recipient for whatever reason(s), the Government shall terminate this Agreement pursuant to Clause 10.1 below.

4. Financial and Budgetary Control

- 4.1 The Recipient shall use the Subsidy wholly and exclusively for funding the Project and in accordance to this Agreement only.
- 4.2 The Government will not:
- (a) make or be liable for any payment in excess of the Subsidy;
 - (b) reimburse any expenses incurred by the Recipient prior to the issue of the approval-in-principle letter or after the expiry or termination of this Agreement.
- 4.3 The Government will not consider any application for extension of the funding period unless, in the sole opinion of the Government, there are exceptional circumstances which justify otherwise. The Government’s decision as to whether there are such exceptional circumstances shall be final and the Government is not obliged to give any reasons to the Recipient or any other persons for its decision. Notwithstanding anything provided to the contrary in this

Agreement, the Recipient shall be responsible for any shortfall in order to complete and carry out the Project.

- 4.4 The Recipient shall keep a Designated Bank Account and keep separate the Subsidy from other monies belonging to the Recipient. The Recipient shall cause the Subsidy and all other receipts relating to the Project to be paid into and all payments relating to the Project to be paid out of the Designated Bank Account, and ensure that all receipts and payments in respect of the Project are properly and timely recorded. All withdrawals from the Designated Bank Account shall be certified by the Recipient's authorised representatives whose particulars are provided in Table 1 of Annex VI; and only the Recipient's authorised representatives whose particulars are provided in Table 2 of Annex VI can make withdrawals from the Designated Bank Account. The Recipient shall notify the Government of any intended change of any authorised representatives to certify withdrawals from the Designated Bank Account; and/or any intended change of any authorised representatives for withdrawing money from the Designated Bank Account in writing at least seven (7) days before such change takes effect. The Recipient shall keep all unspent balance of the Subsidy at all times in the Designated Bank Account.
- 4.5 The Recipient shall return all unspent balance of the Subsidy with Interest thereon to the Government immediately upon demand.

5. Books and Records, Financial Accounts and Reports

- 5.1 The Recipient shall, during the continuance of this Agreement, maintain proper books of accounts, all relevant payments and receipts and all relevant records and information in relation to the Project (including without limitation, the Contract, the Installation Works Contract, procurement documents, statements of the Designated Bank Account, cash and bank books, ledger of accounts for recording all transactions, all income and expenses and all assets and liabilities in relation to the Project, invoices from the Consultant and the Contractor; payment records to the Consultant and the Contractor; and Consultant's and Contractor's receipts of payments).

The Recipient shall keep such books and records for a minimum period of seven (7) years after the last payment to the Consultant or the Contractor, whichever is later. The Recipient shall take appropriate precautions to prevent loss, damage, deterioration or theft of the books and records and the Government's representatives shall be allowed access to such books and records for inspection, verification and copying from time to time upon reasonable notice.

- 5.2 Supplementary information and supporting documents shall be provided upon request from the Government. Without prejudice to the Government's right to terminate this Agreement provided in Clause 10 below, the Government is entitled to suspend any payment of the Subsidy if the Recipient fails to submit any financial accounts or any of the data, facts or information represented to and/or provided by the Recipient to the Government about the Project and/or the Approved Application is incomplete, incorrect, untrue or misleading.

6. Covenants

- 6.1 The Recipient hereby covenants and with continuing effect until the termination of this Agreement that:
- (a) completion of the Project: the Recipient shall complete the Project by such time as specified in Clause 2.2.
 - (b) performance of this Agreement: the Recipient shall carry out the Project in accordance with this Agreement and each of the Recipient in respect of itself shall perform all its other obligations under this Agreement.
 - (c) standard of performance: the Recipient, its Directors, employees, agents and sub-contractors who are engaged to carry out or otherwise involved in the Project shall use the necessary experience, skill, care, diligence and expertise such that the Project will be carried out in a professional, timely and diligent manner.

- (d) use of the Subsidy: the Subsidy shall be used wholly and exclusively for the purpose specified in Clause 4.1 and the Approved Application or any part thereof and such purpose shall not be changed without the Government's prior written consent.
- (e) use of the EVCEI: the Recipient shall ensure that the installed EVCEI at the Car Park shall be used solely and exclusively for installation of EV chargers or EV supply equipment.
- (f) inspection: the Recipient shall, upon reasonable prior written notice from the Government and during normal working hours, permit and arrange for the Government's or its other authorised representatives to access the Car Park to inspect the Project or to enter any premises of or controlled by the Recipient where any document or record pertaining to the Project is kept or any item arising out of the Project and any assets incidental thereto (including all financial records and books of accounts and the Government will be provided with copies thereof if requested) for the purpose of inspection or copying, or for verifying the accuracy of any information given by the Recipient to the Government, or otherwise verifying that the Recipient has complied with its obligations under this Agreement.
- (g) compliance: the Recipient shall comply in all respects, including the giving of all notices, paying of all fees and the obtaining of all consents and approvals, with the provisions of all legislation, regulations and by-laws affecting or in any way relating to the Project.
- (h) information: the Recipient shall provide the reports and information referred to in Clause 5 to the Government in the manner provided therein and all other reports and information relating to the Recipient and the group of companies relating to it as the Government may request from time to time.
- (i) obligations: the Recipient shall perform all its obligations under all of the material agreements or contracts (including the

Contract and the contract to be signed with the contractor) to which it is a party.

- (j) claims pari passu: the Recipient shall ensure that at all times the claims of the Government against the Recipient under this Agreement rank at least pari passu with the claims of all the Recipient's other unsecured and unsubordinated creditors save those whose claims are preferred by any bankruptcy, insolvency, liquidation or other similar laws of general application.
- (k) further assurance: the Recipient shall, forthwith upon the first written request of the Government, do all such things and execute all such documents as the Government may deem necessary or desirable to implement or to give legal effect to the provisions of this Agreement.

7. Rights and Obligations of the Government

- 7.1 The Government may, confirm and redefine the coverage and number of parking spaces in the Car Park, and confirm, amend and reject the detailed works specifications and associated drawings after the Recipient has submitted the detailed works specifications and associated drawings prepared by the Consultant and before the Recipient invites tenders for employment of the Contractor for the installation works.
- 7.2 The Government shall approve or reject any claims for subsidy from the Recipient.
- 7.3 The Government Representative may review, confirm or refine the specifications of the tender document for procuring the services of a contractor for the installation works and check whether the said tender document is prepared in accordance with the Guidance on Specifications and the Design Guidelines. During the tendering exercise for engaging a contractor for the installation works, an estimated market price of the installation works will be inserted by EPD's advisor into the tender box for the Recipient's reference (not in the form of tender) and the Recipient shall facilitate the discharge

of the EPD's advisor's duties, including but not limited to allow EPD's advisor to check the work of the Consultant and observe the opening of tenders for engaging a contractor for the installation works if needed.

- 7.4 The role of the Government is merely a subsidy provider. The Government shall not be treated as the main contractor in implementation of the installation works, and the Consultant shall not be treated as agent or sub-consultant of the Government. The Government shall not under any circumstances be held liable for the works or services to be rendered to the Recipient by the Consultant and the Contractor.
- 7.5 The Government has the right to disclose to the public the information and particulars of the Car Park installed with EVCEI under the Project. This Clause 7.5 shall survive the expiry or termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

8. Release of Subsidy

- 8.1 Subject to Clauses 8.2 and 8.3 and the Recipient's implementation of the Project to the satisfaction of the Government and the Recipient's compliance with the terms and conditions of this Agreement, the Government shall release the Consultant Subsidy of not more than Hong Kong Dollars • Only (HK\$ •), which is the same amount as the Contract Price, to the Recipient in the following manner –
- (a) 30% of the Contract Price, upon signing of this Agreement and the signing of the Installation Works Contract between the Recipient and the Contractor; and
 - (b) the balance of the Contract Price (which shall not in any event exceed the amount of the Consultant Subsidy) after the Recipient issues a confirmation to the Government indicating that the Project has been completed to the satisfaction of the Consultant and the Recipient.

- 8.2 Upon Completion of the Project, where the actual amount paid to the Consultant is less than the Contract Price, such excess amount shall be considered as unspent amount and shall be returned to the Government in accordance with Clause 4.5 of this Agreement.
- 8.3 Save and except for the Recipient's withdrawal pursuant to Clause 11.1, the Government shall not release any Subsidy or the Consultant Subsidy to the Recipient if:
- (a) the Recipient invites tenders from contractors to carry out the installation works without first submitting the detailed works specifications and associated drawings of the EVCEI to be installed in the Car Park for the Government's review and confirmation as stipulated in Clause 3.1(b);
 - (b) the Recipient abruptly and unreasonably abandons or terminates the Contract or the Installation Works Contract without the prior written approval of the Government. In such event, all costs and expenses of the Consultancy Services and the installation works of the EVCEI shall be borne by the Recipient; or
 - (c) the Recipient commenced the re-tendering exercise of the Consultancy Services without first obtaining the Government's consent as stipulated in Clause 3.2.
- 8.4 In the event that the Recipient withdraws from EHSS pursuant to Clause 11.1 below, the Recipient shall be entitled to receive an amount for the Consultancy Services rendered by the Consultant to the Recipient up to the date of withdrawal, subject to a maximum amount of 30% of the Contract Price as stipulated in Clause 8.1(a). Any amount released to the Recipient in respect of the Consultancy Services which have not been performed at the date of withdrawal shall be refunded to the Government. For the avoidance of doubt, any amount released to the Recipient pursuant to this Clause shall be subject to the Government's satisfaction that the Consultant has completed all tasks and obligations in accordance with the terms and conditions of the Contract up to the date of withdrawal.

8.5 The Recipient shall submit to the Government a claim form together with supporting documents, including but not limited to: copies of the signed Contract, proofs of payment to the Consultant if applicable, proofs of satisfactory performance of the Consultant in accordance with the terms and conditions of the Contract and a declaration to confirm that no other contracts or agreements in association with the EVCEI confirmed and installed under the EHSS have been made between the Recipient and other parties other than the Consultant and the Contractor for installing the EVCEI.

8.6 Without prejudice to any other rights or remedies which the Government may have, the Government is entitled to withhold or suspend further release of any portion of the Subsidy or the Consultant Subsidy and/or require all or any of the Subsidy released to the Recipient under this Agreement be returned forthwith to the Government in the event that:

- (a) the Recipient fails to comply with any of its obligations under Clause 3.1 of this Agreement;
- (b) the Recipient fails to comply with any of guides or guidance or directives as issued by EPD in relation to the Project;
- (c) the Project or the Recipient does not meet any of the eligibility criteria as set out in the Application Notes;
- (d) the Recipient misuses or misapplies the Subsidy or any part thereof or uses or applies the Subsidy or operates the Project accounts in such manner which in the sole opinion of the Government is not in the interest of the Project, or in the public interest or is not reasonable in the circumstances;
- (e) the Recipient has abandoned the Project without the prior written approval of the Government;
- (f) the Recipient has failed, or is in the Government's sole opinion like to fail, to implement the Project in accordance with this Agreement (including without limitation the Approved

Application);

- (g) the Government is not satisfied with the progress of the Project;
- (h) the Project or any part thereof is being subsidised and/or funded by any sources other than the Subsidy or from the Recipient's own funding;
- (i) in the Government's sole opinion, the Project has substantially deviated from the Approved Application or any specifications of the tender document for the installation works of the EVCEI as confirmed by the Government under Clause 7.3;
- (j) any receipt, invoice, report, or other document submitted by the Recipient for claiming payment of the Subsidy or the Consultant Subsidy is not acceptable to the Government or is disputed by the Government on reasonable grounds;
- (k) any portion of the amount claimed is disputed by the Government on reasonable grounds;
- (l) any of the data, facts or information represented to and/or provided by the Recipient to the Government about the Project, the Application or the Subsidy is incomplete, incorrect, untrue, inaccurate or misleading;
- (m) any part of the Project is not performed to the satisfaction of the Government;
- (n) the Government has reasonable grounds to believe that the Recipient is or will be liable to the Government under the indemnity clause for the loss or damage suffered by the Government; or
- (o) the withholding is required by any applicable law.

8.7 For the avoidance of doubt, under no circumstances shall the Recipient be entitled to charge any interest or claim any

compensation or relief of whatever nature against the Government by reason of any late or withholding of payment of the Subsidy or any part thereof for any reason whatsoever.

8.8 The Government will normally release the subsidy not later than one month upon satisfactory receipt of all required documents from the Recipient.

8.9 Notwithstanding any other provisions in this Agreement, any payment of any portion of the Consultant Subsidy or Subsidy shall be without prejudice to or any implication whatsoever for any rights or cause of action which has or may have accrued, or which may accrue, or any remedy available, to the Government under this Agreement or the law in respect of any breach whatsoever of this Agreement by the Recipient.

9. Recipient's Warranties and Representations

9.1 The Recipient in respect of itself makes the representations and warranties set out in Clause 9.1(a) to Clause 9.1(p) and acknowledges that the Government has entered into this Agreement in reliance on those representations and warranties:

- (a) status: it is a corporation duly organized under the laws of Hong Kong.
- (b) binding obligations: the obligations expressed to be assumed by it in this Agreement are legal and valid obligations binding on it and enforceable against it in accordance with the terms hereof.
- (c) execution of this Agreement: its execution of this Agreement and its exercise of its rights and performance of its obligations hereunder do not and will not:
 - (i) contravene any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets;

(ii) conflict with its memorandum and articles of association;
or

(iii) conflict with any applicable law.

It has the power to enter into this Agreement to which it is a party and all corporate and other action required to authorise the execution of this Agreement and the performance of its obligations hereunder has been duly taken.

- (d) no material proceedings: no action or administrative proceeding of or before any court or agency which would, if adversely determined against it, have a Material Adverse Effect within a reasonable period of time has been started, save for any such legal proceedings commenced by a third party which (i) are frivolous or vexatious, (ii) have no reasonable cause of action or (iii) which are being contested in good faith by appropriate proceedings and against which adequate reserves are maintained.
- (e) validity and admissibility in evidence: all acts, conditions and things required to be done, fulfilled and performed and all authorizations (governmental or otherwise) required to be obtained in order (a) to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in this Agreement to which it is a party, (b) to ensure that the obligations expressed to be assumed by it in this Agreement to which it is a party are legal, valid, binding and enforceable and (c) to make this Agreement to which it is a party admissible in evidence in its jurisdiction of incorporation have been done, fulfilled, performed and obtained.
- (f) claims pari passu: under the laws of its jurisdiction of incorporation in force at the date hereof, the claims of the Government against it under this Agreement will rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors save those whose claims are preferred

solely by any bankruptcy, insolvency, liquidation or other similar laws of general application.

- (g) no winding up: no material member of the group of companies relating to it has taken any corporate action nor have any other steps been taken or legal proceedings (save for any such legal proceedings commenced by a third party which are (i) frivolous or vexatious, (ii) being contested in good faith by appropriate proceedings and (iii) unconditionally discharged or dismissed within one hundred and eighty (180) days) after it has been started or (to the knowledge and belief of a Director of it) threatened against any material member of the group of companies relating to it for its winding-up, dissolution, administration or reorganization (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of it or of any or all of its assets or revenues.
- (h) information supplied: all information supplied, statements and representations made by or on behalf of the Recipient in relation to the Project, the Approved Application or this Agreement are true, complete and accurate in all material respects as at the date it was given and is not misleading in any respect.
- (i) solvency: it is able to pay its debts as they fall due and has not commenced negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors.
- (j) project: the funding that is available or, with the satisfaction of applicable conditions, would be available to the Recipient is sufficient to enable the Recipient, to complete the carrying out of the Project and to ensure that the completion of the Project will occur by no later than the Completion Date.

- (k) compliance: it is in compliance with the requirements of all applicable laws, rules and regulations and orders of governmental or regulatory authorities save those which are not material in the context of the Project and the effect of such non-compliance is not significantly adverse to it or the Project or the Government.
- (l) The Recipient can execute, deliver and perform this Agreement who shall either be-
 - (i) duly authorised by the validly incorporated as an owners' corporation under and by virtue of the Building Management Ordinance (Cap. 344 of the Laws of Hong Kong). The corporation is and will remain subsisting throughout the term of this Agreement; or
 - (ii) DMC Manager or authorised representatives of all owners of the Car Park in case owners' corporation has not been formed.
- (m) The Recipient has the proper legal capacity and power to (i) apply for the EHSS; (ii) appoint the Consultant and the Contractor; and (iii) enter into this Agreement and any documents pursuant thereto.
- (n) Neither the execution of this Agreement nor the Recipient's performance of its obligations hereunder will violate or breach, or otherwise constitute or give rise to a default under the terms or provisions of (if applicable) the Recipient's constitutional documents or of any material contract, commitment, or other obligation to which the Recipient is a party or by which it is bound.
- (o) All decisions, resolutions or instructions made or to be made by the Recipient to the Government in relation to the EHSS are or will be validly made.
- (p) The Recipient has not entered into and shall not enter into any

arrangement which may conflict with this Agreement.

9.2 Each of the warranties above shall be separate and independent and shall not be limited by reference to or inference from any other warranty.

9.3 The Recipient acknowledges that the Government enters into this Agreement on the basis of and in reliance on the warranties given above.

10. Termination

10.1 Without prejudice to any other rights and remedies which the Government may have, the Government may at any time on the occurrence of any of the following events terminate this Agreement by giving written notice to the Recipient with immediate effect:

- (a) the Recipient fails to comply with any terms, conditions or undertakings in this Agreement and (in the case of a breach capable of being remedied) the Recipient fails to remedy the breach to the satisfaction of the Government within seven (7) days (or such other period as the Government may in its sole discretion allow) after the issuance by the Government to the Recipient of a request in writing (such request shall contain a warning of the Government's intention to terminate the Agreement) requiring it to do so;
- (b) any representation or statement made or deemed to be made by the Recipient in the Agreement or in any notice or other document delivered by it pursuant thereto or in connection therewith is or proves to have been incorrect or misleading in any material aspect when made or deemed to be made and the circumstances causing any such representation or warranty to be incorrect or misleading would reasonably be expected to have a Material Adverse Effect;
- (c) the Recipient has, without prior written consent of the Government, assigned, transferred, subcontracted or otherwise

disposed of or purported to assign, transfer, subcontract or otherwise dispose of the whole or any part of the Subsidy or any or all of its interests, rights, benefits or obligations in the Project and/or this Agreement to any third party;

- (d) in the sole opinion of the Government, material change occurs in the management or control of the Recipient or Project which material adversely affect the Recipient's ability to perform the Project or its duties or obligations under the Agreement save for those changes made in accordance with the provisions of this Agreement;
- (e) the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the winding up, dissolution, bankruptcy, insolvency, administration, reorganisation or reconstruction of the Recipient (other than a voluntary liquidation for the purpose of amalgamation or reconstruction which the Government has approved in advance) or the appointment of a receiver, provisional liquidator, liquidator, administrator, administrative receiver, conservator, custodian, trustee or similar officer of the Recipient or over all or any of its assets, or the Recipient makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of the above or any judgment is made against the Recipient or any similar occurrence under any jurisdiction that has a similar or analogous effect;
- (f) the Recipient engages in any conduct which is reasonably considered by the Government to be prejudicial to the Project;
- (g) the Recipient stops or suspends payment to its creditors generally or is unable or admits its inability to pay debts generally as they fall due or is declared or becomes bankrupt or insolvent;
- (h) any execution or distress is levied against, or an encumbrancer takes possession of, the whole or any material part of, the property, undertaking, assets of the Recipient or any of the

parking spaces within the Car Park and any such execution or distress or taking possession shall not have been effectively stayed pending any appeal or the claim to which such execution, distress or taking of possession relates shall not have been fully satisfied within, in each case, ninety (90) days or any event occurs which under the laws of any jurisdiction has a similar or analogous effect;

- (i) the Recipient makes any composition or arrangement with creditors;
- (j) the Recipient is being prosecuted for non-payment of any money due to the Government or any other person;
- (k) the Recipient or any of its director, staff, agent, consultant (including the Consultant) or contractors (including the Contractor) engaged for the performance of its obligations under this Agreement commits an offence under the Prevention of Bribery Ordinance (Cap. 201) or any other criminal offence which in the opinion of the Government has affected the Recipient's abilities to perform this Agreement or other Government contracts;
- (l) the Recipient persistently or flagrantly fails to comply fully or punctually with its obligations and duties under this Agreement or is not cooperative and does not respond actively to the instructions given by the Government;
- (m) the Second Consultant selected pursuant to Clause 3.2 abandons or terminates the contract with the Recipient for whatever reason;
- (n) 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;
- (o) the continued engagement of the Recipient or the continued

implementation of the project is contrary to the interest of national security; or

- (p) the Government reasonably believes that any of the events mentioned in Clause 10.1 (n) or Clause 10.1 (o) above is about to occur.

10.2 Notwithstanding anything provided herein to the contrary, the Government may at any time at its option terminate this Agreement by giving the Recipient not less than thirty (30) days' prior written notice. In such event, the Recipient shall be entitled to receive subsidy for such part of the Project carried out up to the date of termination, which shall not be more than 30% of the Consultant Subsidy, subject to the amount of work completed by the Consultant. Any amount paid in respect of such part of the Project which has not been performed at the date of termination shall be returned to the Government.

10.3 Upon the termination of this Agreement, without prejudice to any of the Government's other rights and remedies, the Government shall be under no obligation to advance any further monies to the Recipient and the Recipient shall:

- (a) forthwith account for all monies already expended in relation to the Project to the Government with all relevant original receipts and payment vouchers as well as all declarations of expenditure duly signed by the Recipient to support the expenditure;
- (b) forthwith pay part or all of the fees to the Consultant in accordance with the Contract; and
- (c) forthwith return all unspent balance of the Subsidy to the Government.

10.4 If the Agreement is terminated pursuant to Clause 10.1, without prejudice to any of the Government's other rights and remedies, the Recipient shall immediately repay all amounts made available to the

Recipient under this Agreement.

- 10.5 Notwithstanding anything provided to the contrary in this Agreement, if at any time, the Government has reason to believe that any term, condition or undertaking of this Agreement has been breached, the Government reserves the right not to terminate this Agreement but to take appropriate action and seek recourse against the Recipient, including without limitation, withhold any further payment of the Subsidy and require the Recipient to refund forthwith all or any part of the Subsidy that has been paid to the Recipient no later than six (6) months after the request from the Government is issued, reduce the amount of the Subsidy, debar the Recipient from making any funding application from EPD for such period as the Government considers appropriate.
- 10.6 On the expiry or termination of this Agreement, this Agreement shall cease to have any further force and effect and no further subsidy will be made available to the Recipient, but without prejudice to:
- (a) the Government's rights and claims under this Agreement or otherwise at law against the Recipient arising from antecedent breaches of this Agreement by the Recipient (including any breach(es) which entitle(s) the Government to terminate this Agreement);
 - (b) the rights and claims which have accrued to a party prior to the completion, expiry or termination of this Agreement; and
 - (c) the continued existence and validity of those provisions which are expressed to survive the completion, expiry or termination of this Agreement or which in their context appropriately survive the expiry or termination of this Agreement and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.
- 10.7 In the event that the Recipient intends to withdraw from EHSS pursuant to Clause 11 below, the Recipient may terminate this Agreement by giving the Government not less than thirty (30) days'

prior written notice and the following:

- (a) valid resolutions passed at the meeting of the owners' corporation in accordance with the relevant provisions in the Building Management Ordinance (Cap. 344 of the Laws of Hong Kong) and a copy of such resolutions certified as true copy by the Chairman of the owners' corporation shall be provided to the Government (if owners' corporation is/are formed); or
- (b) valid resolutions passed at a meeting of all owners of the building where the car park is ancillary to and a copy of such resolutions certified as true copy by the Recipient shall be provided to the Government.

11. Withdrawal from EHSS

11.1 The Recipient shall notify by writing and obtain the Government's consent of its intention to withdraw from EHSS and its decision not to proceed with the tendering exercise for engaging a contractor for the installation works of the EVCEI if:

- (a) the Recipient does not accept the feasibility assessment and cost estimate of the Project as prepared by the Consultant; or
- (b) the Recipient does not intend to re-tender after the tenders submitted for the procurement of the contractor for the installation works are opened and such tenders have exceeded the estimated market price inserted by EPD's advisor in the tender box or the Ceiling of Subsidy.

11.2 If the Recipient withdraws from EHSS at any stage after signing this Agreement with the Government, or cannot complete the installation works and / or terminates the Contract with the Consultant, the Recipient shall bear all the consequences and liabilities, including without limitation, any costs arising from the engagement of the Consultant and the Contractor for the installation works of the EVCEI. The Government shall only release subsidies to the

Recipient in accordance with Clause 8.4.

12. Liability and Indemnity

12.1 Neither the Government nor any of its employees or agents shall be under any liability whatsoever for or in respect of:

- (a) for any loss of or damage to any of the Recipient's property or that of its directors, employees, agents, contractors, volunteers, Project participants or any third parties however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise); or
- (b) to the maximum extent permitted by law for any injury to or death sustained by any of the Recipient's directors, partners, employees, agents, contractors, volunteers, Project participants or any third parties, save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.

12.2 Without prejudice to any other provision of the Agreement, the Recipient shall indemnify and keep indemnified each of the Government, its employees and agents (each an "Indemnified Person") against (a) any and all actions, claims (whether or not successful, compromised, settled, withdrawn or discontinued), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against an Indemnified Person ("Claims") and (b) any and all liabilities, losses, damages, costs, charges or expenses (including all legal fees and other awards, costs, payments, charges and expenses and any loss or damage sustained by or any injury to or death of any person in consequence of any Negligence of the Recipient, its directors, partners, employees, agents, contractors, volunteers, Project participants) which an Indemnified Person may pay or incur as a result of or in relation to any Claims, which in any case arise directly or indirectly in connection with, out of or in relation to:

- (a) a breach of the duty of confidence (whether under this

Agreement or general law) by the Recipient, or any of its Directors, employees, agents and contractors (or any person acting on its or their behalf) (each a “Relevant Person”);

- (b) the use by the Recipient or any Relevant Person of any personal data in contravention of the PDPO;
- (c) any breach of this Agreement by the Recipient, regardless of whether such breach was caused by the Recipient or any Relevant Person;
- (d) the negligence, recklessness, tortious acts or wilful omission of the Recipient, its directors, partners, employees, agents, contractors, volunteers, Project participants; or
- (e) the wilful misconduct, default, unauthorised act or wilful omission of the Recipient or a Relevant Person.

12.3 The indemnity under Clause 12.2 shall not apply to any injury or death caused by the Negligence of an Indemnified Person.

12.4 For the purpose of this Clause “Negligence” has the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).

12.5 The Recipient acknowledges and confirms that the Subsidy provided by the Government are merely facilitating the installation works of the EVCEI under the EHSS and no warranty, representation or guarantee whatsoever has been given by the Government in connection with any part of the EVCEI. The Recipient acknowledges that it is entirely at its own will to decide whether or not to participate in the EHSS and enter into this Agreement and the Recipient has also been invited to seek independent legal or other technical advice before signing this Agreement. The Government and its officers, directors, managers, employees or agents shall not be held liable and the Recipient shall not under any circumstances be entitled to claim against the Government for any loss or damage which may be suffered by the Recipient as a result of, whether

directly or indirectly, the following circumstances:

- (a) the act, performance, default, fraud, negligence, carelessness, omission or otherwise on the part of the Consultant and the Contractor, the Government Representative or any other person participating in the EHSS;
- (b) any act or decision or advice (if any) on the part of the Government made pursuant to the instruction or decision or opinion of the Recipient or the Consultant and the Contractor;
- (c) any act or decision or advice (if any) on the part of the Government made pursuant to the policies, guidelines or directions applicable to the EHSS or other schemes of similar nature launched or operated by the Government;
- (d) any act or decision or advice (if any) on the part of the Government made on the genuine or reasonable belief that such act or decision or advice is necessary for implementing the works under this Agreement; and
- (e) any act or decision or advice (if any) on the part of the Government being not the direct cause of any loss or damage.

13. Force Majeure

13.1 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 release of any part of the Subsidy until the event of Force Majeure discontinues.

13.2 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 may, at the expiration of such period, terminate this

Agreement by giving not less than fourteen (14) days' written notice to the Recipient. In such event, the Government shall cease releasing any subsidy to the Recipient.

13.3 Subject to Clause 13.2 of this Agreement, in the event that performance of obligations under this Agreement is delayed by Force Majeure, the contract period of the Consultant 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.

13.4 Notwithstanding anything in this Agreement to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the event or events of Force Majeure.

13.5 For the purpose of this Agreement, "Force Majeure" means an unforeseeable, unavoidable and uncontrollable event including without limitation any supervening outbreak of war or infectious disease affecting Hong Kong, epidemic outbreak in Hong Kong, hostilities (whether war be declared or not), invasion, acts of foreign enemies, usurped power, overthrow (whether by external or internal means) of the Government, civil war, riot, civil disturbances, civil commotion, acts of God, fire, tidal wave, earthquake, tsunami, lightning, storm, technical breakdown, interference with transmission, failure in communications, delay in or failure to obtain supply of materials, parts, equipment or leased lines and act of any government or authority.

14. Conflict of Interest

14.1 The Recipient shall, during the continuation of this Agreement and for six (6) months thereafter:

- (a) ensure that it (including its Associates and Associated Persons, each sub-contractor and their Associates and Associated Persons), agents, management committee, members, property management company, shall not undertake any service, task or

job or do anything whatsoever for or on behalf of the Recipient or any third party (other than in the performance of this Agreement) which conflicts, or which may be seen to conflict, with the Recipient's duties to the Government under this Agreement; and

- (b) immediately notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Recipient, or its Associates or Associated Persons, or any of its sub-contractors, or their Associates or Associated Persons, or its agents, management committee, members, property management company, conflict or compete, or may conflict or compete, with the Recipient's duties to the Government under this Agreement.

14.2 The Recipient shall notify the Government in writing immediately upon knowing of financial, professional, commercial, personal or other interests (whether actual or potential, direct or indirect) that the Recipient or its Associates or Associated Persons, or any of its sub-contractors or their Associates or Associated Persons, or its agents, management committee, members, property management company, may have in, or of any association or connection which the Recipient or the aforesaid persons may have with, any person, product, service or equipment proposed or recommended by the Recipient under this Agreement.

14.3 The Recipient shall ensure that each of its Associates and Associated Persons, each of the Recipient's Directors, employees, agents, contractors, consultants and other personnel and their respective Associates and Associated Persons, its agents, management committee, members, property management company, shall keep themselves informed and shall inform the Recipient and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may conflict or compete, with the Recipient's duties to the Government under this Agreement.

14.4 Once a conflict of interest is noted, the Recipient shall promptly resolve or remove the risk arising from the conflict of interest. The Recipient shall also record the remedial action(s)/resolution(s) taken and promptly inform the Government.

15. Corrupt Gifts and Payments of Commission

15.1 The Recipient shall not:

- (a) give or offer to give to any employee or agent of the Government any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the execution of this Agreement or any other Government contracts or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other Government contracts; or
- (b) enter into this Agreement or any other Government contracts in connection with which commission has been paid or agreed to be paid by the Recipient or on its behalf, or to its knowledge.

15.2 Any breach of Clause 15.1 by the Recipient or by any person employed by it or acting on its behalf (whether with or without the knowledge of the Recipient) or the commission of any offence under the Prevention of Bribery Ordinance (Cap. 201) or under any law of a similar nature by the Recipient or by any person employed by it or acting on its behalf in relation to this Agreement or any other Government contracts shall entitle the Government to (a) terminate this Agreement pursuant to Clause 10.1; (b) recover from the Recipient all or any monies paid under this Agreement together with all administrative, legal and other expenditure accrued up to the date of repayment; and (c) hold the Recipient liable for any loss or damages which the Government may thereby sustain.

15.3 The Recipient shall use its best endeavour to follow the practice set out in the “Best Practice Checklist-Governance and Internal Control in Non – Governmental Organisations” issued by the Independent Commission Against Corruption (“ICAC”) (downloadable from:

<http://www.icac.org.hk>) from time to time.

16. Confidentiality

- 16.1 The Recipient shall treat as confidential all information, documents, materials and all other data (including any personal particulars records and Personal Data (as defined in the PDPO) 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 provided that this Clause 16.1 shall not extend to any information which is already in the public knowledge (otherwise than as a result of a breach of this Clause) and any information of which disclosure is required by law or order of a court of a competent jurisdiction.
- 16.2 The Recipient hereby agrees that it will not use or disclose the confidential information described in Clause 16.1 to any person (including the Recipient's Associates, Associated Persons, Directors, employees, agents and sub-contractors) except in the circumstances where such disclosure is necessary for the due and proper performance of this Agreement or where the prior written consent of the Government has been obtained for such disclosure.
- 16.3 The Recipient undertakes: (a) to take all necessary security measures at its own cost for the protection of the information, documentation, materials and data, which it is obliged by this Clause 16 to keep secret and treat as confidential, and (b) upon prior notice given by the Government to the Recipient, to provide the Government with such information, documentation, materials and data as required by the Government and to grant the Government or its representative access to its premises (including any premises owned, rented or controlled by the Recipient, its Associates, Associated Persons, Directors, employees, agents or sub-contractors) to ascertain that all security measures required under this Agreement are in place and are implemented.
- 16.4 The Recipient shall ensure that each of its Associates, Associated

Persons, Directors, employees, agents, sub-contractors and any other persons engaged in any work in connection with this Agreement are aware of and comply with the security measures taken pursuant to Clause 16.3 above as well as all other provisions of this Clause 16, the PDPO and the Official Secrets Ordinance (Cap.521 of the Laws of Hong Kong). The Recipient shall indemnify the Government and keep the Government fully and effectively indemnified against all actions, costs (including the fees and disbursements of lawyers, agents and expert witnesses), claims, demands, expenses, loss, damage and liabilities whatsoever which the Government may suffer, incur or sustain as a result of any breach of confidence (whether under this Agreement or general law) by any such persons.

- 16.5 The Recipient shall indemnify and keep the Government, its employees and authorised persons fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising from or incurred by reason of any actions and/or claims made in respect of information subject to the PDPO which action and/or claim would not have arisen but for the act, negligence or omission of the Recipient, any of its Associates, Associated Persons, Directors, employees, agents or sub-contractors or any other persons engaged in any work in connection with this Agreement.
- 16.6 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 its Associates, Associated Persons, Directors, employees, agents, sub-contractors and any other persons engaged in any work in connection with this Agreement to whom any confidential information is required to be disclosed to do so.
- 16.7 The Recipient shall immediately notify the Government of any complaint, breach of security measures or possible information leakage in relation to the confidential information described in this Clause 16. The Recipient shall also give the Government all reasonable assistance in connection with any proceedings by which the Government may institute pursuant to any of the provisions in

this Clause 16.

- 16.8 The provisions of this Clause 16 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

17. Others

- 17.1 The Government shall bear no responsibility, financial or otherwise, for expenditure or other liabilities arising from the EHSS and/or the use of any subsidised EVCEI which are installed with the Subsidy paid under 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 Recipient shall at its own cost and expenses do and execute any further things and document(s) or procure that the same be done or executed as may be required by the Government to give full effect to Clause 16 and shall provide all such documents and materials 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. This Clause 17.4 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.
- 17.5 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.

- 17.6 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: _____

Fax no.: (852) _____

The Government

12/F, North Tower, Tseung Kwan O Government Offices

30 Tong Yin Street, Tseung Kwan O, Sai Kung, New Territories

For the attention of: Principal Environmental Protection

Officer (Mobile Source)

Environmental Protection Department

Fax no.: (852) 3547 0198

- 17.7 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 17.6 be deemed given three (3) working days after posting it.

- 17.8 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. 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.

- 17.9 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.
- 17.10 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.
- 17.11 The parties hereby declare that nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

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

SIGNED by)
SO King-lung, Benny)
Principal Environmental Protection Officer (Mobile Source))
for and on behalf of the Government of)
the Hong Kong Special Administrative)
Region in the presence of :-)

Witness :

Signature:

Name :

Title:

[If owners' corporations (OCs) is/are formed]

SIGNED by)
_____[name], [ID no.]_____[and] [name] & [ID no.]____)
duly authorised representative for and on)
behalf of [OC Name])
in the presence of :-)

Witness :

Signature:

Name :

Title:

[If the Recipient is/are DMC Manager / Property Management Company /

all owners of car parks]

SIGNED by)

____Name and ID no_____)

Duly authorised representative for and on)

behalf of the Recipient)

in the presence of :-)

Witness :

Signature:

Name :

Title: