

FUNDING AGREEMENT

CLEANER PRODUCTION PARTNERSHIP PROGRAMME VERIFICATION PROJECT

between

HONG KONG PRODUCTIVITY COUNCIL

and

XXX Limited

THIS AGREEMENT is made this day of 2008 between
(1) HONG KONG PRODUCTIVITY COUNCIL, a statutory body incorporated under the Hong Kong Productivity Council Ordinance (Chapter 1116) of Hong Kong whose office is situated at HKPC Building, 78 Tat Chee Avenue, Kowloon, Hong Kong (hereinafter called "HKPC")

AND

(2) XXX Limited (Business Registration No.), a company incorporated in Hong Kong whose registered office is situated at XXXX (hereinafter called "the Company")

WHEREAS :-

- (1) The Director of Environmental Protection (hereinafter called "DEP"), acting for the Government of the Hong Kong Special Administrative Region, has provided funding for the operation of a Cleaner Production Partnership Programme (hereinafter called "the Programme").
- (2) HKPC has been appointed as the implementation agent of the Programme and is responsible for the overall administration of the Programme. The Secretariat of the Programme and the Programme Director have been appointed for this purpose.
- (3) The Company has applied for funding support under the Programme to verify the effectiveness of an Improvement Project. The application has been approved by the Programme Director of the Programme acting under the authorization of the Project Management Committee of the Programme appointed by DEP.
- (4) The Company and HKPC have agreed to enter into this Agreement for the purpose of ensuring the proper use of the funding support in compliance with the conditions set out in the "Cleaner Production Partnership Programme: Guide to Application for Funding Support" (hereinafter called "the Guide") published by the Secretariat of the Programme and upon the terms and conditions as hereinafter appearing.

NOW IT IS AGREED as follows:-

1. Definitions and Interpretation

1.1 Definitions

Agreement	means this agreement between HKPC and the Company.
Environmental Technology Service Provider or ET Service Provider	means an ET service provider, who is registered with the Secretariat of the Programme, appointed by the Company under the Service Contract to carry out the Verification Project and whose name is listed in the bracket below. (Name of ET Service Provider: _____ _____)
Factory	means the factory referred to in the Funding Application Form.
Funding Application Form	means the funding application form submitted by the Company and a copy of which is attached to this Agreement for identification purpose.
Guide	has the meaning given to in Recital (4), as the same may from time to time be amended by the Secretariat of the Programme.
Improvement Project	means a project to improve energy efficiency or reduce air pollutant emissions which has been implemented at the Factory and the effectiveness of the project is to be verified under the Service Contract. It can also be a demonstration project funded under the Demonstration Project initiative of the Programme and the effectiveness of the Demonstration Project is to be verified under the Service Contract.
Secretariat of the Programme	means the Secretariat specifically set up within HKPC to administer the Programme. The Secretariat is under the leadership of the Programme Director appointed by HKPC and approved by DEP.
Service Contract	means the service contract between the Company and the ET Service Provider for carrying out the Verification Project at the Factory.
Verification Project	means the Verification Project for the Factory covering such scope of work as referred to in the Funding Application Form.

1.2 In this Agreement, except where the context otherwise requires:

- (a) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted;
 - (b) words denoting the singular shall include the plural and vice versa and words denoting any one gender shall include all genders; and
 - (c) a “person” shall mean any person or body of persons whether incorporated or unincorporated.
- 2. In consideration of the provision of the funding support to the Company on and subject to the Terms of the Funding (as hereinafter defined), the Company hereby agrees to procure the completion of the Verification Project in accordance with the terms and conditions as provided in the Guide and as set out in this Agreement and any further requirements relating to the Verification Project as may from time to time be prescribed by HKPC through the Secretariat of the Programme (collectively, “Terms of the Funding”). In the event of any inconsistency in the Terms of the Funding, this Agreement shall prevail.
- 3.
 - (a) The Company hereby warrants and confirms that throughout the continuance of this Agreement it satisfies the requirements in relation to eligibility as set out in the Guide.
 - (b) The Company hereby warrants it is not at the time of entering into this Agreement insolvent and knows of no circumstance which would entitle any creditor to appoint a receiver or to petition for winding up or to exercise any other rights over or against its assets or the Factory.
- 4. The Company hereby agrees to appoint the ET Service Provider to carry out the Verification Project based on the scope as set out in the Funding Application Form.
- 5. The Company shall procure commencement of the Verification Project within two weeks from the date of this Agreement. The Company shall further procure completion of the Verification Project, and the submission of the verification report to the Secretariat of the Programme, in each case within 3 months from the date of this Agreement, unless the Secretariat of the Programme agrees in writing to extend the date. Failing to submit the verification report within the time limit will result in non-disbursement of funding to the Company.
- 6. The funding support to be given to the Company shall be in the sum of **HK\$XXX** which sum is subject to the conditions for disbursement of funding support as mentioned in Clause 7. The Company agrees to apply the funding support solely for the appointment of the ET Service Provider for carrying out the Verification Project and in the manner as set out in this Agreement.
- 7. The funding support shall be given to the Company in full upon submission by the Company to the Secretariat of the Programme of the following:
 - (a) a verification report to be prepared and signed by the ET Service Provider in accordance with Clause 8 within 3 months from the date of this Agreement; and

- (b) evidence of full payment by the Company to the ET Service Provider for the Verification Project.
8. The verification report shall include the following:
- (a) a description of the Improvement Project and its anticipated effectiveness in terms of improvement in energy efficiency and/or reduction in air pollutant emissions;
 - (b) scope and methodology of the Verification Project; and
 - (c) results of the Verification Project as against the anticipated effectiveness.
9. The Company shall indemnify each of HKPC and the Government and keep each of HKPC and the Government fully and effectively indemnified against all loss, claims, demands, damages, costs, expenses and liabilities which any of them may sustain or incur or which may be brought or established against any of them by any person as a result or otherwise arising out of the breach by the Company of any of the Terms of the Funding.
10. HKPC whether on its own accord or acting on the instructions of the Project Management Committee of the Programme may terminate this Agreement by a written notice to the Company to this effect on the occurrence of any one of the following events:
- 10.1 the Company is in breach of any of the provision in the Terms of the Funding; or
 - 10.2 the Company fails to provide to the Secretariat of the Programme all or any of the items required in Clause 7 on or before the applicable deadline specified therein; or
 - 10.3 any material change occurs in the management or control of the Factory so that it no longer falls within any of the types specified in paragraph 1.5 of the Guide; or
 - 10.4 the Company goes into liquidation either compulsorily or voluntarily (save for the purpose of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets or in respect of the Factory or if the Company makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things or any judgement is made against the Company or any similar occurrence under any jurisdiction affects the Company; or
 - 10.5 without prejudice to the generality of the foregoing, there has been a lack of progress of the Verification Project in a material way; or
 - 10.6 the Project Management Committee of the Programme sees it fit to terminate the Verification Project in public interest.
11. Notwithstanding anything in the Terms of the Funding to the contrary, in the event of the termination of this Agreement, the Company is not entitled to any funding support.

Any cost incurred by the Company in the Verification Project or the appointment of the ET Service Provider shall be borne solely by the Company itself. Upon termination of this Agreement, no party shall have any further claim against the other save in relation to those claims of HKPC or of the Government arising from any antecedent breach of any Terms of the Funding.

12. This Agreement shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region. Each party agrees that the courts of Hong Kong are to have jurisdiction to settle any proceedings, suit or action arising out of or in connection with this Agreement and each party submits to the jurisdiction of such courts.
13. Any default by any employees, agent or other personnel of the Company in the carrying out of the Verification Project or in the performance of the Company's obligations under this Agreement shall be deemed to be default by the Company under this Agreement.
14. Time shall be of essence of this Agreement. No waiver of any of the terms of this Agreement by either party shall be effective unless made in writing and no waiver of any non-compliance with any particular term shall be deemed to be a waiver of any other term of any future non-compliance with the same term.
15. No amendment or modification of or addition to this Agreement shall be valid unless made in writing and signed by both HKPC and the Company. Other Terms of the Funding may be amended by HKPC through the Secretariat of the Programme alone from time to time. The amended version of the Guide shall be published on the www.cleanerproduction.hk website.

AS WITNESS whereof this Agreement is signed by the Parties hereto the day and year first above written.

SIGNED by)
the duly authorized representative of)
HONG KONG PRODUCTIVITY COUNCIL)
with COMPANY CHOP)

SIGNED by)
the duly authorized representative of)
the COMPANY)
with COMPANY CHOP)

This page is blank