

SME Export Marketing Fund - Funding Agreement

「中小企業市場推廣基金」— 資助協議

THIS AGREEMENT is made on _____ of _____ (Date to be filled in by the Government)

本協議於 _____ 年 _____ 月 _____ 日由下列各方簽訂 [日期由政府填寫]：

BETWEEN

- (1) _____ (company name), an enterprise registered in Hong Kong under the Business Registration Ordinance (Cap.310) with business registration number _____ and whose registered office is at _____

(“**Applicant**”) AND

_____ (公司名稱) 為一家在香港按照商業登記條例 (香港法例第 310 章) 登記的企業，商業登記證號碼為 _____，其註冊辦事處位於 _____ (下稱「申請企業」) 及

- (2) The Government of the Hong Kong Special Administrative Region as represented by the Director-General of Trade and Industry or any other officer as may be authorised by him/her from time to time for the purpose of this Agreement (“**Government**”).

香港特別行政區政府 (下稱「政府」)，由工業貿易署署長或其他不時獲工業貿易署署長授權的人員代表。

WHEREAS:

鑒於：

- (A) The Trade and Industry Department of the Government administers the SME Export Marketing Fund (“EMF”) to provide funding support to small and medium enterprises in Hong Kong for participation in export promotion activities to expand markets outside Hong Kong;

政府工業貿易署管理的「中小企業市場推廣基金」（下稱「基金」）向香港中小企業提供資助，供其參與出口推廣活動，藉此擴展香港境外市場；

- (B) Subject to the balance of the funding commitment approved for the EMF by the Finance Committee of the Legislative Council, the EMF is open to application by enterprises who have met the eligibility criteria and agreed to the conditions of use of the funding as set out in the “Guide to Application of the SME Export Marketing Fund” and the Government may approve or reject the Application on the terms and conditions as set out in the Guide; and

在立法會財務委員會就基金核准的承擔額有可用餘額的情況下，符合基金申請資格及同意載於「中小企業市場推廣基金」申請指引（下稱「申請指引」）內的使用條件的企業均可申請本基金；政府可根據載於申請指引內的條款及條件批准或拒絕該申請；以及

- (C) The Applicant has submitted an application for funding support under the EMF for carrying out the export promotion activity as set out in its application and the Government has preliminarily approved such application and agreed to provide funding support to the Applicant on the terms and conditions set out below.

申請企業就參與申請內所列明的出口推廣活動（下稱「活動」）向本署申請基金資助（下稱「申請」）；政府已初步批准有關申請，並同意按照以下條款及條件向申請企業提供基金資助。

IT IS HEREBY AGREED BETWEEN THE PARTIES THAT:

雙方謹此協議如下：

1. In this Agreement, the following terms and expressions shall have the meaning given to them below save as the context otherwise requires:

在本協議中，除非文意另有所指，以下詞目及詞彙須與下表訂明相同：

“Activity”
活動 means any one of the export promotion activities as stipulated in the Guide and being applied for funding support by the Applicant under the EMF as specified in the Schedule;

指附表所指明的申請企業向本基金申請資助，並屬申請指引所訂定資助範圍的其中一項出口推廣活動；

“Another Activity”
另一活動 means any one of the export promotion activities as stipulated in the Guide; “Other Activities” shall be construed accordingly;

指申請指引所訂定的其中一項出口推廣活動；「其他活動」(Other Activities)須據此解釋；

“Application”
申請 means the Applicant’s application under the EMF as specified in the Schedule; or as the context requires, any further application which may be made by the Applicant pursuant to Clause 8;

指附表所指明的申請企業向本基金提交的申請；或按文意所指，申請企業根據第 8 條提交的任何其他申請；

“Connected Enterprise”
關連企業 has the same meaning as given to it in the Guide;

與申請指引內的含義相同；

“Department”
本署 means the Trade and Industry Department of the Government;

指政府的工業貿易署；

<p>“EMF” 基金</p>	<p>means the SME Export Marketing Fund launched and administered by the Department since 2001 aiming to encourage small and medium enterprises (SMEs) to expand their markets outside Hong Kong by providing financial assistance to SMEs for participation in export promotion activities;</p> <p>指由本署自 2001 年推行及管理，旨在向中小企業提供資助，以鼓勵中小企業參與出口推廣活動，藉此協助其擴展香港境外市場的「中小企業市場推廣基金」；</p>
<p>“Guide” 申請指引</p>	<p>means the Guide to Application of the SME Export Marketing Fund as issued and revised by the Department from time to time and is available at www.smefund.tid.gov.hk/emf/eng;</p> <p>指由本署不時發布及修訂的「中小企業市場推廣基金」申請指引，可於基金網站 www.smefund.tid.gov.hk/emf/tc 查閱；</p>
<p>“Initial Payment” 首期撥款</p>	<p>means the amount of fund preliminarily approved and provided by the Government upon consideration of the Applicant’s Application and as stipulated in the Schedule; or as the context requires, the amount of fund preliminarily approved and provided by the Government upon consideration of any further application which may be made by the Applicant pursuant to Clause 8; and</p> <p>指考慮申請企業就附表所指明活動的申請後，政府初步核准及提供的基金資助金額；或按文意所指，政府考慮申請企業根據第 8 條提交的任何其他申請而初步核准及提供的基金資助金額；以及</p>
<p>“Interest” 利息</p>	<p>means all interest on the Initial Payment which should have accrued from the date the Applicant accepted the Initial Payment, based on the Hongkong and Shanghai Banking Corporation Limited saving interest rate applicable at the time calculated up to the date of payment of such interest.</p> <p>指由申請企業接受首期撥款當日起計應已累算的所有利息，並以當時適用的香港上海滙豐銀行有限公司儲蓄存款利率計算至支付利息當日。</p>

2. In consideration of the Applicant's due observance, compliance and discharge of its obligations as set out in this Agreement to the satisfaction of the Government, the Government agrees to provide funding support in the amount as set out in the Schedule subject to the terms and conditions set out herein.

政府同意以申請企業妥為遵守、遵從並履行載於申請指引內的義務，並達到令政府滿意的程度為前提，根據協議內的條款及條件提供附表所載金額的基金資助。

3. In accepting the Initial Payment, the Applicant must:

若接受首期撥款，申請企業必須：

- (a) duly complete its participation in the Activity within the period of time as specified in the Application;

根據申請內所指明的時限妥為完成參與活動；

- (b) use, apply or disburse the Government's funding for the sole purpose of the Activity and in the manner as specified in the Guide;

將政府的基金資助僅作該項活動的用途，並根據申請指引所指明的方式使用、運用或動用資助；

- (c) submit the relevant invoices, receipts and all other supporting documents to the Government in the manner and within the time as specified in the Guide for the Government's vetting and final approval of the Application;

根據申請指引所指明的方式及時限提交有關發票、收據及所有其他證明文件，以便政府就該申請進行審閱及作出最終批核；

- (d) comply and fulfil the eligibility criteria, conditions of use of the funds under the EMF including the Initial Payment, and the requirements and procedures as specified in the Guide; and

遵從及符合本基金的申請資格及使用條件，包括首期撥款及申請指引內所指明的要求及程序；以及

- (e) comply with all applicable laws (including the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region), regulations and by-laws of Hong Kong.

遵守所有適用於香港的法例（包括《中華人民共和國香港特別行政區維護國家安全法》）、規例和附例。

- 4. Whether and if so, when the Activity is duly completed shall be determined by the Government in accordance with the Guide. The Government's determination shall be final and conclusive.

政府將根據申請指引決定活動是否及何時妥為完成。政府的決定為最終及不可推翻的。

- 5. Notwithstanding anything contained in this Agreement to the contrary, if

儘管本協議任何條文有任何相反協議，如若

- (a) the Applicant, for whatever reason, fails to observe, comply with or discharge any of the obligations in Clause 3(a) to (e);

申請企業，不論任何原因，無法遵守、遵從或履行第 3(a)至第 3(e)條所列的任何義務；

- (b) the Applicant 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;

申請企業曾經或正在作出可能構成或導致發生危害國家安全罪行或不利於國家安全的行為或活動；

- (c) the continued engagement of the Applicant or the continued performance of this Agreement is contrary to the interest of national security;

申請企業繼續參與或繼續履行資助協議不利於國家安全；

- (d) the Government reasonably believes that any of the events mentioned in paragraph (b) to (c) above is about to occur; or

政府合理地認為以上第(b)至(c)段所述的任何一種情況即將出現；或

- (e) should there be any misrepresentation or false declaration made in the Application subsequently found or if there is any material change in the information provided in the Application,

隨後發現申請有作出任何失實陳述或虛假聲明，又或申請中所提供的資料有任何重大變更，

the Government may withdraw its preliminary approval of the Application or reject the Application and upon such withdrawal or rejection, the Government

政府可撤回有關申請的初步批核或拒絕有關申請。在撤回或拒絕有關申請後，政府

- (i) shall be under no obligation to pay any further funding under the EMF in relation to the Activity;

沒有義務就該活動進一步提供基金資助；

- (ii) may not process any further applications in relation to Other Activities or where further applications in relation to Other Activities have been submitted, may suspend the processing of all such further applications under the EMF made by the Applicant, its Connected Enterprises and its related enterprises as described in the Guide; and

可能停止處理該申請企業其他活動的任何其他申請，或可能暫緩處理該申請企業已提交的所有其他基金申請，而本項所提及的申請企業包括申請企業、其關連企業及根據申請指引界定的相關企業；以及

- (iii) shall have the right to demand for repayment of the Initial Payment and all moneys paid under the EMF in respect of the Activity, in which case the Applicant shall repay the Government such amount forthwith with interest.

有權要求申請企業歸還首期撥款及本基金已就該活動支付的一切金額。屆時，申請企業必須應政府要求立即將有關金額連同利息退回政府。

The Applicant shall not seek any compensation from the Government and the Government shall not be responsible for any loss or damages that the Applicant may have suffered due to or arising from such demand for repayment or withdrawal of approval.

申請企業不得就任何因政府要求退回資助或撤回批核而可能造成的損失或損害向政府追討賠償，而政府亦無須就該等損失或損害負上責任。

6. The Applicant acknowledges that the amount of Initial Payment is determined by the Government on the basis of the information and documents provided by the Applicant in its Application. If upon consideration of the Applicant's Application, the Government determines that the total amount of fund which should be payable exceeds the Initial Payment, the Government shall pay the balance to the Applicant as soon as practicable. The Government will endeavour but is not obliged to complete the processing of a valid and complete application within the time as specified in the Guide. If the total amount so determined is less than the Initial Payment, the Applicant shall repay to the Government any excess payment within thirty (30) calendar days from the date of Government's notification.

申請企業確認首期撥款的金額是由政府按申請企業於申請中所提供的資料及文件而釐定。若政府在考慮申請企業的申請後，釐定的資助總額超過首期撥款的金額，政府將在切實可行範圍內儘快向申請企業發放餘下資助額。政府將竭力但無義務在申請指引指明的時限內完成審批有效及完整的申請。若政府釐定的資助總額少於首期撥款的金額，申請企業必須於政府發出通知當日起計的三十個曆日內將超額的款項退回政府。

7. Without prejudice to Clause 5, if there is any material change to the information provided by the Applicant in its Application, the Applicant must promptly inform the Government in writing and indicate whether it intends to amend or withdraw the Application due to the change. The Government reserves the right to withdraw its approval to the Application and demand for repayment for any funding paid.

在不損害第(5)條的原則下，如申請企業在申請中所提供的資料有任何重大變更，必須立即以書面通知政府，並說明是否擬就此變更修改或撤回有關申請。政府保留撤回該申請的批核，並要求申請企業退回任何已支付資助金額的權利。

8. The Applicant may submit further applications for any initial payments under the EMF in relation to Other Activities. If a further application in relation to Another Activity is submitted and the Government provides preliminary approval of the application to provide such initial payment,

申請企業可以就其他活動向基金提交首期撥款申請。若申請企業就另一活動提交其他申請，而政府就該申請給予初步批核以發放首期撥款，

- (a) any funds so approved shall be provided to the Applicant on the same terms and conditions set out in this Agreement;

所有向申請企業提供的已批核資助將同樣受載於本協議的條款及條件所約束；

- (b) in accepting any payment from the Government, the Applicant must observe, comply and discharge all obligations under this Agreement including without limitation those provided in Clause 3; and

若申請企業接受政府的任何資助，必須遵守、遵從及履行本協議所列的義務，包括但不限於第(3)條；以及

- (c) all the terms and conditions in this Agreement shall be construed accordingly as if this Agreement is executed in relation to that Another Activity,

處理另一活動的申請時，本協議內的所有條款及條件應作相同的解釋，猶如本協議亦於另一活動執行一樣，

Provided That –
但—

- (i) regardless of the number of applications for funding support (whether in the form of initial payments or reimbursements or otherwise) under the EMF made by the Applicant and whether the applications are made in relation to the Activity specified in the Schedule or in relation to Other Activities, the aggregate amount of funds of all such applications which may be provided to the Applicant under the EMF shall be subject to the caps as stipulated in the Guide; and

不論申請企業向本基金提交的申請數量（無論是首期撥款、實報實銷或其他資助形式），亦不論申請是否就附表內所指明的活動或其他活動而提交，申請企業所獲的累計資助金額不能超過申請指引內訂定的上限；以及

- (ii) If an application for funding support (whether in the form of initial payments or reimbursements or otherwise) under the EMF is made by another enterprise which in the sole opinion of the Government is a Connected Enterprise, that application shall be regarded as being made by the Applicant for the purpose of determining the maximum amount of funds that may be provided and the amount of funds which may be provided under that application shall share the same caps as for the Applicant.

若政府全權認為提交有關基金資助申請（無論是首期撥款、實報實銷或其他資助形式）的另一企業是關連企業，在釐定可發放的最高資助金額時，該申請將視為由申請企業所提交，而該申請可獲的資助金額將同時限於申請企業的所有累計資助金額上限。

9. The Applicant shall observe the Prevention of Bribery Ordinance (Cap. 201) (“PBO”). The Applicant shall not, and shall take all such necessary steps to ensure that its directors, employees, agents, consultants, contractors and other personnel who are in any way involved in the Activity or Other Activities shall not, offer to or solicit or accept from any person any money, gifts or advantages (as defined in the PBO) in relation to the Activity or Other Activities. If the Applicant or any such directors, employees, agents, consultants, contractors and other personnel commits any offence under the PBO in relation to this Activity or Other Activities, the Application concerned shall be rendered voidable at the option to the Government. If the Government determines that the Application shall be void, any approval given by the Government shall be deemed withdrawn as if no approval has been given and the Applicant shall forthwith repay to the Government the Initial Payment and all other moneys received in connection with the Application in respect of the Activity or Other Activities (as the case may be) whether under this Agreement or otherwise. All further applications under the EMF made by the Applicant shall be withheld and shall not be considered further. The Applicant shall be liable for any and all claims, legal proceedings, loss, damages, costs (including legal costs) and expenses the Government may thereby sustain. The Government shall not be responsible for any claims, legal proceedings, loss, damages, costs or expenses of whatever nature the Applicant may incur due to or in connection with the nullity of such Application.

申請企業須遵守《防止賄賂條例》（香港法例第 201 章）。申請企業不得，並須採取一切所需措施，確保其董事、僱員、代理人、顧問、承辦商及其他以任何形式參與活動或另一活動的人員不得因活動或另一活動的關係，向任何人提供或索取金錢、饋贈或利益，或接受任何人的金錢、饋贈或利益（定義見《防止賄賂條例》）。如申請企業或其任何董事、僱員、代理人、顧問、承辦商及其他人員因本活動或另一活動的關係干犯《防止賄賂條例》所訂的任何罪行，有關申請可被政府視作無效。如政府確定有關申請無效，已經給予的任何批核將被視作已撤回，情況如同沒有給予批核一樣。申請企業須立

即向政府償還因與活動或另一活動有關（視屬何情況而定）的申請而收到的首期撥款及所有其他款項，及所有不論是否根據本協議而收到其他款項。該申請企業提交的所有其他基金申請亦會被終止處理，而且不獲進一步考慮。申請企業須就政府可能因此蒙受的任何及所有索償、法律程序、損失、損害、費用（包括法律費用）及開支負上法律責任。對於申請企業因該申請無效或與此相關的原因而可能招致任何不論性質為何的索償、法律程序、損失、損害、費用或開支，政府均無須負上任何責任。

10. If the Applicant fails to make the repayment to the Government as stipulated in Clauses 5, 6, 7 and 9, the Government shall have the right to take all necessary steps, including taking legal proceedings for recovery of the said amounts, with interest.

若申請企業未能按第(5)、(6)、(7)及(9)條的規定向政府退回資助，政府有權採取一切必要措施，包括採取法律程序，追討所涉及的金額及利息。

11. The Government reserves the right to amend the Guide from time to time. Unless the context otherwise requires, the Guide in the version prevailing as at the date of receipt of this Application by the Government or in the case of further applications being made by the Applicant pursuant to Clause 8, the date of receipt of the further applications by the Government, shall apply. Should there be any dispute on the interpretation of a term of the Guide, the Government's decision shall be final and conclusive.

政府保留不時修訂申請指引的權利。除非文意另有所指，申請指引應以政府接獲本申請當日通行的版本為準。如若申請企業根據第(8)條提交其他申請，則應以政府接獲有關申請當日通行的版本為準。若對申請指引內條款的詮釋有任何爭議，政府的決定為最終及不可推翻的。

12. All rights and powers of the Government under this Agreement shall be exercisable by the Director-General of Trade and Industry or any officer as may be authorised by him/her from time to time for the purpose of this Agreement.

工業貿易署署長或其他不時獲工業貿易署署長為執行本協議而授權的人員可行使政府於本協議所規定的一切權利及權力。

13. This Agreement shall become effective on the date first written above.

本協議應自開首所書的日期起生效。

14. This Agreement constitutes the whole agreement between the parties hereto and supersedes any previous agreements or arrangement between them relating to the subject matter hereof. The Applicant acknowledges that in entering into the Agreement, it has not relied on any statements, warranties or representations given or made by the Government.

本協議構成雙方之間的整份協議，並取代先前就本協議主題所作出的任何協議或安排。申請企業確認，在訂定本協議時，並沒有依賴政府所給予或作出的任何聲明、保證或陳述。

15. Nothing in this Agreement shall create any contract of employment, relationship of agency, partnership or joint venture between the Government and the Applicant. Neither party is authorised to act in the name of, or on behalf of, or otherwise bind the other party.

本協議內的任何內容均不構成政府與申請企業之間的任何僱傭合約、代理關係、合夥關係或合資企業關係。任何一方均無權以另一方的名義或代表另一方行事，或以其他方式約束另一方。

16. 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).

雙方謹此聲明，本協議的內容並無賦予或看來是賦予第三者任何利益或權利，使其可依據《合約（第三者權利）條例》（第 623 章）執行本協議的任何條款。

17. This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and each party agrees to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any disputes arising from this Agreement.

本協議受香港的法律管限，並須根據香港的法律解釋。就因本協議而引起的任何爭議，協議各方須受香港法院的專屬司法管轄權管轄。

18. If there is any inconsistency or ambiguity between the English version and the Chinese version of the Agreement, the English version shall prevail.

如本協議的英文版本與中文版本有任何抵觸或不相符之處，應以英文版本為準。

This Agreement is duly executed by the parties and on the date first written above.

本協議於開首所書的日期由雙方妥為簽署並生效。

SIGNED BY	}	SIGNED BY	}
簽署	}	簽署	}
	}		}
	}		}
_____	}	_____	}
(Signature of Representative with	}	(Signature of Representative with the	}
Applicant's Company Chop)	}	Department's Chop)	}
(代表簽署及申請企業印章)	}	(代表簽署及本署印章)	}
	}		}
_____	}	_____	}
(Name of Representative)	}	(Name of Representative)	}
(代表姓名)	}	(代表姓名)	}
the duly authorised representative of	}	the duly authorised representative of	}
the Applicant	}	the Government	}
申請企業의 正式授權代表	}	政府的正式授權代表	}

Schedule

附表

(To be completed by the Government)

[由政府填寫]

1. Date of receipt of the Applicant's Application by the Government:

政府接獲申請企業申請的日期：

2. Activity applied for in the Application:

所申請的活動：

3. Amount of Initial Payment:

首期撥款金額：