

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

and

THE

**AGREEMENT FOR PREQUALIFIED SUPPLIER FOR THE
PILOT SCHEME FOR ELECTRIC PUBLIC LIGHT BUSES**

AGREEMENT

DATED this _____ day of _____

BETWEEN:

- (1) THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION as represented by the Director of Environmental Protection of 15th Floor & 16th Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong (“**the Government**”); and
- (2) _____ whose registered office situated at _____ (“**the Prequalified Supplier**” which expression shall include its successors in title and assigns).

Recitals

- (A) **The Government has agreed to allow the Prequalified Supplier to participate in the Pilot Scheme for the Electric Public Light Buses (the “Scheme”) by supplying electric public light buses (e-PLB) to the Recipient in accordance with the terms and conditions of this Agreement.**
- (B) **The Prequalified Supplier has agreed to participate in the Scheme and other associated requirements in accordance with the terms and conditions of this Agreement.**

Hereinafter set forth, the parties agree as follows:

1. Definition and Interpretation

1.1 In this Agreement,

“Business Organization” means a sole proprietorship or a partnership or a joint venture (whether incorporated or unincorporated);

“Company Director” means any person occupying the position of director by whatever name called and includes a de facto or shadow director;

“Force Majeure” means: (a) any supervening outbreak of war affecting Hong Kong and/or any other parts of the PRC, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government and/or the government of the PRC, civil war, riot, civil disturbances, fire if not caused or contributed to by the Prequalified Supplier, or any employee or agent or ex-employee or ex-agent thereof, civil commotion and acts of God; or
(b) any supervening catastrophic event which is similar to the foregoing if not caused or contributed to by the Prequalified Supplier, or any employee or agent or ex-employee or ex-agent thereof; or
(c) any supervening epidemic outbreak in Hong Kong and/or any other part of the PRC;
and which, in any case of (a), (b) and (c) above, prevents the performance of the duties and obligations of any party hereunder;

“e-PLB(s)” means electric public light bus(es);

“Eligible e-PLB” means an e-PLB for which type approval has been granted by the Transport Department and confirmation by the Independent Assessor has been obtained that it meets all the requirements set out in Schedule 1 to this Agreement and the “*The Technical Guidelines (TG) for Electric Public Light Buses (Fast Charging Type) and the Associated Charging Facilities*” published by the Government;

“HKD” means Hong Kong dollars, the lawful currency of Hong Kong;

“Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights whether now known or created in future

(of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights;

“Independent Assessor” means a third-party assessor hired by the Government to check and test the compliance of the e-PLBs supplied by the Prequalified Supplier against the Specification specified in Schedule 1 and assess its performance.

“Prequalified Supplier” means the supplier engaged by the Government to supply Eligible e-PLB for the Scheme in accordance with the terms and conditions of this Agreement;

“Fixed Price” means the selling price set by the Prequalified Supplier for selling an Eligible e-PLB to a Recipient under the Scheme;

“ready for use” in respect of a Eligible e-PLB which is purchased with the provision of the Subsidy in accordance with this Agreement, means the use of the Eligible e-PLB will not infringe any laws of the Hong Kong Special Administrative Region;

“Recipient” means a green public light bus (GPLB) operator participating in the Scheme and receiving Subsidy from the Government for the purchase of e-PLB from a Prequalified Supplier;

“Subsidy” means the reimbursement provided by the Government to a Recipient for purchasing Eligible e-PLB;

“Warranty Period” means the period during which an Eligible e-PLB is under warranty in accordance with a contract which is executed by the Recipient and the Prequalified Supplier as approved by the Government in accordance with this Agreement;

“working day” means a day other than a general holiday (as defined and referred to in the General Holidays Ordinance (Cap. 149)) or a day on which Typhoon Signal No. 8 or above or the black rain storm warning signal is not hoisted in Hong Kong at any time between the

hours of 9 a.m. and 5 p.m.

1.2 In this Agreement:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include every gender;
- (c) words importing persons include natural persons, firms, companies, corporations and Business Organization;
- (d) references to terms and conditions of this Agreement are references to the relevant terms and conditions set out in relevant clauses of this Agreement and relevant schedules to this Agreement;
- (e) references to Clauses and Schedules are references to the relevant clauses in or Schedules to this Agreement;
- (f) the index and headings shall not affect the interpretation of this Agreement;
- (g) references to any obligation on any person to do any act or thing include an obligation to procure that act or thing to be done by another person;
- (h) references to “losses” or “liabilities” include all liabilities, damages, losses, compensation, injuries, costs, disbursements, expenses, claims and proceedings;
- (i) the expressions “including” or “includes” means including or includes without limitation;
- (j) references to any Government authority or official shall include a reference to any other Government authority or official from time to time substituting the first mentioned

Government authority or official or performing (in whole or in part) such of the functions performed by the first mentioned Government authority or official on the date of this Agreement as are relevant for the purpose of this Agreement;

- (k) nothing in this Agreement is to be construed as imposing any obligation on the Government not to refuse any consent, approval, permission or authorization unreasonably or to give any consent, approval, permission, or authorization without delay, save where expressly provided in this Agreement. The Government may impose any conditions it deems appropriate to any consent, approval, permission or authorization it gives (if any);
- (l) for the purpose of this Agreement, any act, default, negligence or omission of any contractor, servant, agent, licensee, or employee of the Prequalified Supplier shall be deemed to be the act, default, negligence or omission of the Recipient;
- (m) where the Prequalified Supplier comprises more than one person all covenants undertakings and agreements made by the Prequalified Supplier herein shall be deemed to be made jointly and severally by all the persons the Prequalified Supplier comprises.

2. Responsibilities of the Prequalified Supplier

- 2.1 The Prequalified Supplier shall bear all costs and expenses arising from the development and supply of the e-PLBs including but not limited to the design, manufacture, vehicle testing, type approval, repair and maintenance costs in accordance with the terms and conditions of this Agreement.
- 2.2 The Prequalified Supplier shall sell Eligible e-PLBs at the Fixed

Price for not less than twelve (12) months as set out in Schedule 2 to this Agreement to the Recipients.

- 2.3 The Prequalified Supplier shall be fully responsible for obtaining type approval from the Transport Department of the e-PLBs sold under Clause 2.2. The Prequalified Supplier shall take all reasonable and necessary actions to ensure that type approval will be obtained on or before 30 September 2022.
- 2.4 The Government will appoint an Independent Assessor to check and test the compliance of the requirements of Eligible e-PLBs sold under this Agreement. The Prequalified Supplier shall take all reasonable and necessary actions to assist the Independent Assessor to conduct inspections and tests required for assessment of compliance.
- 2.5 The Prequalified Supplier shall not sell e-PLBs under the Scheme unless and until they are Eligible e-PLBs and are ready for use.
- 2.6 The maximum number of Eligible e-PLBs allowed for sale by the Prequalified Supplier under the Scheme shall not exceed the Cap as set out in Schedule 3 to this Agreement.
- 2.7 If the e-PLB fails to perform up to the requirements of Eligible e-PLBs, the Government may request the Prequalified Supplier to take immediate action to remedy the failure and/or breach (if such failure/breach is rectifiable) within the timeframe as stated in a notice. If the Prequalified Supplier fails to remedy the failure and/or breach within the timeframe specified in the notice, the Government may exercise its right to terminate this Agreement immediately.
- 2.8 The Prequalified Supplier shall set up after-sales services centres as set out in Schedule 4 to this Agreement to provide scheduled maintenance and ad hoc repair services for the Eligible e-PLBs and guarantee to supply parts of the Eligible e-PLBs during their serviceable life of not less than 8 years.

- 2.9 The Prequalified Supplier shall provide maintenance and repair services in respect of all normal wear and tear for the Eligible e-PLBs sold under the Scheme free of charge during the Warranty Period of not less than 5 years.
- 2.10 The Prequalified Supplier shall provide warranty to the traction batteries as set out in Schedule 5 to this Agreement.
- 2.11 The Prequalified Supplier shall provide warranty to the other parts of the Eligible e-PLB apart from traction batteries as set out in Schedule 6 to this Agreement.
- 2.12 In the event of battery replacement, the Prequalified Supplier shall collect, handle, store and/or dispose of the retired batteries of the Eligible e-PLBs in accordance with the Waste Disposal Ordinance (Cap. 354).
- 2.13 The Prequalified Supplier shall not provide e-PLBs of which the design, development, manufacture, use, operation, custody or possession infringes the Intellectual Property Rights or any other rights of any person.
- 2.14 The Prequalified Supplier shall ensure that its directors, staff and agents will not offer, solicit or accept any advantage (as defined in the Prevention of Bribery Ordinance (Cap. 201)) in connection with the sale or purchase of an Eligible e-PLB.
- 2.15 The Prequalified Supplier shall notify the Government immediately in writing when it itself or any of its directors, employees, agents or contractors has any financial, professional, commercial, personal or other interests in the sale or purchase of an Eligible e-PLB and any service(s) related thereto under consideration.
- 2.16 The sale and purchase of the Eligible e-PLB is a direct deal between the Prequalified Supplier and the Recipient joining the Pilot Scheme. The Recipient will obtain Subsidy for purchase of the

e-PLB directly from the Government. The Prequalified Supplier will not receive any subsidy from the Government under the Scheme.

3. Intellectual Property Rights

3.1 The Prequalified Supplier warrants to the Government that:

- (a) the design, development, manufacture, use, operation, custody or possession of the Eligible e-PLBs;
- (b) the performance of this Agreement;
- (c) the supply of the Eligible e-PLBs; or
- (d) the provision of after-sales services, maintenance and repair services as stipulated in this Agreement

does not and will not infringe any Intellectual Property Rights or any other rights of any persons.

3.2 The Prequalified Supplier shall indemnify and keep the Government fully and effectively indemnified against all actions, claims, demands, costs, losses, liabilities, damages, and expenses caused or sustained in respect of any infringement or alleged claim or allegation of infringement of Intellectual Property Rights or any other rights arising out of or in connection with:

- (a) the design, development, manufacture, use, operation, custody or possession of the Eligible e-PLBs;
- (b) the performance of this Agreement;
- (c) the supply of the Eligible e-PLBs;
- (d) the breach of the warranty in relation to Intellectual Property Rights; and
- (e) the provision of after-sales services, maintenance and repair services as stipulated in this Agreement.

3.3 The provisions of Clauses 3.1 and 3.2 above shall survive the completion, expiry or termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion, expiry or termination.

4. Termination of this Agreement

4.1 Notwithstanding anything provided otherwise in this Agreement, the Government shall be entitled to terminate this Agreement if:

- (a) the Prequalified Supplier is in breach of any terms and conditions of this Agreement; or
- (b) the Prequalified Supplier is prosecuted for breaching or non-compliance with the Competition Ordinance (Chapter 619 of the Laws of Hong Kong) in respect of the supply of Eligible e-PLBs in this Agreement; or
- (c) the Prequalified Supplier becomes bankrupt or goes into liquidation or a receiving order is made against it; or
- (d) a receiver is appointed in respect of any of the Prequalified Supplier's assets; or
- (e) possession of any of the Prequalified Supplier's assets is taken by a chargee or mortgagee; or
- (f) the Prequalified Supplier enters into a scheme of arrangement with its creditor;
- (g) the Prequalified Supplier is prosecuted in respect of non-payment of any money due to the Government or any person;
- (h) any other similar event, action or proceeding occurs or is taken in respect of the Prequalified Supplier in any other jurisdictions; or
- (i) there is a claim or allegation of infringement of Intellectual Property Rights or any other rights whatsoever of any persons by the Prequalified Supplier, its officers, employees, agents

or sub-contractors in respect of the performance of this Agreement or in respect of the e-PLBs supplied by it.

- 4.2 In any case set out in Clause 4.1 of this Agreement, this Agreement shall absolutely be terminated but without prejudice to the rights and remedies of the Government against the Prequalified Supplier in respect of any antecedent claim or breach of any terms and conditions of this Agreement. If this Agreement is terminated by the Government (other than pursuant to Clause 5.2) and the Government makes other arrangements for the supply of e-PLBs, the Government may recover from the Prequalified Supplier any additional expenditure incurred by the Government in connection with a default by the Prequalified Supplier referred to in Clause 4.1.
- 4.3 The Government reserves the right to terminate this Agreement without cause at any time, and shall not be liable for any costs, expenses or losses incurred or sustained by the Prequalified Supplier in undertaking preparatory work and any other works in response to this invitation

5. Force Majeure

- 5.1 The Prescribed Supplier prevented by an event or events of Force Majeure is entitled to be excused from fulfilling its obligations under this Agreement for so long as such event or events shall continue. The Prescribed Supplier shall as soon as possible give notice in writing to the Government of the occurrence of the event or events of Force Majeure and the Government shall be entitled to suspend the Agreement until the event of Force Majeure discontinues.
- 5.2 Should fulfillment by the Prequalified Supplier of its obligations under this Agreement be prevented by Force Majeure for twenty-eight (28) days (either consecutive or in the aggregate) or longer, the Government shall be entitled, at the expiration of such period, to terminate this Agreement by not less than fourteen (14) days' notice in writing to the Prequalified Supplier but without

prejudice to the rights and remedies of the Government against the Prequalified Supplier in respect of any antecedent claim or breach of any terms and conditions of this Agreement.

- 5.3 Subject to Clause 5.2 of this Agreement, in the event that fulfillment of obligations under this Agreement is delayed by Force Majeure, the type approval deadline as stipulated in the clause 4.3 to this Agreement shall be extended by the number of days of delay actually caused by such event of Force Majeure unless a different time extension is agreed between the parties. In all other respects the obligations of the parties under this Agreement shall be unaffected.

6. Warning against Bribery

To prohibit the Prequalified Supplier from offering, soliciting or accepting bribes or acting in collusion in relation to any bidding exercise, the following clauses shall be strictly confined:

- (i) The Prequalified Supplier shall not, and shall forbid his employees, agents and sub-contractors to, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) in connection with any tendering and execution of this Agreement.
- (ii) Failure to so forbid or any act of offering, soliciting or accepting advantage referred to in sub-clause (i) above committed by the Prequalified Supplier or by an employee, agent or sub-contractor of the Prequalified Supplier shall, without affecting the Prequalified Supplier's liability for such failure and act, result in its supplying of goods being invalidated.
- (iii) The offer of an advantage to any Government officer with a view to influencing the award of the qualification of the Prequalified Supplier is an offence under the Prevention of Bribery Ordinance (Cap. 201). Any such offence committed by a Prequalified Supplier or any of its officers

(including directors), employees or agents will render its qualification null and void.

- (iv) The Prequalified Supplier shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the Agreement, that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201) is not permitted. The Prequalified Supplier shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may affect the GLB operators on selection of its products.

7. Disclosure of Information

- 7.1 The Prequalified Supplier is well aware and agrees that the information contained in Schedule 1 to Schedule 6 will be disclosed to all the GPLB participating in the Scheme.

8. Others

- 8.1 The Government shall bear no responsibility, financial or otherwise, for expenditure or other liabilities arising from the purchase/ sale/ use of any Eligible e-PLB in accordance with this Agreement.
- 8.2 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.
- 8.3 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.

- 8.4 The rights and obligations of the parties do not merge on completion of any transaction contemplated by this Agreement and all representations and warranties survive the expiry, completion or termination (for whatever reasons) of this Agreement and shall continue in full force and effect notwithstanding such expiry, completion or termination (for whatever reasons) of this Agreement.
- 8.5 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.
- 8.6 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.
- 8.7 The Prequalified Supplier may, subject to the approval of the Government, engage the services of independent contractors to assist it with its duties hereunder provided that the Prequalified Supplier:
- (a) shall not be relieved from any of its obligations hereunder by engaging any such independent contractor and shall remain fully liable to the Government for the performance of such obligations;
 - (b) shall remain liable for any act or omission of any such independent contractor as if such act or omission were its own; and
 - (c) shall secure binding obligations from any such independent contractor so as to ensure that the Prequalified Supplier complies with its obligations under this Agreement.

- 8.8 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.
- 8.9 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 (Chapter 623 of the Laws of Hong Kong).

Schedule 1

Specifications of the e-PLB¹

¹ *The information provided by the selected supplier in accordance with paragraph 5.1(a) of the Open Invitation Notice will become Schedule 1.*

Schedule 2

Fixed Price

HKDxxxxxx²

² *This is the Fixed Price provided by the selected supplier in accordance with paragraph 5.1(b) of the Open Invitation Notice.*

Schedule 3

Maximum number of e-PLBs allowed for sale under the Scheme

xx³

³ *This number is determined in accordance with paragraph 4.8 of the Open Invitation Notice.*

Schedule 4

After-sales services centres⁴

⁴ *The information provided by the selected supplier in accordance with paragraph 5.1(c) of the Open Invitation Notice will become Schedule 4*

Schedule 5

Traction battery warranty⁵

1. Traction battery
 - (a) Battery type
 - (b) Energy Density (system level)
 - (c) Battery Capacity
 - (d) Operating Voltage
 - (e) Maximum Charging Power
 - (f) Warrant Service Life

2. If the capacity of the traction battery drops to less than 80% of the original capacity during the warrant service life, the Prequalified Supplier shall replace the traction battery with a new one free of charge.

⁵ *This is the specification of the traction battery provided by the selected supplier in accordance with paragraph 5.1(a) of the Open Invitation Notice*

Schedule 6

Warranty to other parts of e-PLB other than traction battery⁶

⁶ *This is the specification of the other part of the e-PLB apart from traction battery provided by the selected supplier in accordance with paragraph 5.1(a) of the Open Invitation Notice*

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

SIGNED by)
_____)
for and on behalf of the Government)
in the presence of :-)
_____)

SIGNED by)
_____)
Hong Kong identity card number:)
_____)
for and on behalf of the Prequalified)
Supplier)
which is a limited company registered)
under the Companies Ordinance with)
the registered company number:)
_____)
in the presence of :-)
_____)
Hong Kong identity card number:)
_____)
[occupation])
[address])