

# STANDARD TEXT (DSS Schools)

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 SMC (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 “DSS” means the Direct Subsidy Scheme referred to in the Education Ordinance.
- 1.3 “Education Ordinance” means the Education Ordinance, Cap. 279, as may be amended from time to time.
- 1.4 “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.
- 1.5 “School” means a school which provides [(senior) secondary / primary] education in [description and address of the school].
- 1.6 “School Development Plan” means the school development plan to be submitted by the SMC and as accepted by the Government pursuant to Clause 5.4 hereof.
- 1.7 “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.

- 1.8 “SMC” means the school management committee to be established by the SSB pursuant to Clause 3 hereof.
- 1.9 “SMC Service Agreement” means an agreement to be made between the Government and the SMC on the terms and conditions substantially as outlined in the sample agreement in Schedule Three attached hereto.
- 1.10 “Tenancy Agreement” means an agreement between the Government and the SSB or the SMC with terms and conditions substantially as outlined in the sample agreement in Schedule Four attached hereto.
- 1.11 In this Agreement, words and expressions that are defined in the Education Ordinance shall bear the same meanings in this Agreement, unless otherwise defined.
- 1.12 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.
- 1.13 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 SMC and grant a tenancy of the School Premises (including standard built-in fixtures) to the SMC.
- 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 SMC in accordance with its education policy and subject to the terms and conditions of this Agreement.

## **3. Establishment of the SMC**

- 3.1 Subject to the Companies Ordinance, the Education Ordinance and any other applicable legislation, the SSB shall procure the establishment in respect of the School of an SMC, which shall be –
  - (a) a company limited by guarantee incorporated under the Companies Ordinance and a charitable institution within the meaning of section 88 of the Inland Revenue Ordinance, Cap. 112, within a reasonable time after the School commences operation; or
  - (b) an incorporated management committee under the Education Ordinance and a charitable institution within the meaning of section 88 of the Inland Revenue Ordinance, Cap. 112, in accordance with the timeframe provided for under the Education Ordinance.
- 3.2 The SSB shall submit to the Government –
  - (a) in the case of an incorporated management committee under the Education Ordinance, a draft constitution of the proposed SMC and such other documents as appropriate for approval in accordance with the timeframe provided for under the Education Ordinance.

- (b) in the case of a company limited by guarantee incorporated under the Companies Ordinance, a draft memorandum of association and articles of association of the proposed SMC and such other documents as appropriate for approval no later than six months before the scheduled opening date of the School.
- 3.3 Upon request by the Government, the SSB shall make such amendments to the draft documents submitted to the Government under Clause 3.2 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 3.2, unless such alteration has previously been submitted to and endorsed by the Government in the manner provided for in the Companies Ordinance, the Education Ordinance or any other applicable legislation.
- 3.5 The SSB shall ensure that the object of the SMC 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 3.2 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 In case an incorporated management committee is established under Clause 3 as the SMC, the SSB shall ensure that the SMC 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 SMC shall –
- (a) in the case of an incorporated management committee under the Education Ordinance, be constituted in accordance with its

constitution.

- (b) in the case of a company limited by guarantee incorporated under the Companies Ordinance, comprise members who are the same persons as the directors of the SMC and the same persons as the members of the management committee as defined in 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 SMC 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 SMC 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 SMC 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 SMC 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 SMC shall enter into a tenancy agreement with the Government in identical terms as that of the Tenancy Agreement within six months after the SMC has been incorporated under the Companies Ordinance or some other ordinances as shall be prescribed by the Government 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 SMC 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 SMC 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. SMC Service Agreement**

7.1 The SSB shall ensure that the SMC shall enter into the SMC 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 SMC Service Agreement and to repossess the School

Premises if the SMC 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 SMC Service Agreement.

## **8. Termination and its Consequences**

8.1 The SSB acknowledges that if the SMC shall fail to enter into the SMC 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 SMC 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 SMC 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 this 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;



- (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; and
- (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 (DSS Schools)

## Schedule One

### Conditions for Allocation of School Premises for Operation under the Direct Subsidy Scheme (DSS)

1. The SSB shall ensure that the SMC shall operate a non-profit-making DSS [co-educational] [(senior) secondary / primary] school at [Location].
2. Either the SSB or the SMC (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 SMC has been established, the SMC. 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 with the demand for school places, if circumstances so warrant.
4. The School shall be operated as a DSS [co-educational] [(senior) secondary / 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 School shall be entitled to recurrent and non-recurrent subsidy applicable to a DSS school at the prevailing standard and practice.
6. The SSB shall donate to the SMC 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 not lower than those for aided schools as recommended by the Government. The SSB shall ensure that the SMC shall apply the sum donated by the SSB to purchase all the essential furniture & equipment items within three years after the School has

commenced operation. In this connection, the SSB shall produce evidence, one year before the School commences 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.

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 SMC shall be responsible for any deposits required for electricity, water or other utilities with the School's own funds.
9. The SSB shall finance and shall procure the SMC to finance any possible deficit of the School and ensure the School shall be in a sound financial situation and, in particular, the School shall have accumulated operating reserve sufficient to meet at least two months operating expenses.
10. The School shall be operated in compliance with the Education Ordinance, the Education Regulations, other related legislations and such other requirements as specified from time to time by the Government.
11. The SSB shall ensure that the SMC shall implement as far as practicable the proposals included in the Proposed School Plan.
12. The principal and staff shall be appointed in accordance with the Education Ordinance, the Education Regulations and such other requirements as specified from time to time by the Government.
13. The SSB shall ensure that the SMC shall admit students to the School in accordance with the criteria laid down in the School Development Plan.
14. The SSB shall ensure that the SMC shall implement all education policies applicable to DSS schools.
15. The SSB shall ensure that in each school year, the SMC shall set

aside a sum in accordance with the latest circular/circular memorandum issued by the Government, which shall not be less than 10% of its total school fee income, to provide scholarship and/or other financial assistance for deserving students.

16. The SSB shall ensure that the SMC shall facilitate, whenever possible, internships of trainee teachers.
17. 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.
18. 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 SMC as appropriate. The SMC may apply to the Government for financial assistance for such care and maintenance in accordance with prevailing Government policy.
19. 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 with reference to the schedule of charges as announced in the latest circular issued by the Government.
20. The SSB shall ensure that the SMC shall establish a parent-teacher association as soon as possible and not later than three years after the School has commenced operation.
21. The SSB acknowledges that subject to such other requirements as specified from time to time by the Government, the SMC shall comprise the principal, representatives from the SSB, parents, teachers, other community members or professionals and when appropriate, alumni. In case of an incorporated management committee, its composition shall comply with the relevant provisions in the Education Ordinance.
22. The SSB shall ensure that the SMC 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.

23. The SSB shall, within a reasonable time after the School has commenced operation, enter into an agreement with the SMC incorporating the terms and conditions set out in Clauses 27, 31, 32, 33, 34 and 35 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.
24. The SSB shall collaborate with the Government and the SMC in ensuring that the School will realize and achieve its vision and mission, objectives and performance targets in the School Development Plan.
25. The SSB shall ensure that the SMC 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.
26. 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.
27. The term of the SMC Service Agreement shall be for a period of ten years (to be co-terminous with the Tenancy Agreement between the

SMC and the Government), renewable as hereinafter mentioned.

28. The Government may conduct the following compliance vetting –
  - (a) to check if the admission conditions and requirements according to DSS policy have been breached;
  - (b) to check if the requirements of the Education Ordinance, the Education Regulations and such other statutory requirements applicable to DSS schools are complied with; and
  - (c) to check if malpractice of financial management is observed.
29. If the School does not pass the compliance vetting, the Government will take appropriate actions (including termination of subsidies). The Government may perform follow-up reviews to ensure timely rectification of the situation.
30. 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, medium of instruction, teaching/learning of a subject, etc.);
  - (c) external school review; or
  - (d) other new performance measures to be introduced in the future.
31. The Government may periodically review the performance of the School during the term of the SMC Service Agreement and advise the SMC to make the necessary improvements to overcome identified problems. A comprehensive review will be conducted after the first five-year period, or at any length of period as the Government may think fit, after the School has commenced operation. The assessment will primarily take into account the school annual report, school self-evaluation and performance targets stated in the SMC Service Agreement and inspections and reviews mentioned in Clause 30 above. The School shall be



governed by the School Development and Accountability (SDA) Framework and required to plan and report in consistent with the SDA Framework including the use of key performance measures and the administration of stakeholders' survey when having comprehensive review conducted.

32. After assessment, the Government may –
  - (a) require the SMC to draw up and implement an action plan to overcome identified problems or to achieve the targets with respect to the SMC 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.
33. If the Government considers that the SMC fails to improve with respect to Clause 32 above, the relevant public officers may, without prejudice to his rights and powers under the Education Ordinance –
  - (a) appoint additional school managers to the SMC for such period as he thinks fit;
  - (b) not to renew the SMC Service Agreement by giving the SMC nine months' notice before that Agreement expires;
  - (c) terminate the SMC Service Agreement at any time before the expiry of the Agreement by giving the SMC nine months' notice to that effect; or
  - (d) take any other measures as he thinks fit.
34. The SMC Service Agreement, if not renewed, shall automatically terminate upon expiry of its term. The SMC may apply to the Government in writing for renewing the SMC 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 SMC Service Agreement may be renewed for a five-year term at the sole discretion of the

Government.

35. In the event the SMC Service Agreement is terminated or not renewed, no compensation shall be paid to the SSB and SMC. Outstanding liabilities and accumulated deficits of the School, if any, shall be settled by the SSB or SMC 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 SMC 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.
36. *For school with shared facilities:* The SMC 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 SMC may apply to the Government for financial assistance for the maintenance of the communal facilities in accordance with prevailing Government policy.

# STANDARD TEXT (DSS Schools)

Schedule Two

[Location Plan of the School Premises]

# STANDARD TEXT (DSS Schools)

Schedule Three

[Sample of SMC Service Agreement]

# STANDARD TEXT (DSS Schools)

Schedule Four

[Sample of Tenancy Agreement]