

[Insert Applicant
name and address]

[insert date]

Alternatively-Fuelled Heavy Duty Vehicles Purchase Grant Scheme (the Scheme)

Dear [•],

Thank you for submitting your Application for a grant to be made pursuant to the Scheme in connection with your purchase of an alternatively-fuelled heavy duty vehicle (*AFHDV*).

1. Approval

1.1 Your Application has been considered and we are pleased to confirm that:

- (a) your purchase of a new vehicle of the type and description set out in Table 1 below (the *Approved Vehicle Type*) has been approved as eligible for the Scheme;
- (b) we are prepared to offer to make available to you a grant (the *Grant*) in order to assist you in your purchase of the Approved Vehicle Type;
- (c) you have been provisionally categorised as a [insert SME categorisation]; and
- (d) the amount provisionally proposed to be made by way of grant (the *Provisional Grant Amount*) is set out in Table 1,

in each case, subject to the terms set out in this Grant Letter (including Appendix A and Appendix B) and the Scheme Rules.

Table 1

<i>Approved Vehicle Type</i>	<i>Provisional Grant Amount</i>
[insert vehicle description]	[insert provisional grant amount, i.e. amount to be awarded if all applicant information is verified]

1.2 We reserve the right to adjust the amount of the Grant which we may pay from the Provisional Grant Amount in accordance with this Grant Letter.

2. This Letter

2.1 This is a Grant Letter for the purposes of the Scheme.

2.2 Upon your acceptance of this Grant Letter in accordance with paragraph 3.1 below, this Grant Letter becomes a legal document with obligations and responsibilities for you.

- 2.3 Upon your acceptance of this Grant Letter:
- (a) you will be required to satisfy the conditions listed in paragraph 6.2, in each case, to our satisfaction; and
 - (b) upon you so doing, we will verify your status as a “SME” and make the determination contemplated by paragraph 6.3,

at which point, we will notify you of the amount of the Grant determined in accordance with paragraph 6.3. Please note that until that final determination is made in accordance with paragraph 6.3, we do not have or assume any responsibility or obligation to you.

- 2.4 Before accepting the Grant Letter, you should familiarise yourself with, first, the Scheme Rules, and subsequently all the terms and conditions which are part of the Grant Letter (and consequently, any agreement entered into by reason of your satisfaction of your obligations under the Grant Letter).

3. *Validity Period*

- 3.1 The Grant Letter is open to be accepted by you for the period from the date of this Grant Letter expiring on [*insert date*] (**Validity Period**). Accordingly, to be eligible to have your purchase of an AFHDV considered for a Grant, you must, as a preliminary step on or before the expiry of the Validity Period, accept the terms and conditions of this Grant Letter by duly executing (e.g., by duly signing and dating) this Grant Letter and returning it by email to afhdivgrant@emovis.ie.

This is without prejudice to the other requirements and conditions of this Grant Letter.

- 3.2 Please note that if you do not return this Grant Letter duly executed within the Validity Period, the provisional offer contemplated by this Grant Letter will automatically lapse and cease to have effect and you will not be able to proceed to the next stage of the application process (as set out in paragraph 6).
- 3.3 If the provisional offer has lapsed in accordance with paragraph 3.2, you will have to submit a new application for a Grant which will be the subject of a separate decision, offer and conditions.
- 3.4 Please note that, as set out in clause 1.2 of Appendix B, you (together with your Affiliates) may not receive Grants under the Scheme:
- (a) where the combined total of such Grants exceeds €500,000 (including the Grant that is the subject of this Grant Letter);
 - (b) in respect of more than twenty (20) AFHDVs (including the Vehicle);
 - (c) where you do not have an establishment or branch within Ireland as of the date the Grant is paid to you;
 - (d) if the Vehicle has received or is to receive any subsidy or grant under any other scheme; or
 - (e) where you and/or an Affiliate are subject to an outstanding recovery order for repayment of State aid previously granted by the State following a decision by the

European Commission that such aid was illegal and incompatible with the EU internal market,

and, without prejudice to the other requirements specified in this Grant Letter, our intention to make any payment in connection with a Grant to you, and your receipt of a Grant, under this Grant Letter is subject to these requirements. For the avoidance of any doubt, while it is our intention to provide a Grant where all required conditions are satisfied, we are under no legal obligation to do so.

4. *Confirmations/further information*

4.1 It is a condition of this Grant Letter that all documentation and information supplied by you in relation to the Scheme is true and correct as of (a) the date it was supplied and (b) the date the Grant is paid to you.

4.2 You acknowledge that we are relying on the documentation and information supplied by and to be supplied by you in making decisions in connection with the Scheme, including in connection with this Grant Letter.

4.3 Without prejudice to paragraph 4.1, we may seek such documents, information or confirmations from you as we may determine in relation to any matter in connection with (a) your Application, (b) the purchase or operation of the Vehicle being purchased by you, or (c) this Grant Letter. This may include, without limitation, seeking the original of the Grant Letter duly executed by you.

5. *Purpose of Grant*

The Grant is being provided to facilitate the purchase of a new AFHDV that exceeds EU environmental standards, or, in the absence of such standards, which contributes to the protection of the environment by promoting the transition to low and zero emission vehicle technologies.

6. *Grant Payment*

6.1 We will only make a decision in respect of payment of a Grant to you, which is at our absolute discretion where:

- (a) you are in compliance with the requirements of this Grant Letter (including paragraph 3.4):
- (b) you have satisfied the conditions listed in paragraph 6.2, in each case, in accordance with paragraph 6.2; and
- (c) we have verified your status as a "SME" in accordance with paragraph 6.3.

6.2 You shall provide to us, in form and substance satisfactory to us, within nine (9) months of your written acceptance of the Grant Letter (the *Grant Availability Period*):

- (a) copy registration certificate for the new purchased Vehicle showing, amongst other things, the vehicle identification number, the Vehicle as registered in Ireland and you, the addressee of this Grant Letter, as registered owner;
- (b) copy VAT invoice showing the purchase of the Vehicle by you on a date following the date of your entering into the Grant Letter;

- (c) copy insurance certificate showing that the purchased Vehicle is insured in accordance with the Road Traffic Act 1961, section 56;
- (d) copy of your current motor tax certificate
- (e) your Tax Reference Number and Tax Clearance Access Number so that we can access your current tax clearance certificate or such other evidence in relation to establishing your tax compliance as we might specify;
- (f) a financial statement for the last two (2) operating years, or a link to your published accounts, if applicable;
- (g) provide such information or confirmations as may have been required from you in accordance with paragraph 4.3.

6.3 On the conditions in paragraph 6.2 being satisfied, we shall:

- (a) verify your status as a “SME”;
- (b) verify whether there has been any change in the circumstances or matters taken into account in our initial assessment when determining the Provisional Grant Amount;
- (c) subject to paragraph 6.5, determine, having regard to:
 - (i) paragraph 3.4;
 - (ii) paragraph 6.2(b);
 - (iii) the amount of the Eligible Costs for the Vehicle;
 - (iv) clause 1.14 of Appendix B; and
 - (v) the Provisional Grant Amount,the amount of the Grant to be paid to you; and
- (d) notify you of the amount of the Grant which we will make available under this Grant Letter.

6.4 If you do not satisfy the conditions set out in paragraph 6.2 on or before the end of the Grant Availability Period, any obligation or liability on our part in connection with the Grant (or any amount in respect of it) shall cease and the Grant Letter will terminate.

6.5 If we determine that your status as a “SME” has changed or that there has been a change in the circumstances taken into account in our initial assessment of the Provisional Grant Amount, then, at our discretion, we may:

- (a) cease to consider your application;
- (b) ask you to submit a new application;
- (c) seek further information or clarifications from you; and/or

- (d) consider your application by reference to the change in status or circumstances, and determine the amount of the Grant by reference to such changed status or circumstances.
- 6.6 Provided you comply with the requirements of this Grant Letter, within two (2) months of you supplying us with the information referred to in paragraph 6.7, we shall pay, or procure the payment to, your bank account of the Grant.
- 6.7 In the event of our notification to you in accordance with paragraph 6.3(d), within thirty (30) days of your receipt of such notification, you will then provide the Scheme Operator with your bank details to facilitate the payment of the Grant by electronic funds transfer to such account specified. The bank details required will be those specified in our notification to you in accordance with paragraph 6.3(d).
7. *Termination of Grant Offer*
- 7.1 We may, in our absolute discretion, at any time terminate this Grant Letter upon giving you seven (7) days' notice prior to making any notification to you under paragraph 6.3(d).
- 7.2 Upon such termination in accordance with paragraph 7.1, we shall not proceed to pay to you the Grant (or any amount in respect of it).
- 7.3 Without prejudice to paragraph 7.1, we may immediately terminate this Grant Letter, cease making any payments of the Grant, seek repayment of the Grant already paid to you, reduce the amount of the Grant to be paid and/or withdraw the Grant if any of the events outlined at clause 1.14 of Appendix B occur.
8. *Defined terms/terms and conditions*
- 8.1 Any term or expression used but not otherwise defined shall have the meaning given to it in Appendix A.
- 8.2 The terms and conditions set out at Appendix B apply to, and are part of, this Grant Letter.
- 8.3 In the event of there being any ambiguity or discrepancy between the terms of this Grant Letter (excluding the Appendices) and the Appendices, the provisions of this Grant Letter (excluding the Appendices) shall prevail.
9. *Governing Law*

This Grant Letter is governed by, and shall be construed in accordance with, the laws of the State and you and we submit to the exclusive jurisdiction of the Irish courts.

Please sign where indicated below to confirm your agreement to the foregoing.

Yours sincerely,

[•]
NATIONAL ROADS AUTHORITY
(otherwise known as
TRANSPORT INFRASTRUCTURE IRELAND)

Accepted and agreed:

Date: _____

APPENDIX A
DEFINITIONS AND INTERPRETATION

1. Definitions and Interpretation

1.1 Definitions

In this Grant Letter:

“Affiliate” means:

- (a) in respect of a Grantee that is an enterprise, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;
- (b) in respect of a Grantee that is an individual person:
 - (i) an enterprise in which the Grantee has a majority of the shareholders’ or members’ voting rights;
 - (ii) an enterprise in which the Grantee has the right to appoint or remove a majority of the members of the administrative, management or supervisory body;
 - (iii) an enterprise in which the Grantee has the right to exercise a dominant influence over pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association; or
 - (iv) an enterprise, which is a shareholder in or member of another enterprise, which the Grantee controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.

“AFHDV” means, at any time, an alternatively-fuelled HDV which is specified at such time as eligible for the Scheme in accordance with the Scheme Rules.

“Applicable Law” means any law applicable in the State without further enactment and includes, without limitation, common law, statute, statutory instrument or orders made thereunder, proclamation, by-law, EU Directive, decision, regulation, rule, order, rule of court, instruments or delegated or subordinate legislation;

“Application” means the completed Grant Application Form and all supplementary information furnished by or on behalf of the Grantee in connection with its application for a Grant in connection with the Vehicle;

“Approved Vehicle Type” has the meaning given to it in paragraph 1 (Approval) of this Grant Letter;

“Data Protection Legislation” means all applicable data protection law, including the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), the Data Protection Act 2018 and any regulations enacted thereunder and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011;

“Department” means the Minister for Transport;

“Eligible Costs” means, in the case of the Vehicle, the difference in purchase price (excluding any applicable Value Added Tax and/or discounts) between:

- (a) the Vehicle; and
- (b) a HDV with the same or similar specifications as the Vehicle but which operates using a diesel fuelled power train;

“EU” means the European Union;

“FOI Act” has the meaning given to it clause 1.6 of Appendix B;

“General Block Regulation” or “GBER” means the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty of the functioning of the EU;

“Government” means the government of Ireland;

“Grant” has the meaning given to it in paragraph 1 (Approval) of this Grant Letter as the grant being made available to the Grantee;

“Grant Application Form” means the application form and information submitted by you in connection with your application for a Grant in accordance with the Scheme Rules;

“Grant Availability Period” has the meaning given to it in paragraph 6.2 (Grant Payment) of this Grant Letter;

“Grant Letter” means this letter;

“Grantee” or “you” means the addressee of the Grant Letter;

“HDV” means a heavy-duty vehicle, including a van, truck, bus or coach, with an unladen design gross weight of more than 3.5 tonnes;

“Holding Company” means, in relation to a person, any other person in respect of which it is a Subsidiary;

“Investigation” has the meaning given to it in clause 1.4(b) of Appendix B;

“Liabilities” means all costs, claims, demands, damages, expenses, compensation, charges, settlements, penalties, losses, fines, awards, inconvenience and liabilities (including, legal and any other professional fees and costs, together with value added tax);

“new”, in the case of an AFHDV, means that the AFHDV:

- (a) as of the start of the Grant Availability Period:
 - (i) has not been registered pursuant to the Finance Act 1992 in the name of any person; and
 - (ii) has not been acquired by you, or been the subject of any agreement or contract for its acquisition by you; and
- (b) has not been used prior to its acquisition by you, except in respect of incidental transit to a motor trader authorised to sell the relevant model of AFHDV.

“Parties” means the Scheme Administrator together with the Scheme Operator and the Grantee;

“Personnel” means any employees and contractors of the Grantee from time to time;

“Provisional Grant Amount” has the meaning given to it in paragraph 1 (Approval) of this Grant Letter;

“Records” has the meaning given to it in clause 1.3(a) of Appendix B;

“Road Transport Undertaking” means a Grantee engaged in carrying passengers or goods or both by road for hire or reward;

“Scheme” is the AFHDV purchase grant scheme being made available by the Scheme Administrator, as contemplated by the Scheme Rules and this Grant Letter;

“Scheme Administrator” means, in accordance with arrangements contemplated by section 32, Roads Act 1993, TII;

“Scheme Operator” means the person, from time to time, responsible for the operation of the Scheme on behalf of the Scheme Administrator in accordance with clause 5 of Appendix B;

“Scheme Rules” means the rules setting out the parameters of the Scheme as published on the Scheme Administrator’s website;

“State” means the island of Ireland, excluding Northern Ireland;

“State Aid Rules” means articles 107 and 108 of Treaty of the Functioning of the EU (as may be amended) and all Applicable Laws, legislation, directives regulations, guidelines, procedures that are derived from articles 107 and 108, including Commission Regulation (EU) No 651/2014, and all rulings of the courts of both the EU and the State, and including also, for the avoidance of any doubt, any communication from the EU Commission in respect of articles 107 and 108;

“Subsidiary” shall have the meaning ascribed to it in section 7 of the Companies Act 2014;

“Tax” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

“TII” means Transport Infrastructure Ireland (being the operational name of the National Roads Authority);

“Validity Period” has the meaning given to it in paragraph 3.1 (Validity Period) of this Grant Letter;

“Vehicle” means the AFHDV:

- (a) being purchased by you;
- (b) which is of the Approved Vehicle Type; and
- (c) which is the subject of the Grant; and

“**Vehicle Registration Certificate**” means a certificate issued under section 131(5) of the Finance Act 1992.

1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Grant Letter to:
- (i) “**assets**” includes present and future properties, revenues and rights of every description;
 - (ii) a “**person**” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
 - (iii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (iv) “**Department**”, “**Grantee**”, any “**Party**”, “**Scheme Operator**”, “**Scheme Administrator**” or any other person shall be construed as to include its successors in title, permitted assigns and permitted transferees;
 - (v) references to “**us**”, “**our**” or “**we**” shall be construed as referring to the Department, the Scheme Administrator and the Scheme Operator, as the case may be;
 - (vi) “**VAT**” shall be construed as a reference to value added tax including any similar tax which may be imposed in place thereof from time to time;
 - (vii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (viii) a time of day is a reference to Greenwich Mean Time.
- (b) Unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing the masculine include the feminine and vice versa and words importing persons include corporations and vice versa.
- (c) The word “**including**” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word “include” and its derivatives shall be construed accordingly.
- (d) The headings in this Grant Letter are inserted for convenience of reference only and shall not be considered a part of, or affect the construction or interpretation of this Grant Letter or its Appendices.

1.3 Currency symbols and definitions

“**€**” denotes the lawful currency of the State.

APPENDIX B
SCHEME GENERAL TERMS AND CONDITIONS

1. Scheme General Terms and Conditions

1.1 AFHDV

- (a) The Grantee must purchase the Vehicle in the name of the Grantee.
- (b) The Grantee must purchase the Vehicle in the name of the Grantee only after accepting the Grant Letter.
- (c) The Grantee must register the Vehicle in the State in the name of the Grantee.
- (d) The Grantee must register the Vehicle in the State in the name of the Grantee only after accepting the Grant Letter.
- (e) The Grantee must retain ownership of the Vehicle for a minimum of three (3) years from the date of registration of the Vehicle. If at any time before the end of the three (3) year term, the Grantee wishes to dispose of the Vehicle, the Grantee must obtain the prior consent of the Scheme Administrator.

1.2 Specific conditions

It is a condition of the Grantee's and the Vehicle's eligibility for the Scheme that:

- (a) the Grantee and the Grantee's Affiliates have not received Grants under the Scheme:
 - (i) where the combined total of such Grants exceeds €500,000 (including the Grant the subject of this Grant Letter); or
 - (ii) in respect of more than twenty (20) AFHDVs (including the Vehicle);
- (b) the Grantee has an establishment or branch within Ireland as of the date the Grant is paid to the Grantee;
- (c) the Vehicle shall not have received, or been the subject of an application for, any other subsidy or grant under any other scheme; and
- (d) the Grantee and the Grantee's Affiliates are not subject to an outstanding recovery order for repayment of State aid previously granted by the State following a decision by the European Commission that such aid was illegal and incompatible with the EU internal market.

1.3 Accounts and Records

- (a) The Grantee shall keep proper books of account, records of all payment and receipts, all supporting documentation including invoices, statements and bank statements, and any other relevant documents relating to the expenditure of the Grant for a period specified, from time to time, to the Grantee by the Department, Scheme Operator or Scheme Administrator, such period being a minimum of at least ten (10) years following receipt of the Grant ("**Records**").
- (b) All Records shall be kept in such a manner as to provide precise financial details relating to this Grant Letter at any particular time.

- (c) The Grantee shall permit any person authorised by the Scheme Administrator such reasonable access to the Grantee's premises, staff, Personnel and Records for the purposes of ascertaining compliance with this Grant Letter.

1.4 *Monitoring and Reporting*

- (a) The Grantee shall provide such information and documents as the Department, the Scheme Administrator and/or the Scheme Operator may require in order to establish that the Grant has been used properly in accordance with this Grant Letter and all Applicable Law, and that the Grantee has fulfilled its obligations in connection with the Grant, the Scheme and this Grant Letter, including (without limitation) providing upon request from time to time:
 - (i) up to date Tax Clearance Certificate, or such other evidence as may reasonably be required;
 - (ii) evidence of insurances; and
 - (iii) Vehicle Registration Certificate for the Vehicle.
- (b) In the event of any investigation(s) by the European Commission that the Grantee's receipt or use of the Grant is contrary to State Aid Rules ("**Investigation**"), the Grantee shall comply fully and promptly with:
 - (i) any Investigation(s); and
 - (ii) without prejudice to clause 1.4(a) of this Appendix B and the Scheme Operator and the Scheme Administrator rights in clause 1.14 of this Appendix B, any finding, determination, ruling or order by the European Commission or any court or tribunal of competent jurisdiction that the Grantee's receipt or use of the Grant is contrary to State Aid Rules.
- (c) In the event of any Investigation, the Grantee shall keep the Scheme Operator, the Scheme Administrator and the Department fully and promptly informed and, to the fullest extent permitted by Applicable Law, liaise with the Scheme Operator and the Department concerning any response(s) to any such Investigations.

1.5 *Data Protection and Confidentiality*

- (a) Terms and expressions used in this clause shall have the same meaning as in the Data Protection Legislation.
- (b) The Grantee shall comply with Data Protection Legislation.
- (c) The Grantee hereby undertakes and agrees that before disclosing any personal data to the Scheme Operator, the Scheme Administrator or the Department, the Grantee shall obtain any necessary and relevant consents from any relevant data subjects or satisfy an alternative legal basis pursuant to the Data Protection Legislation for their personal data to be disclosed to and processed by the Scheme Operator, the Scheme Administrator or the Department.
- (d) The Grantee hereby acknowledges that information, including personal data within the meaning of Data Protection Legislation, which is provided to the Scheme Operator,

the Department and/or the Scheme Administrator in connection with the Scheme may be used and disclosed by the Scheme Operator, the Department and/or the Scheme Administrator to the extent reasonably necessary for the administration of the Scheme. The Grantee further acknowledges that relevant information, including but not limited to vehicle registration details, may be shared with other grant providers to ensure that vehicles are not benefitting from multiple grant supports.

1.6 *Freedom of Information*

The Grantee acknowledges that each of the Department and the Scheme Administrator are subject to the Freedom of Information Act 2014 (the “**FOI Act**”) and that records provided by the Grantee to any of the Scheme Operator, the Department and/or the Scheme Administrator, or generated by any of the foregoing in connection with the administration of the Scheme, may be subject to disclosure under the FOI Act.

1.7 *Intellectual Property*

The Grantee (and any other third party) has no, and will not acquire any, right, title or interest in or to the Scheme Operator’s, the Department’s or the Scheme Administrator’s:

- (a) logo;
- (b) trademarks;
- (c) proprietary information;
- (d) trade secrets; or
- (e) any other intellectual property of the Scheme Operator, the Department or the Scheme Administrator or their third party licensors.

1.8 *Acknowledgment of Funding and Announcements*

- (a) The Grantee undertakes that it shall in its annual report (if applicable) and on its website:
 - (i) acknowledge the Scheme’s funding of and support for the Vehicle; and
 - (ii) indicate the Vehicle’s status as an AFHDV.
- (b) Without prejudice to clause 1.8(a) of this Appendix B, and save with the consent of the Scheme Administrator, the Grantee shall not make any public announcement, publications, marketing or sales materials relating to the Grant or the Scheme.

1.9 *Warranties*

- (a) The Grantee warrants, represents and undertakes to the Scheme Administrator as of the date the Grant Letter is entered into and as of the date the Grant is made that:
 - (i) the Grantee has the necessary powers, competence and authority to enter into the Grant Letter and to carry out its obligations thereunder;
 - (ii) the Grantee shall comply with all Applicable Laws;

- (iii) the Grantee is not subject to any contractual or other restriction imposed by the Grantee's own or any other organisation's rules or regulations or otherwise which may prevent or materially impede the Grantee from meeting the Grantee's obligations under the Grant Letter;
 - (iv) the Grantee shall promptly discharge the Grantee's statutory obligations in respect of PAYE, PRSI, VAT, VRT, motor tax and all other relevant taxation and levies relating to this Grant Letter;
 - (v) since the date of the Grantee's last accounts there has been no material change in the Grantee's financial position or prospects, including its SME status;
 - (vi) the Grantee has not received nor is the Grantee in receipt of any other sources of State and/or EU funding for the Vehicle or any part thereof;
 - (vii) the Grantee shall comply with:
 - (A) all instructions from the Scheme Operator, and/or the Scheme Administrator and/or any of their authorised representatives in relation to the Scheme, and
 - (B) all terms and conditions of this Grant Letter;
 - (viii) the Grantee and/or its Affiliates shall use the Vehicle in connection with commercial activity;
 - (ix) the Grantee and its Affiliates shall not use the Vehicle to perpetrate or in connection with any criminal activity;
 - (x) the Grantee is responsible for the costs, acts and omissions of the Grantee's Personnel in relation to the Vehicle; and
 - (xi) the Grantee and its Affiliates, if any, can pay their debts as they fall due.
- (b) To the fullest extent permitted by Applicable Law, nothing in this Grant Letter shall be construed so as to imply or have the effect of the granting by the Scheme Operator, the Scheme Administrator or the Department of any warranty, condition, assurance or other term of any kind, express or implied, to the Grantee or to any third party whomsoever for any matters arising out of the performance of this Grant Letter.
- (c) Without prejudice to clause 1.9(b), nothing in this Grant Letter shall be construed so as to imply or have the effect of the granting by the Scheme Operator or the Scheme Administrator or the Department of any warranty, condition, assurance or other term of any kind, express or implied, to the Grantee or to any third party whomsoever regarding the payment of the Grant under paragraph 6 (*Grant Payment*) of this Grant Letter, which remains solely a matter at the Scheme Administrator's discretion.

1.10 Indemnity

- (a) The Grantee shall fully and effectively indemnify and keep indemnified the Scheme Operator, the Scheme Administrator, the Department or other relevant funding body and its respective officers, board members, employees and agents from and against any and all Liabilities arising out of or in connection with:

- (i) any breach of, or default in complying with, this Grant Letter;
 - (ii) the sickness, injury or death of any person or loss or damage to property arising out of or in connection with the Grantee's performance or non-performance of this Grant Letter or its obligations to third parties; or
 - (iii) compliance with all Applicable Laws, including, State Aid Rules.
- (b) These provisions of this clause 1.10 (Indemnity) survive the termination or expiration of this Grant Letter.

1.11 *Liability*

- (a) Nothing in this Grant Letter shall operate to exclude or limit a Party's liability for death or personal injury caused by negligence, fraud or any other liability which cannot be excluded or limited by law.
- (b) To the fullest extent permitted by Applicable Law, the Scheme Operator, the Scheme Administrator and the Department are not responsible for, any and all liability, loss or damage suffered or incurred by the Grantee or any other person arising out of:
- (i) the performance or non-performance of this Grant Letter;
 - (ii) the expiry or termination of this Grant Letter;
 - (iii) the operation of the Vehicle; or
 - (iv) the use of the Grant or the withdrawal of the Grant,
- whether arising by reference to tort (including negligence), breach of contract or any other legal theory (including State Aid Rules), for any consequence arising therefrom, even if foreseeable.
- (c) Without prejudice to clause 1.11(b), to the fullest extent permitted by Applicable Law, the Scheme Operator, the Scheme Administrator and the Department are not responsible for, any and all liability, loss or damage suffered or incurred by the Grantee or any other person arising out of:
- (i) the performance or non-performance of this Grant Letter;
 - (ii) the expiry or termination of this Grant Letter;
 - (iii) the operation of the Vehicle; or
 - (iv) the use of the Grant or the withdrawal of the Grant,
- whether arising by reference to tort (including negligence), breach of contract or any other legal theory (including State Aid Rules), for any of the following, even if foreseeable:
- (A) loss of income or revenue;
 - (B) loss of business;

- (C) loss of profits or contracts;
 - (D) loss of goodwill; or
 - (E) indirect or consequential loss or damage.
- (d) Subject to clause 1.11(a), the Scheme Operator's, the Scheme Administrator's and the Department's total aggregate liability under this Grant Letter is limited to the value of the Grant.

1.12 Insurance

The Grantee shall ensure that such insurances in respect of the Vehicle and its operation as may be required by law are taken out and maintained.

1.13 Termination

Upon termination or expiry of this Grant Letter for any reason all rights and obligations of the Parties under this Grant Letter shall automatically terminate except for any rights and/or obligations which may have accrued prior to termination or expiry and any rights and/or obligations which expressly or by implication are intended to commence or continue in effect on or after termination or expiry.

1.14 Cessation, Repayment and Reduction of the Grant

- (a) The Scheme Operator and/or the Scheme Administrator may without liability immediately terminate this Grant Letter, cease making any payment of the Grant, seek repayment of the Grant already paid to the Grantee and/or reduce the amount of the Grant to be paid if any one or more the following events occur or have occurred:
- (i) any information supplied by the Grantee in the Application or in connection with this Grant Letter is untrue or inaccurate, or becomes untrue or inaccurate;
 - (ii) in the reasonable opinion of the Scheme Operator and/or the Scheme Administrator it is necessary or prudent to do so in order to comply with any Applicable Law or the requirements of any guidelines, rules or regulations prescribed by Government or any other authority having jurisdiction over the Scheme Operator and/or the Scheme Administrator or to settle any complaint or challenge received by the Scheme Operator and/or the Scheme Administrator in such respect;
 - (iii) the Grantee:
 - (A) commits any breach of any of its obligations under the terms and conditions of this Grant Letter; or
 - (B) without prejudice to (A) above, is in breach of any representation, warranty or undertaking set out in this Grant Letter,

and, in any case, which is not capable of remedy, or which is capable of remedy but which is not remedied within thirty (30) days of written notice from the Scheme Operator and/or the Scheme Administrator to do so;
 - (iv) the Grantee:

- (A) becomes insolvent, ceases to carry on its business, has a receiver, examiner, liquidator, administrative receiver, administrator, trustee in bankruptcy or other similar officer appointed over the whole or part of its assets, or an order is made or a resolution is passed for the winding up of the Grantee or if the Grantee made an arrangement or assignment for the benefit of its creditors or is any analogous event to any of the foregoing occurs in respect of the Grantee; or
- (B) has, pursuant to the Personal Insolvency Act, initiated a Debt Relief Notice process or appointed a personal insolvency practitioner for the purposes of proposing a Debt Settlement Arrangement or a Personal Insolvency Arrangement to all or some of the Grantee's creditors or the Grantee is the subject of a Debt Relief Notice, a Debt Settlement Arrangement or a Personal Insolvency Arrangement under the Personal Insolvency Act. "Debt Relief Notice", "personal insolvency practitioner", "Debt Settlement Arrangement" and "Personal Insolvency Arrangement" have the meanings given to those terms in the Personal Insolvency Act; or
- (C) is unable to pay the Grantee's debts at the time of entering into the Grant Letter or becomes unable to pay their debts as a consequence of purchasing the Vehicle; or
- (v) the Grantee does not retain the Vehicle for three (3) years in accordance with clause 1.1(e) of this Appendix B.
- (b) The Scheme Operator and/or the Scheme Administrator may without liability immediately terminate this Grant Letter and cease making any payment of the Grant where the Scheme has been terminated in accordance with the Scheme Rules.
- (c) If the Scheme Operator and/or the Scheme Administrator seeks repayment of the Grant as a result of the occurrence of any of the events referred to above at clause 1.14(a), the Grantee covenants and undertakes to make such repayments in full and without deduction, set-off or withholding of any kind within one (1) month of receipt of a written demand by the Scheme Operator and/or the Scheme Administrator.
- (d) Any cessation of the Grant payments and/or reduction in the amount of the Grant shall be notified in writing to the Grantee by the Scheme Operator and/or the Scheme Administrator.

2. General Provisions

- 2.1 The Grantee shall comply with all Applicable Laws and legal requirements in connection with the performance of the Grantee's obligations under this Grant Letter.
- 2.2 At all times, the Grantee shall act fairly, responsibly and openly in the Grantee's dealings with the Scheme Operator and the Scheme Administrator.
- 2.3 This letter may be entered into in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

- 2.4 Any liability of any Party under the provisions of this Grant Letter may in whole or in part be released, varied, impounded or compromised by such Party under any liability without it in any way prejudicing or affecting its rights against any other Party under the same or a like liability whether joint and several or otherwise. No failure by any Party to enforce any provision or term of this Grant Letter shall be construed as a waiver of such provisions or of the right thereafter of the Party to enforce the same.
- 2.5 If any of the provisions (or part thereof) of this Grant Letter are found by a court of competent jurisdiction or any other competent authority to be void, invalid or unenforceable, such provision or provisions shall be deemed to be deleted from this Grant Letter and the remaining provisions (or part thereof) shall not be affected and shall continue to apply. The Parties shall then negotiate in good faith in order to agree terms of a mutually satisfactory provision to be substituted for the provision found to be void, invalid or unenforceable.
- 2.6 This letter shall not be construed as establishing or implying any partnership or joint venture between the Parties and nothing in this Grant Letter shall be deemed to constitute any of the Parties as the agent of any other Party or authorise any Party to:
- (a) pledge the credit of or otherwise bind or oblige the other Party;
 - (b) make any representation or warranty on behalf of another Party; or,
 - (c) commit another Party in any way whatsoever, without in each case obtaining that Party's prior written consent.
- 2.7 Where the Grantee is neither a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Grant Letter on behalf of the Grantee shall be jointly and severally liable for the Grantee's obligations and Liabilities arising under this Grant Letter.
- 3. Changes to the parties**
- The Grantee shall not assign, delegate, sub-contract or otherwise transfer any of its rights or obligations under this Grant Letter without the prior consent in writing of the Scheme Administrator.
- 4. Set Off**
- 4.1 All payments to be made by the Grantee in connection with the Grant Letter shall be calculated and be made without (and free and clear of any deductions) for set off or counterclaim.
- 4.2 The Scheme Administrator may set off any amount due from the Grantee under the Grant Letter against any amount owed by the Scheme Administrator to the Grantee, whether under this Grant Letter or any other agreement between the Scheme Administrator and the Grantee.
- 5. Scheme Operator**
- 5.1 The Scheme Administrator has been requested in accordance with the Roads Act 1993 to provide the Scheme, including all administration and operating services in connection with the Scheme to the Department and the Scheme Administrator, in turn, has engaged one of its contractors to provide administrative services in connection with the Scheme.

5.2 References in this Grant Letter to the Scheme Operator are references to the contractor engaged by the Scheme Administrator from time to time for this purpose in its capacity of administering the Scheme.

6. Notices

6.1 Where the Scheme Administrator or the Grantee is required to notify the other or otherwise wishes to communicate with the other, such notice or communication may be served:

(i) in the case of the Grantee to the Scheme Administrator, by e-mail or by facsimile transmission to such e-mail address or facsimile number as may be notified by the Scheme Administrator from time to time; or

(b) in the case of the Scheme Administrator to the Grantee:

(i) by e-mail to such address as may be notified in writing by the Grantee to the Scheme Administrator from time to time; or

(ii) by such other means as the Scheme Administrator may consider appropriate.

6.2 Any notice or communication so served shall be deemed duly served:

(a) in the case of e-mail, upon delivery; or

(b) in the case of facsimile transmission, upon confirmation of receipt.

7. Dispute Resolution

Should there be any dispute arising out of this Grant Letter, including the interpretation or fulfilment of any of its provisions:

(a) all such disputes shall be promptly discussed by the Scheme Operator and the Grantee in an effort to arrive at a mutually agreeable solution;

(b) failing the resolution of the matter within a twenty-one (21) day the dispute may be referred to the Scheme Administrator so that it and the Grantee can discuss the matter in an effort to arrive at a mutually agreeable solution;

(c) if the matter is not resolved within a further fourteen (14) day period, the matter may be referred to mediation by the mutual agreement of the Parties based on terms and conditions to be agreed; and

(d) if the matter is not resolved by mediation (including failure to agree on the identity of the mediator and/or failure to agree the terms and conditions of the mediation) within a further twenty-eight (28) day period either Party may resort to court process.