

STANDARD TEXT (Aided PS)

THIS Service Agreement is made on day of .

PARTIES:

- (1) **[SCHOOL SPONSORING BODY]** of **[Registered Address]**
(hereinafter referred to as the “SSB”);

AND

- (2) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** as represented by the Permanent Secretary for Education of 14/F, Wu Chung House, 213 Queen’s Road East, Wanchai, Hong Kong (hereinafter referred to as the “Government”).

WHEREAS

- A. The Government wishes to provide quality education in accordance with approved education policies and invites organizations to operate Government-built schools.
- B. The SSB has submitted an application in response to the invitation.
- C. The Government has selected the SSB as a qualified sponsoring body for further discussion on the allocation of the School Premises (as defined below) and the operation of the School (as defined below).
- D. The parties contemplate that the Government shall allocate the School Premises to the SSB.
- E. The SSB has agreed to donate to the IMC (as defined below) a sum equivalent to the costs of furnishing and equipping the School in accordance with the Conditions (as defined below).
- F. The parties have agreed to proceed with the preparation of the School on the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED

1. Definitions

- 1.1 “Conditions” means the conditions upon which the School Premises is allocated and the School is to be operated, as set out in Schedule One hereto and as may be amended from time to time by mutual agreement between the parties.
- 1.2 “Education Ordinance” means the Education Ordinance, Cap. 279, as may be amended from time to time.
- 1.3 “Proposed School Plan” means the proposed school plan submitted by the SSB in connection with its application for allocation of a school premises and accepted by the Government with amendments, if any.
- 1.4 “School” means a school which provides primary education in [\[description and address of the school\]](#).
- 1.5 “School Development Plan” means the school development plan to be submitted by the IMC and as accepted by the Government pursuant to Clause 5.4 hereof.
- 1.6 “School Premises” means the land the boundary of which is delineated in the location plan in Schedule Two attached hereto, together with the school buildings to be constructed thereon.
- 1.7 “IMC” means the incorporated management committee to be established by the SSB pursuant to Clause 3 hereof.

- 1.8 “IMC Service Agreement” means an agreement to be made between the Government and the IMC on the terms and conditions substantially as outlined in the sample agreement in Schedule Three attached hereto.
- 1.9 “Tenancy Agreement” means an agreement between the Government and the SSB or the IMC with terms and conditions substantially as outlined in the sample agreement in Schedule Four attached hereto.
- 1.10 In this Agreement, words and expressions that are defined in the Education Ordinance shall bear the same meanings in this Agreement, unless otherwise defined.
- 1.11 In this Agreement unless the context requires otherwise –
- (a) words importing the singular number shall include the plural and vice versa;
 - (b) words importing any particular gender shall include all other genders; and
 - (c) references to persons shall include bodies of persons whether corporate or incorporate.
- 1.12 Any reference in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended modified extended re-enacted or replaced (whether before or after the date of this Agreement) and including all subsidiary legislation from time to time made under it.

2. Government’s Obligations to the SSB

- 2.1 The Government has in principle accepted the SSB’s application for the allocation of the School Premises.

- 2.2 Upon completion of the School Premises, and at a time to be specified by the Government, 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.
- 2.3 Upon the commencement of the operation of the School on such a date as agreed by the Government, the Government shall provide financial subsidy, assistance and support to the IMC in accordance with its education policy and subject to the terms and conditions of this Agreement.

3. **Establishment of the IMC**

- 3.1 The SSB shall submit to the Government a draft constitution of the proposed IMC, not later than six months before the scheduled opening date, or by such later date as the Permanent Secretary for Education may approve in writing.
- 3.2 The SSB shall, before the commencement of operation of the School, procure the establishment in respect of the School of an IMC under the Education Ordinance. The IMC shall be a charitable institution within the meaning of Section 88 of the Inland Revenue Ordinance, Cap. 112.
- 3.3 Upon request by the Government, the SSB shall make such amendments to the draft documents submitted to the Government under Clause 3.1 as appropriate as the Government sees fit.
- 3.4 Subject to Clause 3.3, no addition, alteration or amendment shall be made to the documents approved by the Government under Clause 3.1, unless such alteration has previously been submitted to and endorsed by the Government in the manner provided for in the Education Ordinance.
- 3.5 The SSB shall ensure that the object of the IMC shall be for the sole purpose of advancement of education by operating the School.
- 3.6 The SSB shall ensure that any person that acts as a manager of the School is registered as a manager of the School under the provisions of the Education Ordinance at all material times.

- 3.7 Upon the approval of the documents submitted under Clause 3.1 by the Government, the SSB shall submit a list of the proposed managers of the School and an application by each proposed manager for registration as a manager of the School under the provisions of the Education Ordinance.
- 3.8 The SSB shall ensure that the IMC shall, within three months from the date on which the failure to maintain full composition arises, forward to the Government the relevant application(s) by the nominated person(s) qualified to fill the vacancy/vacancies concerned for registration as managers, except otherwise provided for under the Education Ordinance.
- 3.9 The SSB shall ensure that the IMC shall be constituted in accordance with its constitution as provided for under the Education Ordinance.

4. Implementation of the Proposed School Plan

- 4.1 To the extent that the promises and undertakings are relevant to the SSB, the SSB shall take all such steps as may be necessary to implement the promises and undertakings in accordance with the Proposed School Plan, the Conditions and the Education Ordinance.
- 4.2 The SSB acknowledges that it has been supplied with a copy of the Conditions to enable it to ensure that the School Development Plan to be prepared by the IMC is consistent with the Conditions, the Proposed School Plan and the Education Ordinance.
- 4.3 The Conditions shall form part of the terms and conditions of this Agreement.
- 4.4 In the event that a requirement in the Conditions is in conflict with any requirements in the Education Ordinance, the Education Ordinance shall prevail.

5. School Development Plan

- 5.1 The SSB shall ensure that the IMC shall submit to the Government a proposed school development plan providing such information as may be specified by the Government, within six months after the

School has commenced operation.

- 5.2 The SSB shall ensure that the proposed school development plan to be submitted by the IMC is consistent with the Conditions, the Proposed School Plan and the Education Ordinance.
- 5.3 If the Government requests any reasonable alteration or modification to the proposed school development plan, the SSB shall forthwith comply with such requests.
- 5.4 Upon acceptance by the Government, the proposed school development plan shall be deemed to be the School Development Plan and shall be incorporated into the IMC Service Agreement. Any modifications to the School Development Plan shall require prior written approval of the Government.

6. Tenancy Agreement

- 6.1 The SSB, if required by the Government, shall enter into the Tenancy Agreement at a reasonable time before or at the same time as the handing over (hand over of the keys) of the School Premises.
- 6.2 The SSB shall ensure that the IMC shall enter into a tenancy agreement with the Government in identical terms as that of the Tenancy Agreement within six months after the IMC has been incorporated pursuant to Clause 3 or on such other date as mutually agreed between the two parties.
- 6.3 Upon the conclusion of the tenancy agreement between the IMC and the Government pursuant to Clause 6.2 above, the Tenancy Agreement between the SSB and the Government shall be discharged and cancelled.
- 6.4 The SSB acknowledges that if the IMC shall fail to enter into the tenancy agreement with the Government as referred to in Clause 6.2, the Tenancy Agreement between the SSB and the Government shall remain in full force and effect until terminated in accordance with the terms and conditions contained therein.

7. IMC Service Agreement

- 7.1 The SSB shall ensure that the IMC shall enter into the IMC Service Agreement with the Government within one year after the School has commenced operation or on such other date as mutually agreed between the parties.
- 7.2 The SSB acknowledges that the Government shall reserve a right to terminate the IMC Service Agreement and to repossess the School Premises if the IMC shall upon adequate prior notice being served and a reasonable time allowing for remedial action to be taken having expired, still fail to achieve the agreed operating standard for the School in accordance with the School Development Plan as embodied in the IMC Service Agreement.

8. **Termination and its Consequences**

8.1 The SSB acknowledges that if the IMC shall fail to enter into the IMC Service Agreement with the Government in accordance with Clause 7.1 above, the Government shall be entitled to terminate forthwith this Agreement.

8.2 This Agreement shall come to an end upon –

- (a) the termination of the IMC Service Agreement; or
- (b) the termination of the Tenancy Agreement between the SSB and the Government other than reason pursuant to Clause 6.3;
or
- (c) the termination of the Tenancy Agreement between the IMC and the Government as referred to in Clause 6.2;

whichever occurs earlier.

8.3 The Government shall be entitled to terminate this Agreement forthwith if the SSB shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or if a receiver has been appointed over any of its assets.

8.4 The Government and the SSB may by mutual agreement terminate the SSB Service Agreement at any time.

8.5 On termination of this Agreement –

- (a) all rights and obligations of the parties under this Agreement shall 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; and
- (b) the SSB shall, wherever possible, provide Government with information on all contracts made by the SSB so as to enable the Government to ensure smooth operation of the School.
- (c) the SSB shall facilitate the Government as far as practicable to prepare for taking over the operation of the School and/or allocating the School to a new operator, including but not limited to assigning or procuring the assignment to the Government and/or the new operator the rights of the SSB in all or any of the contracts relating to the operation of the School.

9. Assignment

- 9.1 The SSB shall not be entitled to assign or otherwise dispose of any of its interests, rights, benefits or obligations under this Agreement.

10. Headings

- 10.1 The headings to the clauses of this Agreement are for ease of reference and convenience of the parties only and shall not affect the interpretation or construction of this Agreement and be deemed to indicate the meaning of the clauses or schedules to which they relate.

11. General

- 11.1 This Agreement constitutes the entire understanding between the parties concerning the subject matter hereof and shall be governed by and construed in accordance with the laws of Hong Kong. No waiver or amendment of any provision of this Agreement shall be effective unless made by a written instrument signed by both parties.

12. **Service of Notice**

- 12.1 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 telex or facsimile and shall be deemed to have been served by hand when delivered, if by post 48 hours after posting and if by telex or facsimile when dispatched.

EXECUTED under hand in two originals the day and year 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 SSB

By _____

Signature _____

Title _____

Witness _____

(_____)

STANDARD TEXT (Aided PS)

Schedule One

Conditions for Allocation of School Premises for Operating an Aided Primary School

1. The SSB shall ensure that the IMC shall operate a [co-educational] aided primary school at [Location].
2. Either the SSB or the IMC (as specified by the Government) shall take immediate possession of the School Premises at a time to be specified by the Government following the completion of the School Premises as recommended by the Director of Architectural Services/Director of Housing.
3. The School shall start operation in [month and year] or on a date to be mutually agreed between the Government and the SSB or if the IMC has been established, the IMC. However, the Government may require the School to open on an earlier date in other school premises as the Government shall arrange and on such date as the Government deems fit, in order to meet the demand for school places, if circumstances so warrant.
4. The School shall be operated as an aided [co-educational] primary school to be run in one daily session in the daytime and with such class organization (including special classes if applicable) or any other mode of attendance as may be approved by the Government. Subject to further approval by the Government, the evening session, if any, shall be registered as a separate school.
5. The Government shall provide the School with grants/subsidies in accordance with the applicable Code of Aid.
6. *For cases other than Redevelopment and Re-provisioning, and cases involving allocation of vacant school premises:* The SSB shall donate to the IMC a sum, which shall exclude any subsidy from the Government and other incomes of the School, equivalent to the costs of furnishing and equipping the School to standards as recommended by the Government. The SSB shall ensure that the IMC shall purchase all the essential furniture & equipment items within three years after the School has commenced operation, in accordance with the approved acquisition procedures. In this connection, the SSB shall

produce evidence, one year before the School has commenced operation, that it will have adequate funds to meet the furniture and equipment costs. In addition, the SSB shall make available half of its furniture and equipment contribution at least two months before the School commences operation and the other half not later than 18 months after the School has commenced operation.

6. *For Redevelopment and Reprovisioning cases (excluding cases involving allocation of vacant school premises for purpose other than whole-day conversion):* The Government shall provide a subsidy for furnishing and equipping the School to the required standard. The SSB shall ensure that the IMC shall apply the subsidy to purchase all the essential furniture & equipment items as recommended by the Government in accordance with the approved acquisition procedures within three years after the School has commenced operation.
7. The SSB shall seek the prior written approval of the Government concerning the proposed naming of the School, which shall be kept short and concise, and preferably reflect the vision and mission, or educational values advocated by the SSB.
8. The SSB acknowledges that the IMC shall be responsible for any deposits required for electricity, water or other utilities with the School's own funds.
9. The School shall be operated in compliance with the Education Ordinance, the Education Regulations, the applicable Code of Aid and such other requirements as specified from time to time by the Government.
10. The SSB shall ensure that the IMC shall implement as far as practicable the proposals included in the Proposed School Plan.
11. The principal and staff shall be appointed in accordance with the Education Ordinance, the Education Regulations, the applicable Code of Aid and such other requirements as specified from time to time by the Government.
12. The SSB shall ensure that the IMC shall admit students to the School in accordance with the admission policy promulgated by the Government from time to time. It shall admit students referred by the Government, including children who newly arrive in or migrate to Hong Kong and students with special educational needs.

13. The SSB shall ensure that the IMC shall implement all education policies applicable to aided primary schools.
14. The SSB shall ensure that the IMC shall facilitate, whenever possible, internships of trainee teachers.
15. The School Premises shall remain Government property. Any application for additions, alterations or improvements to the School Premises shall be subject to approval by the Government and shall be submitted in duplicate to the Government for approval, and copied to the Director of Architectural Services/Director of Housing.
16. The SSB acknowledges that the care and maintenance of the School Premises and the area within the school compound shall be the responsibility of the SSB or the IMC as appropriate. The IMC may apply to the Government for financial assistance for such care and maintenance in accordance with prevailing Government policy.
17. Unless not practicable, the buildings and facilities of the School when required shall be made available to the Government and any other organizations as may be approved by the Government for conducting public examinations, operating other schools on a temporary basis, or organizing educational, community or other activities. Charges may be levied in accordance with the schedule of charges as announced in the latest circular issued by the Government.
18. The SSB shall ensure that the IMC shall establish a parent-teacher association as soon as possible and not later than three years after the School has commenced operation.
19. The SSB acknowledges that subject to such other requirements as specified from time to time by the Government, the composition of the IMC shall comply with the relevant provisions in the Education Ordinance governing an incorporated management committee.
20. The SSB shall ensure that the IMC shall produce a proposed school development plan to the satisfaction of the Government within one year after the School has commenced operation. The proposed school development plan shall, amongst others, include a set of performance targets and performance indicators for self-evaluation and assessment of the School.
21. The SSB shall, within a reasonable time after the School has

commenced operation, enter into an agreement with the IMC incorporating the terms and conditions set out in Clauses 25, 27, 28, 29, 30 and 31 hereof, under which the latter shall be responsible for the management of the School in accordance with the said terms and conditions and the School Development Plan.

22. The SSB shall collaborate with the Government and the IMC in ensuring that the School will realize and achieve its vision and mission, objectives and performance targets in the School Development Plan.
23. The SSB shall ensure that the IMC shall submit to the Government annually, beginning one year from the opening of the School, a complete statement of the accounts of the School audited by a certified public accountant (practising) as defined in the Professional Accountants Ordinance and submitted at such time and in such manner as Government may specify.
24. The Director of Audit or any officer duly authorized by him may, if he considers it necessary in the public interest, have access to the records and accounts of the School and to the records and accounts of any controlling or any other agencies to which money from the School is diverted which is directly or indirectly involved with the expenditure of public money, or special funds established for educational development out of income of the School derived otherwise than from government grants. In this connection, the staff of the School or of any controlling or any other agencies to which money from the School is diverted shall be obliged to explain to the Director of Audit or to his authorized representatives, any matter relating to the receipt, expenditure or custody of money for which the School or any controlling or any other agencies to which money from the School is diverted or both are accountable in the public interest.
25. The term of the IMC Service Agreement shall be for a period of five years (to be co-terminous with the Tenancy Agreement between the IMC and the Government), renewable as hereinafter mentioned.
26. The Government may assess the performance of the School by conducting –
 - (a) full inspections along domains such as: management and organization, teaching and learning, support for students and school ethos, and attainment and achievement;

- (b) focus inspections on one of the domains or a specific area (e.g. discipline, home-school co-operation, teaching/learning of a subject, etc.); or
 - (c) external school review.
- 27. The Government may periodically review the performance of the School during the term of the IMC Service Agreement and advise the IMC to make the necessary improvements to overcome identified problems. The assessment will primarily take into account the school annual report, school self-evaluation and performance targets stated in the IMC Service Agreement and inspections and reviews mentioned in Clause 26 above.
- 28. After assessment, the Government may –
 - (a) require the IMC to draw up and implement an action plan to overcome identified problems or to achieve the targets with respect to the IMC Service Agreement within a reasonable period specified by the Government;
 - (b) monitor the progress of implementation and the achievement of the targets; and
 - (c) conduct follow-up inspections during and/or after the period of time given to the School to improve.
- 29. If the Government considers that the IMC fails to improve with respect to Clause 28 above, the relevant public officers may, without prejudice to his rights and powers under the Education Ordinance –
 - (a) appoint additional school managers to the IMC for such period as he thinks fit;
 - (b) not to renew the IMC Service Agreement by giving the IMC nine months' notice before that Agreement expires;
 - (c) terminate the IMC Service Agreement at any time before the expiry of the Agreement by giving the IMC nine months' notice to that effect; or
 - (d) take any other measures as he thinks fit.

30. The IMC Service Agreement, if not renewed, shall automatically terminate upon expiry of its term. The IMC may apply to the Government in writing for renewing the IMC Service Agreement at least 15 months before it expires. Subject to the Government's prevailing policy and the Government being satisfied with the performance of the School, the IMC Service Agreement may be renewed for a five-year term at the sole discretion of the Government.
31. In the event the IMC Service Agreement is terminated or not renewed, no compensation shall be paid to the SSB or the IMC. Outstanding liabilities and accumulated deficits of the School, if any, shall be settled by the SSB or IMC as appropriate with its own funds. The net accumulated surplus of the School, if any, shall be returned to the Government at such time as the Government may specify. The IMC shall submit accounts up to that date of cessation audited by a certified public accountant (practising) as defined in the Professional Accountants Ordinance at such time and in such manner as the Government may specify.
32. *For Redevelopment and Reprovisioning cases:* The existing [Name of School] at [existing school address] shall be closed as and when required by the Government.
33. *For Redevelopment and Reprovisioning cases:* The SSB shall voluntarily surrender the existing school site of [Name of School] at [existing school address] together with the premises thereon to the Government free of encumbrances upon relocation of [Name of School] to the new school.
34. *For school with shared facilities:* The IMC shall share, jointly manage and maintain the communal facilities at its own cost in the school site in [address of the school] with the adjoining schools. The boundary of and items included in the communal facilities shall be subject to the finalized design of the school compound. The IMC may apply to the Government for financial assistance for the maintenance of the communal facilities in accordance with prevailing Government policy.

STANDARD TEXT (Aided PS)

Schedule Two

[Location Plan of the School Premises]

STANDARD TEXT (Aided PS)

Schedule Three

[Sample of IMC Service Agreement]

STANDARD TEXT (Aided PS)

Schedule Four

[Sample of Tenancy Agreement]