

# **Standard Text**

## **First IMCSA for new aided schools**

RED - applicable to government land

GREEN – applicable to private land

**THIS IMC SERVICE AGREEMENT** is made on the [Day] Day of [Month] [Year].

**PARTIES :**

- (1) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** as represented by the Permanent Secretary for Education of 11/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong (hereinafter referred to as the “Government”); and
- (2) **[NAME OF THE INCORPORATED MANAGEMENT COMMITTEE]**, a body corporate established under the Education Ordinance (Cap. 279 of the Laws of Hong Kong) whose registered office is situated at [Address] (hereinafter referred to as the “IMC”).

**RECITALS :**

- A. By an agreement dated [Signing Date] (“SSB Service Agreement”) made between the Government and [Name of SSB] (“the SSB”), the Government and the SSB agreed to (among other things) perform certain duties and obligations in relation to the School on the terms and conditions therein contained.
- B. The IMC has submitted for the Government’s approval a Proposed School Development Plan setting out the plan on how the School shall be operated and what performance targets that the IMC shall achieve.
- C. The Government has approved the IMC’s Proposed School Development Plan.
- D. The Government and the IMC agree to incorporate the School Development Plan into this Agreement.
- E. **The Government shall enter into the Tenancy Agreement with the IMC and grant a tenancy of the School Premises to the IMC.**

- F. In pursuance of the above, the parties agree to the terms and conditions set out herein.

## **OPERATIVE PART :**

### **1. Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings :-

Agreement	means this IMC Service Agreement including the Schedules attached hereto.
Code of Aid	means the code applicable to the School that prescribes the rules and conditions in accordance with which the Government promotes education by means of grants to schools, as may be issued and amended by the Permanent Secretary from time to time.
Commencement Date	means [Date], being the date on which the School pursuant to Clause 5.6 commenced running classes.
Conditions	means the conditions for allocation to the SSB of an aided school for operation by the IMC, the details of which are set out in Schedule I attached hereto, as the same may be amended or supplemented from time to time by mutual agreement in writing between the Government and the SSB.
Constitution	means the constitution of the IMC which is approved by the Permanent Secretary.
Education Bureau	means the Education Bureau of the Government.

Hong Kong	means the Hong Kong Special Administrative Region of the People's Republic of China.
Land Lease	means [identification number of the land lease].
month	means a calendar month.
Ordinance	means the Education Ordinance (Cap. 279 of the Laws of Hong Kong).
Performance Targets	means any or all performance targets contained in the School Development Plan to be achieved by the IMC pursuant to Clause 5.8.3, as amended or supplemented from time to time, by the parties to this Agreement.
Permanent Secretary	means the Permanent Secretary for Education of the Education Bureau of the Government and includes any public officer to whom the Permanent Secretary for Education has delegated his authority for the purposes of this Agreement.
person	includes any individual, corporation, firm and unincorporated body.
Principal	means the principal of the School.
Proposed School Development Plan	means the proposed school development plan submitted by the IMC to the Government for approval within six months after the commencement of the school operation.
Proposed School Plan	means the proposed school plan submitted by the SSB to the Government in connection with the SSB's application for allocation of a school premises (including its amendments and

supplements) as accepted by the Government, a copy of which is at Schedule II attached hereto.

**Regulations** means the Education Regulations (Cap. 279A of the Laws of Hong Kong).

**School** means the [primary/secondary] school, which is registered with the Education Bureau pursuant to the Ordinance and named [School Name] operated by the IMC.

**School Development Plan** means the Proposed School Development Plan (including its amendments and supplements, if any) as approved by the Government, a copy of which is at Schedule III attached hereto, as may be amended or supplemented by the parties to this Agreement by mutual agreement in writing from time to time.

**School Premises** means the school premises at [address], which is delineated in the plan at Schedule IV attached hereto for identification purpose only.

**Tenancy Agreement** means the tenancy agreement in respect of the School Premises to be entered into between the Government and the IMC pursuant to Clause 4.1 hereof.

**Trainee Teachers** means students undertaking teacher training courses in local tertiary institutions.

**year** means a calendar year.

1.2 Any reference in this Agreement to any ordinance shall include a reference to any subsidiary legislation made under such ordinance and any reference to any ordinance or any subsidiary legislation shall include a reference to any statutory re-enactment thereof or any modification thereof for the time being

in force.

- 1.3 Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.4 In the event of any conflict between the main body of this Agreement and the Schedules attached to this Agreement, the main body of this Agreement shall prevail. In the event of any conflict between the provisions of this Agreement and the provisions of the Ordinance, the provisions of the Ordinance shall prevail.

## **2. Term**

- 2.1 This Agreement shall be deemed to have come into effect on the Commencement Date and end on 31 August of the year in which the 5th anniversary of the Commencement Date takes place (both days inclusive), subject to earlier termination (if any) in accordance with the provisions of this Agreement.
- 2.2 This Agreement shall automatically terminate upon expiry of the term of this Agreement. The IMC may request renewal of this Agreement by giving a written notice of such intention to the Government not less than 15 months prior to the expiry of the term of this Agreement. Subject to the Government's prevailing policy and the Government being satisfied with the performance of the School, this Agreement may be renewed for a five-year term or such other term at the sole discretion of the Government.

## **3. Consideration**

In consideration of the Government agreeing to **grant a tenancy of the School Premises at a nominal rent to the IMC and** providing financial subsidy, assistance and support to the IMC in accordance with the Government's prevailing education policy and subject to the terms and conditions of this Agreement, the IMC hereby agrees and undertakes to operate and manage the School as a non-profit making **[primary/secondary]** school in accordance with this Agreement, the Ordinance, the Regulations and such other guidelines and directions issued from time to time by the Government.

#### **4. Grant of Tenancy, Financial Subsidy, Other Assistance and Support**

##### **4.1 Grant of tenancy**

4.1.1 Simultaneous with the execution of this Agreement or as soon as reasonably practicable upon the execution of this Agreement, the Government shall enter into a Tenancy Agreement with the IMC and grant a tenancy of the School Premises (including standard built-in fixtures) to the IMC.

4.1.2 The IMC shall be responsible for any deposits required for electricity, water, gas or other utilities with the School's own funds.

##### **4.2 Financial subsidy**

4.2.1 The Government shall provide recurrent and/or non-recurrent financial subsidy to the IMC subject to the terms and conditions of this Agreement and the Government's prevailing education policy.

4.2.2 The IMC shall apply the subsidy for the designated purpose in accordance with the Code of Aid and circulars issued by the Education Bureau from time to time.

##### **4.3 Other assistance and support**

The Government shall provide to the IMC such assistance and support as the Government sees fit and necessary in accordance with the Government's prevailing education policy and the Code of Aid with a view to helping the IMC to manage and operate the School.

#### **5. IMC's Obligations**

The IMC hereby covenants with continuing effect until termination of this Agreement the following :-

##### **5.1 Object of the IMC**

The object of the IMC shall be for the sole purpose of advancement of education by managing and operating the School in accordance with this Agreement.

5.2 Amendment of constitution

The IMC shall make no addition, alteration, and/or amendment to its Constitution, unless such change(s) has/have not been objected to by the Government in writing.

5.3 Roles and responsibilities of the IMC

5.3.1 The IMC shall manage and operate the School.

5.3.2 The IMC shall comply with the provisions of the Ordinance and the Constitution. For the avoidance of doubt, in the event of any conflict between the Ordinance and the Constitution, the Ordinance shall prevail.

5.4 Composition of the IMC

5.4.1 The Permanent Secretary may issue such guidelines and directions on the composition of the IMC as the Permanent Secretary sees fit. The IMC shall at all times comply with the aforesaid guidelines and directions.

5.4.2 The composition of the IMC and the appointment of school managers shall be subject to the requirements of the Ordinance, the Constitution and any requirements as may be specified by the Permanent Secretary.

5.5 School premises

5.5.1 Furniture and equipment

The IMC shall furnish, maintain and equip the School to standards as specified in the document entitled "Reference List of Furniture and Equipment for [Primary/Secondary] School adopting Standard Schedule of Accommodation" or such other relevant documents issued by the Education Bureau.

5.5.2 Availability of the school building and facilities

Subject to any physical limitation which cannot reasonably be expected to be removed or resolved by the SSB and/or the IMC, the buildings and facilities of the School and the School Premises shall upon the Government's request be made available by the IMC to the Government and/or any other persons as may be approved by the Government for conducting public examinations, or operating other schools on a temporary basis or organising educational, community or other activities as the Government deems fit (including without limitation polling activities). Charges may be levied with reference to the schedule of charges as announced in the latest circular issued by the Government.

5.5.3 The IMC shall be responsible for any deposits required for electricity, water, gas or other utilities with the School's own funds.

5.6 Commencement of operation

The IMC shall ensure that classes at the School shall be run from the Commencement Date.

5.7 Proposed School Plan and Conditions

Subject to Clause 5.8, the IMC shall carry out all duties and obligations imposed on the management committee as specified in the Proposed School Plan and Conditions.

5.8 School Development Plan and Performance Targets

5.8.1 The IMC shall implement the School Development Plan.

5.8.2 The IMC and the Government shall negotiate in good faith if the Government proposes any addition, alteration or amendment to the School Development Plan. The IMC shall use its best endeavours to implement the Government's proposal.

5.8.3 The IMC shall use its best endeavours to achieve the Performance Targets.

5.9 Principal and staff

The IMC shall appoint or remove the Principal or other staff of the School in accordance with the Ordinance, the Regulations and such other requirements as specified from time to time by the Government.

5.10 Parent-teacher association

The IMC shall establish a parent-teacher association as soon as possible but in any event not later than three years after the Commencement Date.

5.11 Trainee teachers

The IMC shall facilitate, whenever possible, teaching practicum for Trainee Teachers upon the request of local teacher education providers.

5.12 Admission of students

The IMC shall admit students to the School in accordance with the prevailing admission policy as may be determined by the Permanent Secretary.

5.13 Implementation of education policy

Subject to the provisions of the Ordinance and the Constitution, the IMC shall implement the prevailing education policy as may be specified from time to time by the Government.

5.14 Agreement between the IMC and the SSB

The IMC shall enter into a legally binding agreement with the SSB to ensure that the School will be operated in accordance with this Agreement, the Ordinance, the Regulations, the Constitution and such other guidelines and directions issued from time to time by the Government.

**6. Assessment of Performance**

6.1 At any time during the term of this Agreement, the Government may conduct at any intervals reviews :-

- (a) of the quality of education provided at the School;
- (b) to ascertain whether the School is being operated and managed to the standard as specified in the School Development Plan;
- (c) to ascertain whether the provisions of this Agreement are being complied with; and
- (d) on the School's self-evaluation.

6.2 For the purposes of Clause 6.1 above, the IMC shall fully co-operate with the Government and shall grant such access to its premises, books and records as may be requested by the Government to enable the Government and its authorised representatives to carry out such reviews.

6.3 The assessment mentioned above will primarily take into account the Performance Targets and the School's self-evaluation.

6.4 If at any time the IMC fails to comply with any provisions of this Agreement or manage or operate the School in conformity to the standard set out in the School Development Plan, the Government or the Permanent Secretary may without prejudice to its/his rights and powers under this Agreement or the Ordinance :-

- (a) require the IMC to draw up and implement an action plan to overcome identified problems or to achieve the Performance Targets within the period as the Government or the Permanent Secretary may specify, provided that the specified period shall not be less than one month;
- (b) monitor the progress of implementation and the achievement of the Performance Targets;

- (c) conduct follow-up inspections during and/or after the period specified under paragraph (a) above.

6.5 If the Government considers that the IMC has failed to comply with Clause 6.4, the Government or the Permanent Secretary may, without prejudice to its/his rights and powers under the Ordinance :-

- (a) appoint managers in accordance with Section 41 of the Ordinance; and/or
- (b) decide not to renew this Agreement by :-
  - (i) giving the IMC nine months' notice before this Agreement expires; or
  - (ii) (if that agreement will expire in less than nine months' period) giving the IMC prior notice and the Government may in its discretion determine the notice period; and/or
- (c) terminate this Agreement at any time before the expiry of this Agreement by :-
  - (i) giving the IMC nine months' notice in writing; or
  - (ii) (if that agreement will expire in less than nine months' period) giving the IMC prior notice and the Government may in its discretion determine the notice period; and/or
- (d) take any other measures as it/he thinks fit.

6.6 For the purposes of this Clause 6, the expression "review" includes without limitation inspections and assessments; and "self-evaluation" means the annual self-evaluation to be conducted by the School with respect to the achievement of the Performance Targets.

## **7. Termination**

7.1 Subject to Clause 6.5(c), the Government shall be entitled to terminate this Agreement if the IMC shall fail to (a) achieve the Performance Targets; (b) manage or operate the School in accordance with the terms and conditions of this Agreement; or (c) comply with any terms and conditions of this

Agreement.

7.2 This Agreement shall automatically terminate if :-

- (a) the term of this Agreement has expired and the Government has not renewed this Agreement; or
- (b) the SSB Service Agreement is terminated (howsoever occasioned); or
- (c) the Tenancy Agreement is terminated (howsoever occasioned); or
- (c) the Land Lease is terminated (howsoever occasioned); or
- (d) the SSB or the IMC goes into liquidation (other than a voluntary liquidation for the purpose of a bona fide amalgamation or reconstruction whilst the SSB or the IMC (as the case may be) is solvent) or any corporate action or any other steps been taken or legal proceedings (save for any such legal proceedings commenced by a third party which are frivolous or vexatious, have no reasonable cause of action or which are being contested in good faith by appropriate proceedings and, in each case, which are discharged within 120 days) been started against the SSB or the IMC for its winding-up, dissolution or re-organization (whether by voluntary arrangement or otherwise) or if a liquidator, receiver, administrator, trustee or similar officer is appointed over all or any businesses or assets of the SSB or the IMC; or
- (e) the IMC is dissolved in accordance with the provisions of the Ordinance.

7.3 The Government and the IMC may by mutual agreement in writing terminate this Agreement at any time after the IMC has consulted the SSB and obtained and produced to the Government the SSB's written consent to such termination.

7.4 Upon termination of this Agreement, the Government may at its sole discretion terminate the Land Lease in accordance with the provisions therein and/or cease to provide financial subsidy, assistance and support to the IMC under this Agreement, the Conditions and the Code of Aid.

## **8. Assignment and Consequences of Termination**

- 8.1 The IMC shall not assign, transfer, sub-contract, license or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement without the prior written approval of the Government.
- 8.2 On the expiration or termination (howsoever occasioned) of this Agreement :-
- (a) all rights and obligations of the parties under this Agreement shall automatically terminate except for such rights of actions as shall have accrued prior thereto and any obligations which expressly or by implication are intended to come into or continue in force on or after such expiration or termination;
  - (b) the IMC shall, upon the Government's request, (i) provide the Government with information relating to all or any contracts entered into by the IMC so as to enable the Government to ensure smooth operation of the School; (ii) assign to or, as the case may be, procure the assignment to, the Government (or its nominees) the rights of the IMC in all or any such contracts entered into by the IMC at the IMC's own cost and expense; and (iii) do and execute any further things and documents (or procure that the same be done or executed) as may be required by the Government to give full effect to sub-paragraph (ii) and shall provide all such documents and materials to the Government within 14 days of the date of the Government's request.
- 8.3 Upon the expiry or termination (howsoever occasioned) of this Agreement, the Government may immediately take over the operation of the School and the IMC shall ensure that all students of the School shall remain enrolled in the School by then if the students so request.
- 8.4 The Government shall not be liable to the IMC or any other person under any circumstances whatsoever for any losses, damages, costs, expenses or liabilities incurred or sustained by the IMC or any person in relation to the non-renewal or termination (howsoever occasioned) of this Agreement.

- 8.5 The IMC shall as soon as practicable upon the expiry or termination (howsoever occasioned) of this Agreement :-
- (a) settle all outstanding debts and liabilities up to and including the date of the termination of this Agreement and make good any accumulated deficits and upon the Government's request, provide promptly the Government with documentary evidence in respect of such settlement to the satisfaction of the Government;
  - (b) refund to the Government all unspent government recurrent and non-recurrent subsidy or such portion of the unspent subsidies as assessed by the Permanent Secretary;
  - (c) transfer to the Government at the IMC's own cost and expense all assets and inventories purchased with government subsidies or funds generated by the School.
- 8.6 For the avoidance of doubt, the Permanent Secretary's assessment for the purposes of Clause 8.5(b) above shall be conclusive and binding on the IMC; and for the purposes of Clause 8.5(c) above, all assets and inventories of the IMC shall be deemed to have been purchased with government subsidies or funds generated by the School unless the contrary is proved by the IMC to the Government's satisfaction.
- 8.7 If this Agreement is terminated by the Government pursuant to Clause 7, without prejudice to any of the Government's other rights and remedies, the Government may require the IMC to repay immediately to the Government any and all amounts of financial subsidy, assistance or support provided by the Government pursuant to this Agreement which have not been defrayed, applied or used, or whose application or use has not been controlled, monitored or supervised, by the IMC, strictly in accordance with the terms and conditions of this Agreement.
- 8.8 Notwithstanding anything provided in this Agreement to the contrary, if any event provided in Clauses 7.1(a) to (c) occurs, the Government reserves the right (a) not to terminate this Agreement and (b) to require the IMC to

comply with Clause 8.2(b), Clause 8.5 and/or Clause 8.7.

**9. Relationship of the Parties**

The IMC enters into this Agreement with the Government as an independent contractor only and shall not represent itself as an employee, agent, partner or servant of the Government.

**10. Amendments and Entire Agreement**

10.1 Subject to the provisions of this Agreement, the provisions of this Agreement shall not be waived, amended or supplemented except by a written instrument signed by each of the parties hereto.

10.2 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, arrangements or understandings between them relating to the subject matter hereof. The IMC acknowledges and agrees that it has not relied on any statements, undertakings, warranties or representations given or made by the Government relating to the subject matter hereof, save for those statements, undertakings, warranties or representations expressly set out in this Agreement.

**11. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of Hong Kong.

**12. Service of Notice**

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other addresses as the recipient may designate by notice given in accordance with this Clause. Any such notice may be delivered by hand or by pre-paid letter or email or facsimile and shall be deemed to have been served by hand when delivered, if by post 48 hours after posting, if by email when actually received in a form readable by an individual and if by facsimile when

dispatched.

**13. Waiver**

No failure by either party to exercise and no delay by either party in exercising any right or remedy available to it under this Agreement or in law or equity shall operate as a waiver of such right or remedy nor shall any single or partial exercise of such right or remedy preclude any other or further exercise thereof; nor shall any such failure to exercise, or delay in exercising, or single or partial exercise of any such right or remedy preclude the exercise of any other right or remedy; and the rights and remedies of each party herein contained shall be cumulative and not exclusive of any other rights or remedies provided by law or in equity.

**14. Saving**

Nothing in this Agreement shall be taken to restrict, derogate from or otherwise interfere with any powers, discretions or duties, or the exercise or performance of any powers, discretions or duties, conferred or imposed by or under any law upon the Government, any Government bureau or department or any public officer or other person in the employ of the Government.

**15. Severability**

If any provision in this Agreement shall be or be found by any authority of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

**SCHEDULE I**

**Conditions for Allocation of School Premises**

**SCHEDULE II**

**Proposed School Plan**

**SCHEDULE III**

**School Development Plan**

**SCHEDULE IV**

**School premises delineated in the plan**

IN WITNESS WHEREOF this Agreement has been entered into and executed under hand in two originals the date first before written.

SIGNED for and on behalf of the Government of the Hong Kong Special Administrative Region

By \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Witness \_\_\_\_\_

( )

SIGNED for and on behalf of the Incorporated Management Committee of [\[School Name\]](#)

By \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Witness \_\_\_\_\_

( )