

Education Bureau
of the Government of the Hong Kong Special Administrative Region
School-based After-school Learning and Support Programmes Grantee Agreement

Please read this Agreement carefully and make sure that you understand the terms and conditions thoroughly. By signing of the Acceptance Proforma regarding the above programme grant, you will be deemed to have accepted all the terms and conditions contained in this Agreement and will be bound by them.

1. Definitions

1.1 In this Agreement, unless the context requires otherwise or expressly provides, the following expressions shall have the following meanings respectively:-

“this Agreement”	means this agreement, including all the schedules attached hereto, all of which shall form and be read as an integral part of this agreement.
“Approved Budget”	means the budget submitted as part of the Proposal and approved by the Grantor including the itemised breakdown of expenditure and income listed in the Proposal.
“associate”	in relation to any person means:- (a) a relative or partner of that person; or (b) any body of persons (corporate or unincorporated) one or more of whose directors is in common with one or more of the directors of that person.
“associated person”	in relation to another person means:- (a) any person who has control, directly or indirectly over the other; or (b) any person who is controlled, directly or indirectly, by the other; or (c) any person who is controlled by, or has control over, a person at (a) or (b) above.
“Audited Account”	means any statement of account in respect of the Project (containing auditors’ report, balance sheet, income and expenditure account, cash flow statement and notes to accounts), prepared in accordance with the relevant laws of Hong Kong and the local generally accepted accounting principles (including the Accounting Standards and Accounting Guidelines as the Hong Kong Institute of Certified Public Accountants may issue and update from time to time) and duly audited, dated and signed by a practice unit as defined under the Professional Accountants Ordinance (Cap. 50) which is not in any way connected with the Project.
“Collaborating NGO”	means the collaborating non-governmental organisation named in the Proposal.
“Collaborating Person”	means any collaborating school and/or collaborating NGO.
“Collaborating School”	means the collaborating school named in the Proposal.
“Completion of the Project”	means completion of the Project and all the requirements, services, tasks and Project Objective as set out in the Proposal and this Agreement to the satisfaction of the Government.
“Commencement Date”	means the Date of Commencement of the Project as set out in the Proposal.

“control”	<p>in relation to another person means holding office as a director or the power of a person to secure:-</p> <p>(a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or</p> <p>(b) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or</p> <p>(c) by virtue of holding office as a director in that or any other persons;</p> <p>that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.</p>
“Designated Bank Account”	<p>means an HK\$ account established and maintained with a bank licensed in Hong Kong solely for the purpose of the Project.</p>
“director”	<p>means any person occupying the position of director by whatever name called, including without limitation a de facto or shadow director and any person in charge of the day-to-day management or operation of a body of persons (corporate or unincorporated).</p>
“Eligible Students”	<p>means students who are eligible to participate in the Project as stipulated at the relevant parts of the Education Bureau’s latest Circular Memorandum on “School-based After-school Learning and Support Programmes” and all guidelines annexed thereto as the same may be revised from time to time and published on the webpage www.edb.gov.hk by the Grantor.</p>
“Force Majeure”	<p>means</p> <p>(a) any supervening outbreak of war affecting Hong Kong, 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, civil war, riot, civil disturbances, fire if not caused or contributed to by the Grantee (including its associates or associated persons) or any of the Grantee’s directors, partners, employees, authorised sub-contractors, Collaborating Persons, agents or volunteers (including their respective predecessors), civil commotion and acts of God;</p> <p>(b) any supervening catastrophic event which is similar to the foregoing if not caused or contributed to by the Grantee (including its associates or associated persons) or any of the Grantee’s directors, partners, employees, authorised sub-contractors, Collaborating Persons, agents or volunteers (including their respective predecessors); or</p> <p>(c) any supervening epidemic outbreak in Hong Kong;</p> <p>and which, in either (a), (b) or (c) above, prevents the performance of the Grantor’s or Grantee’s duties and obligations hereunder.</p>
“Government”	<p>means the Government of Hong Kong.</p>
“the Grant”	<p>means the maximum amount of money to be provided by the Grantor as stated in the Offer Letter for the sole purpose of conducting the Project in accordance with this Agreement, including the Other Income, if any.</p>
“Grantee”	<p>means the organisation as stated in the Offer Letter.</p>

“Grantor” or “Government”	means Government of the Hong Kong Special Administrative Region as represented by the Education Bureau.
“HK\$”	means Hong Kong Dollars.
“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.
“Interest”	means all interest which accrues to the Designated Bank Account.
“Other Income”	means the Interest, and all other income or capital generated by the Project.
“Payment Schedule”	means the payment schedule of the Grant set by the Grantor as attached to the relevant parts of the Education Bureau’s latest Guidelines on “School-based After-school Learning and Support Programmes” and all relevant documents annexed thereto as the same may be revised from time to time and published on the webpage www.edb.gov.hk by the Grantor.
“person”	has the meaning given to it in the Interpretation and General Clauses Ordinance, Cap. 1.
“Profit”	means the difference between (a) the aggregate sum of the Grant and Other Income; and (b) the lesser of the aggregate actual cost of the Project or the aggregate cost of the Project as provided in the Approved Budget.
“Programmes and Activities”	means any and all programmes and activities performed or to be performed pursuant to the Project including (without limitation) conferences, exhibitions, seminars, training programmes and services.
“Project”	means the proposal contained in the Proposal and as approved by the Grantor.
“Project Coordinator”	means the project coordinator appointed pursuant to Clause 9.
“Project Materials”	means all works of authorship and materials as may be developed, written, prepared, produced, created, compiled, collected or supplied by the Grantee, its directors, partners, employees, authorised sub-contractors, Project Coordinator, Collaborating Persons, agents or volunteers in relation to the Project or for the purpose of this Agreement (including without limitation, all reports, teaching or training materials, working papers, studies, compilation of data, diagrams, charts, photographs, drawings, specifications, evaluations, books and records, financial accounts, documents, other things and materials, all pre-contractual and contractual documents and all drafts thereof, which are recorded or stored by whatever means in whatever form or media).
“Project Objective”	means the objective(s) of the Project as stated in the Proposal.
“Proposal”	means the proposal submitted by the Grantee to the Grantor to apply for the Grant under School-based After-school Learning and Support Programmes in respect of the 2017/18 implementation cycle as specified

by the Grantor.

“relative” means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and of any step parent.

- 1.2 In this Agreement, except where the context otherwise requires:-
- (a) headings to clauses are for convenience only and shall not affect, limit or extend the interpretation or construction of this Agreement;
 - (b) reference to schedule and clause shall be construed as a reference to a schedule and clause of this Agreement;
 - (c) reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, substituted or re-enacted;
 - (d) any act, default, neglect or omission of any directors, partners, employees, sub-contractors, agents or volunteers of either party hereto shall be deemed to be the act, default, neglect or omission of that party;
 - (e) words denoting the singular shall include the plural and vice versa; and
 - (f) words denoting any one gender shall include all genders.
- 1.3 In the event of any conflict between this Agreement and the Proposal, this Agreement shall prevail.

2. Commencement and Term

Subject to earlier termination as provided herein, this Agreement shall commence on the Commencement Date, and shall expire on 31 July 2018 or such earlier or later date as may be approved by the Grantor in writing.

3. Consideration

In consideration of the Grantor agreeing to provide the Grant for the Project in accordance with the terms and conditions of this Agreement, the Grantee shall:-

- (a) carry out and complete the Project together with any Collaborating Person in accordance with the Proposal and this Agreement and any requirement(s) relating to the Project as may from time to time be prescribed by the Grantor in writing;
- (b) make available the Programmes and Activities as well as the Project Materials to the Grantor in accordance with this Agreement.

4. Grantee's Warranties and Undertakings

4.1 The Grantee hereby warrants and confirms that all information supplied, and statements and representations made by or on behalf of the Grantee in or in relation to this Agreement, the Project, the Proposal and the Approved Budget are true, accurate and complete in all material respects as at the date of signing the Acceptance Proforma. The Grantee undertakes that it shall forthwith notify the Grantor in writing if there is any material change to any information in relation to the Project provided by the Grantee to the Grantor (in particular, the information provided in the Approved Budget and the Proposal as well as the fact as to whether the Grantee has secured any other source of income or funding for the Project) subsequent to the signing of the Acceptance Proforma.

4.2 The Grantee hereby warrants and with continuing effect until the termination or expiry of this Agreement (whichever may occur) that:-

- (a) save with the prior written approval or acknowledgment of the Grantor, the Grantee is not entitled to and has not received any public donations or funding (including without limitation the financial support from other funding schemes administered by the Grantor) for the Project; and
- (b) the Grantee is not insolvent and does not know any circumstance which would entitle any creditor to appoint a receiver, provisional liquidator, liquidator or administrator over any of its assets or to petition for winding up or to exercise any other rights over or against any of its assets.

- 4.3 The Grantee hereby warrants and undertakes and with continuing effect until the termination or expiry of this Agreement (whichever may occur) that the Grantee shall:-
- (a) commence the Project on the Commencement Date or such later date as may be approved in writing by the Grantor;
 - (b) implement the Project with due diligence and in a conscientious and timely manner in accordance with the Proposal;
 - (c) complete the Project by the completion date as stated in the Proposal or such earlier or later date as may be approved by the Grantor in writing;
 - (d) strictly observe the provisions and regulations in the Education Ordinance (Cap. 279), Education Regulations as well as the requirements set out in Education Bureau Circulars in force from time to time;
 - (e) not purchase or acquire equipment with the Grant;
 - (f) strictly adhere to the relevant parts in the Education Bureau's latest Circular Memorandum on "School-based After-school Learning and Support Programmes" and all guidelines annexed thereto as the same may be revised from time to time and published on the webpage www.edb.gov.hk by the Grantor;
 - (g) perform the Programmes and Activities and provide the Project Materials to the satisfaction of the Grantor;
 - (h) use the Grant exclusively for the purpose of carrying out the Project, and will not change the Project Objective or the Proposal or the Approved Budget or any part or parts thereof without the Grantor's prior written consent;
 - (i) carry out its duties and obligations provided herein in accordance with this Agreement;
 - (j) forthwith notify the Grantor in writing upon its becoming aware of the occurrence of any event or circumstance mentioned in Clause 4.2;
 - (k) comply in all respects, including the giving of all necessary notices, the paying of all necessary fees and the obtaining of all necessary licences, consents and approvals, with the provisions of all legislation (including without limitation the Personal Data (Privacy) Ordinance, Cap. 486), regulations and by-laws applicable to the Project;
 - (l) at all times keep the Grantor properly informed and promptly provide all necessary advice, assistance and information as may be requested by the Grantor and/or its designated representatives from time to time;
 - (m) upon the Grantor's request, allow or procure the consent of the Collaborating Persons to allow any person acting on behalf of the Grantor to enter at all reasonable times into and upon any premises of the Grantee or such Collaborating Persons where any documents and records pertaining to the Project is kept, or any part of the Project is being carried out, or any items arising from the Project is being displayed or stored by the Grantee for the purpose of inspection or copying or for verifying the accuracy of any information given by the Grantee to the Grantor and otherwise verifying that the Grantee has complied with its obligations under this Agreement;
 - (n) attend and participate in all meetings, public forums and other promotional or accountability activities as the Grantor may convene or upon the request of the Grantor;
 - (o) permit the Grantor's representatives to attend and participate in any of the Programmes and Activities;
 - (p) immediately take all remedial actions that may reasonably be required by the Grantor at its own expense upon the Grantor's request;
 - (q) not advertise or hold itself out or represent itself as an agent, employee, servant or partner, of the Grantor; or suggest or imply that the Grantor is in any way responsible for its any acts and/or omissions and shall upon receiving request from the Grantor, withdraw or cease using any promotional notice which the Grantor in its absolute discretion considers to be inappropriate or undesirable; and
 - (r) provide at no cost to the Grantor such Project Materials as required by the Grantor from time to time.

5. Financial and Budgetary Control

- 5.1 The Grantee shall use the Grant exclusively for the Project Objective and in accordance with the Approved Budget only.

- 5.2 The Grantee shall not incur or be liable for any expenses exceeding the Grant. The Grantor will not:-
- (a) reimburse any expenses incurred by the Grantee that exceed the Grant;
 - (b) reimburse expenses incurred by the Grantee before the Commencement Date or after the expiry or termination of this Agreement.
- The Grantor accepts no liabilities for any deficits arising from the Project and the Grantor is entitled at its sole discretion to reject any applications for supplementary grant for the Project.
- 5.3 The Grantee shall open and maintain a Designated Bank Account for the sole purpose of keeping and operating all monies of the Grant. Separate ledgers should be set up for recording the income and expenditures of the Grant as well as for recording the income received from non-Eligible Students. The Grant shall be expended on Eligible Students only. For the avoidance of doubt, Interest shall form part of the Grant and be used exclusively for the purpose of the Project in accordance with the terms of this Agreement.
- 5.4. The Grantee shall pay into the Designated Bank Account all income arising from activities relating to the Project in accordance with the terms of this Agreement. The Grantee shall ensure that all receipts and payments in respect of the Project are properly and timely recorded. All withdrawals from the Designated Bank Account shall only be made by the Grantee's authorised representative. The Grantee shall keep all unspent balance of the Grant and any other revenue generated from the Project at all times in the Designated Bank Account.
- 5.5 The Grantee shall apply all Profit for the purpose of the Project Objective.
- 5.6 The Grantee shall return all unspent balance of the Grant to the Grantor immediately upon demand.

6. Books and Records, Financial Accounts and Reports

- 6.1 The Grantee shall, during the continuance of this Agreement, maintain proper books of accounts, all relevant payments and receipts and all relevant records and information in relation to the Project. The Grantee shall keep such books and records for a minimum period of seven (7) years after the Completion of the Project, and the Grantor's representatives shall be allowed access to such books and records for inspection, verification and copying from time to time upon reasonable notice.
- 6.2 The Grantee shall provide the following documents to the Grantor in the manner specified below:-
- (a) progress reports before the due date(s) as specified in the relevant guidelines and rules issued by the Grantor from time to time, and a final completion performance and evaluation report on the Project no later than two (2) months following the Completion of the Project. Each such report shall contain a comprehensive evaluation of the extent to which the Project Objective has/have been met.
 - (b) financial reports (with detailed breakdown of its expenditure and income) no later than two (2) months following the Completion of the Project. Any financial reports, statements and certificate submitted hereunder shall be prepared in accordance with accounting principles generally accepted in Hong Kong. All expenditures on the Project should be supported with detailed receipts and payment vouchers.
 - (c) an Audited Account of the Project supported by an auditor's report no later than six (6) months following the Completion of the Project. The auditor's report shall include statements expressing the auditor's opinion on (a) whether the Audited Account is prepared in accordance with this Agreement; and (b) whether the expenditure incurred by the Grantee is made in accordance with this Agreement (particularly the Approved Budget). The auditor's report shall also make full disclosure of any non-compliance with the Approved Budget. Without prejudice to other rights and remedies of the Grantor under this Agreement, the Grantor is entitled to withdraw the Grant, withhold payment and require the Grantee to immediately return the Grant partially or in full at the Grantor's discretion in the event that there is a late submission of the Audited Account or auditor's report or failure to comply with any of the other requirements stipulated in this clause.
- 6.3 The reports referred to in Clause 6.2 shall be prepared in accordance with such format as required by the Grantor from time to time.

7. Payment of the Grant

- 7.1 Subject to the terms and conditions of this Agreement, the Grant will be paid into the Designated Bank

- Account in accordance with the Payment Schedule set by the Grantor.
- 7.2 Notwithstanding anything to the contrary herein contained, the Grantor shall be entitled to withhold payment of the Grant or any part thereof if in the opinion of the Grantor:-
- (a) the Grantee has failed or is likely to fail to execute the Project in accordance with the Proposal; or
 - (b) the Project or any part thereof is being subsidised by funding other than that approved by the Grantor; or
 - (c) any of the reports, financial statements, other deliverables or Project Materials submitted by the Grantee or any of the Programmes and Activities performed under this Agreement is not to a standard satisfactory to the Grantor; or
 - (d) any of the data, facts or information represented to and/or provided by the Grantee to the Grantor about the Project and/or the Approved Budget is incomplete, incorrect, untrue or is intended to mislead the Grantor.
- Without prejudice to any other rights and remedies of the Grantor under this Agreement, the part of the Grant withheld pursuant to this Clause shall be forfeited by the Grantor (unless otherwise approved by the Grantor on a case-by-case basis) if any breach set out in sub-clause (a) to (d) above is not capable of remedy or, for any breach which is capable of remedy, the Grantee fails to remedy the same to the satisfaction of the Grantor within 1 year after the expiry date of this Agreement as defined in Clause 2.
- 7.3 For the avoidance of doubt, under no circumstances shall the Grantee be entitled to any interest or compensation or relief of whatever nature against the Grantor by reason of any late or withholding of payment of the Grant or any part thereof for any reasons whatsoever.
- 7.4 Unless otherwise agreed by the Grantor in writing, any expenditure incurred by the Grantee on any matter not listed in the Proposal shall be for the Grantee's own account with no recourse to the Grant. Should the Grantee be found to have applied or spent any of the Grant on any matters not listed in the Proposal, the Grantee shall make good and pay back the amount into the Designated Bank Account, failing which the amount with interest thereon calculated in accordance with Clause 7.5 shall be a debt due to and recoverable by the Grantor and interest shall accrue from the date the amount was so applied or spent.
- 7.5 Any interest payable under Clauses 7.4, 10.3, 10.5, 15.2 and 17.2 of this Agreement shall be calculated at the rate equivalent to 5% above the rate per annum as announced by The Hongkong and Shanghai Banking Corporation Limited from time to time to be its prime lending rate for Hong Kong Dollars.
- 7.6 On the Completion of the Project or by 31 July 2018, whichever is the earlier, the Grantee shall forthwith:-
- (a) account to the Grantor for all monies expended on the Project up to the date of Completion of the Project or by 31 July 2018 as the case may be, with detailed and original receipts and payment vouchers to support the expenditure. Any deficit shall be covered by the Grantee's own funds; and
 - (b) repay all unspent balance of the Grant to the Grantor.
- 7.7 Without prejudice to the generality of Clause 28, the Grantor may recover all unspent balance of the Grant under this Agreement by offsetting such unspent balance of the Grant with other funding or grants to be disbursed to the same Grantee under any other funding/grant agreements.
- 7.8 Without prejudice to the generality of Clause 28, the Grantor may recover all unspent balance of any other grant under any other funding/grant agreement by offsetting the same with the Grant under this Agreement.

8. Procurement and Staff Employment

- 8.1 The Grantee shall ensure that the purchases of goods and services of any value in relation to this Project are made on an open and competitive basis and only from those suppliers who are not associates or the associated persons of the Grantee or the Collaborating Persons in order to ensure openness, fairness and value for money, unless the Grantor has otherwise approved in writing.
- 8.2 Should persons be employed in the Project (as approved and listed in the Approved Budget), the Grantee shall comply with the relevant ordinances such as the Employment Ordinance (Cap. 57), the Employees' Compensation Ordinance (Cap. 282) and the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the employment terms and conditions shall not be better than those for comparable jobs in the civil service.
- 8.3 Unless the Grantee has obtained the Grantor's prior written consent:-
- (a) no emoluments shall be paid out of the Grant to any person working on or otherwise involved in the Project who is or becomes rewarded by the Grantee or any third party on a full time basis; and
 - (b) the Grantee shall not be entitled to make any claims against the Grant in respect of remuneration or reward payable to any person other than remuneration or reward wholly exclusively and necessarily attributable to that person's service or services in the performance of the Programmes

and Activities.

- 8.4 The Grantee shall keep the costs of all goods and services, including those of the Project staff, within the Approved Budget and shall similarly keep any adjustments thereto within the Approved Budget.

9. Management of the Project

- 9.1 The Grantee shall appoint a Project Coordinator who shall be responsible for:-
- (a) the overall management of the Project;
 - (b) monitoring the use of the Grant;
 - (c) ensuring the accuracy and completeness of the information provided in all reports submitted by the Grantee to the Grantor;
 - (d) liaising with the Grantor on matters in relation to the Project and responding promptly to the queries as may be raised by the Grantor; and
 - (e) making decisions in relation to the Project.

- 9.2 The Grantee shall ensure that the Project Coordinator will have sufficient experience, knowledge, skill and authority to discharge his duties and functions in respect of the Project.

- 9.3 The Grantee shall use its best endeavours to retain the same person as the Project Coordinator during the continuance of this Agreement and ensure that the Project Coordinator is contactable by the Grantor at all times. Save for changes caused by the death, serious illness or incapacity of the Project Coordinator or changes caused by resignation of the Project Coordinator, the Project Coordinator shall not be changed unless prior written approval has been given by the Grantor (such approval shall not be unreasonably delayed or withheld). In the event of such change, the Grantee shall, at its own expense, forthwith or within such period as may be approved by the Grantor, appoint another substitute to replace the Project Coordinator to the satisfaction of the Grantor and provided that such substitute shall be:-

- (a) no less well qualified in terms of experience, knowledge, skill and authority than the outgoing individual; and
- (b) available at the relevant time to act as such substitute.

If, in the Grantor's reasonable opinion, that the substitute does not satisfy the requirements provided in (a) and (b) of this Clause, the Grantor may require the Grantee to, at the Grantee's own cost, forthwith or within such period as may be specified by the Grantor, appoint another substitute who can satisfy the aforesaid requirements.

- 9.4 The appointment or replacement of the Project Coordinator of the Grantee to undertake any part of the Project shall not relieve the Grantee from any liability or obligation under this Agreement and the Grantee shall be responsible for the acts, omissions, defaults and neglects of all persons undertaking the Project for and on behalf of the Grantee including their directors, partners, employees, authorised sub-contractors, Collaborating Persons, agents or volunteers, as fully as if they were the acts, omissions, defaults or neglects of the Grantee.

10. Termination

- 10.1 Notwithstanding anything to the contrary contained herein, the Grantor may terminate this Agreement after giving fourteen (14) working days' notice in writing to the Grantee, if:-

- (a) the Grantee fails to commence or proceed with the Project with due diligence on or after the Commencement Date;
- (b) the Grantee has breached or has evinced its intention to breach any of the terms, conditions or undertakings of this Agreement or is persistently or wrongfully neglecting to carry out its duties and obligations under this Agreement;
- (c) the Grantee has, without the prior consent in writing of the Grantor, assigned or purported to assign the whole or any part of the Grant, this Agreement or any interest or benefit in the Project to any third party;
- (d) upon the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the winding up or dissolution of the Grantee (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or if a receiver, provisional liquidator, liquidator or administrator has been appointed over all or any of its assets or if the Grantee makes an assignment for the benefit of or composition with its creditors generally or

- threatens to do any of the above or any judgment is made against the Grantee or any similar occurrence under any jurisdiction that affects the Grantee;
- (e) the Grantee has provided or represented to the Grantor any data, facts or information about the Project which is incorrect, untrue or is intended to mislead the Grantor;
 - (f) the Grantee has subcontracted or purported to subcontract the whole or any part of this Agreement without the Grantor's prior written consent;
 - (g) material change occurs in the management or control of the Grantee/Project save for those changes made in accordance with the provisions of this Agreement;
 - (h) the Grantee or any of the Collaborating Persons engages in any conduct which can reasonably be considered to be prejudicial to the Project;
 - (i) the Grantee fails to submit reports and financial accounts provided in Clauses 6.2 or 6.3, or any of the data, facts or information represented to and/or provided by the Grantee to the Grantor about the Project and/or the Approved Budget is incomplete, incorrect, untrue or is intended to mislead the Grantor;
 - (j) any change of the Collaborating Persons without the prior written approval of the Grantor; or
 - (k) the Grantee has breached or has evinced its intention to breach any terms, conditions or undertakings of any other funding/grant agreements entered into between the Grantee and the Government.
- 10.2 Where a termination notice is served under Clause 10.1 hereof this Agreement shall terminate upon expiry of the notice period of fourteen (14) working days.
- 10.3 On the termination of this Agreement, the Grantee shall forthwith:-
- (a) account to the Grantor for all monies expended on the Project up to the termination under this Clause with detailed and original receipts and payment vouchers to support the expenditure; if any monies have been expended on the Project, an Audited Account of the Project supported by an auditor's report should be provided by the Grantee to the Grantor no later than six (6) months following the termination of this Agreement;
 - (b) repay the whole Grant with interest to the Grantor; but provided that if it is proved to the Grantor's satisfaction that the Grant or any part thereof has been spent by the Grantee bona fide and with due care of its obligations under this Agreement, the Grantee shall only repay all unspent balance of the Grant with interest to the Grantor; and
 - (c) pay to the Grantor all administrative, legal and other costs up to the date of full repayment in accordance with sub-clause (b) above.
- The interest stipulated in sub-clause (b) shall be calculated in accordance with Clause 7.5 and such interest shall accrue from the date of termination of this Agreement.
- 10.4 The right of termination provided hereunder shall be without prejudice to any other rights or remedies that the Grantor may have against the Grantee.
- 10.5 For the avoidance of doubt, if at any time, the Grantor has reason to believe that any term, condition or undertaking of this Agreement has been breached, the Grantor reserves the right not to terminate this Agreement but to demand the Grantee to repay forthwith the whole Grant or any part thereof that has been paid to the Grantee with interest calculated in accordance with Clause 7.5 and interest shall accrue from the date of such demand.

11. Indemnity

- 11.1 The Grantor shall not be liable for:-
- (a) any loss or damage to any property suffered or incurred by the Grantee, its directors, partners, employees, authorised sub-contractors, Collaborating Persons, volunteers, agents or any third parties;
 - (b) any injury or death sustained by any of the Grantee's directors, partners, employees, authorised sub-contractors, Collaborating Persons, volunteers, agents or any third parties, save and except any such injury or death caused by the negligence of the Grantor or any of its employees or agents.
- 11.2 The Grantee shall indemnify and keep indemnified the Grantor against all claims, damages, costs, losses or expenses in respect of any injury, death (save and except injury or death caused by the negligence of the Grantor or any of its employees or agents) or damage to property arising out of or resulting from the performance or attempted performance of this Agreement whether caused by any trespass, negligence, neglect, unauthorised act or omission, defamation, breach of statutory duty, nuisance or breach of this

- Agreement by the Grantee, its directors, partners, employees, authorised sub-contractors, Collaborating Persons, agents or volunteers.
- 11.3 The Grantee shall indemnify and keep the Grantor, its authorised users, assigns and successors-in-title fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any allegation or claim that the use, operation or possession of any Project Materials (including the Licensed Materials as defined below) or the exercise by the Grantor, its authorised users, assigns and successors-in-title of any of the rights granted under this Agreement infringes the Intellectual Property Rights of any person.

12. Intellectual Property Rights

- 12.1 Save for the Licensed Materials described in Clause 12.2, all the Project Materials and all and any Intellectual Property Rights in all the Project Materials shall be and shall remain the exclusive property of the Grantor and shall vest in the Grantor absolutely at the time they are created.
- 12.2 The provision of Clause 12.1 shall not apply to any work or material which is or was produced or created other than in relation to the Project and which is incorporated into the Project Materials or otherwise used by the Grantee in the Project or for the performance of the Agreement, or any Project Materials in respect of which any Intellectual Property Rights therein are vested in a third party (“Licensed Materials”).
- 12.3 The Grantee hereby grants for the benefits of the Grantor, its authorised users, assigns and successors-in-title, and/or shall procure at its own costs and expenses that the Government, its authorised users, assigns and successors-in-title are to be granted, an irrevocable, non-exclusive, worldwide, perpetual, royalty-free, transferable and sub-licensable licence to use the Licensed Materials. Such licence to use shall include the following rights:
- (a) the rights to use the Licensed Materials for all and any of the purposes contemplated by this Agreement (including any acts restricted by copyright set out under sections 22 to 29 of the Copyright Ordinance (Cap. 528)); and
 - (b) the rights to reproduce in any format as many copies of the Licensed Materials as are reasonably required for record and operational use.
- 12.4 The Grantee warrants to the Grantor that:-
- (a) the Project Materials (other than the Licensed Materials) and other things and materials developed by or on behalf of the Grantee specifically under this Agreement shall be or shall consist of original works created, developed or made by the Grantee for the Grantor during the course of or in connection with this Agreement;
 - (b) the implementation of the Project, the carrying out of the Programmes and Activities, the performance of this Agreement by the Grantee or the use, operation or possession by the Grantor, its authorised users, assigns and successors-in-title of the Project Materials (including the Licensed Materials) or any part thereof under this Agreement or any part thereof for all and any purposes contemplated under this Agreement does not and will not infringe the Intellectual Property Rights of any person;
 - (c) the exercise by the Grantor, its authorised users, assigns and successors-in-title of any of the rights granted under this Agreement will not infringe the Intellectual Property Rights of any person;
 - (d) if the Project Materials contain any works or materials of which the Intellectual Property Rights belong to a third party, prior to the use and incorporation of such works and materials in performing the Project or for the performance of this Agreement, the Grantee shall have obtained from such third party the grant of all necessary licences for itself and the Grantor, its authorised users, assigns and successors-in-title to use such works and materials in the manner and for any of the purposes contemplated by this Agreement. The costs of the above licences shall be borne by the Grantee; and
 - (e) the Grantee hereby irrevocably waives and undertakes to procure at its own costs and expenses all the authors of the Project Materials (including the Licensed Materials) or any part thereof to irrevocably waive all moral rights (whether past, present or future) as referred to in the Copyright Ordinance, Cap. 528 in the respective items. Such waiver shall operate in favour of the Grantor, its authorised users, assigns and successors-in-title and shall take effect upon creation of such items or upon delivery of such items to the Grantor or the grant of the licence to the Grantor, its authorised users, assigns and successors-in-title (as the case may be).
- 12.5 The Grantee shall at its own costs and expenses take any action or execute any document (or procure that

the same be done or executed) as may be required by the Grantor to give full effect to the provisions of this Clause 12 and shall provide all such documents to the Grantor within fourteen (14) days of the date of the Grantor's written request or such longer period as may be agreed by the Grantor in writing.

13. Confidentiality

- 13.1 The Grantee undertakes not to, during the continuance of this Agreement or at any time thereafter, without the prior written consent of the Grantor disclose to any person any information furnished by or on behalf of the Grantor in connection herewith, or any records, database and materials developed, collected, created or compiled by the Grantee pursuant to this Agreement, provided that the restrictions on disclosure contained herein shall not apply to disclosure:-
- (a) to the Grantee's authorised sub-contractors, Collaborating Persons, employees or agents;
 - (b) to any person in circumstances where such disclosure is necessary for the performance of the Grantee's obligations under this Agreement provided that the Grantee shall, prior to such disclosure, inform the Grantor the content of the information to be disclosed and to whom the disclosure is to be made;
 - (c) of information already known to the recipient otherwise than as a result of disclosure by the Grantee;
 - (d) under compulsion of law.
- 13.2 Any disclosure permitted under the above sub-clause shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified therein.
- 13.3 The Grantee shall not without the prior written consent of the Grantor make use of or reproduce any information furnished by the Grantor relating to this Agreement otherwise than in the performance of its obligations hereunder and shall upon demand, return or dispose of the same as the Grantor may direct.
- 13.4 The Grantee shall at its own expense take such measures as are necessary, whether by adequate security systems, legal proceedings or otherwise, to ensure compliance with this Clause.
- 13.5 Without prejudice to Clauses 13.1 to 13.4, the Grantee shall inform every person to whom any information is disclosed pursuant to this Clause of the restrictions attaching to such information and the Grantee shall first obtain from that person a legally binding and enforceable undertaking in terms similar to that in this Clause.

14. Conflict of Interest

- 14.1 The Grantee shall ensure that it (including its associates and associated persons), its directors, partners, employees, agents and volunteers (including their associates and associated persons), and its authorised subcontractors and Collaborating Persons (including their associates and associated persons) have no actual or potential financial or other interests in, or have any association or connection with:-
- (a) any goods or services to be acquired, procured or provided with the Grant by the Grantee, its authorised sub-contractors or Collaborating Persons or under this Agreement; and
 - (b) any persons to be employed or engaged by the Grantee, its authorised sub-contractors or Collaborating Persons in relation to the Project;
- unless prior written approval of the Grantor has been obtained.
- 14.2 The Grantee shall forthwith notify the Grantor in writing of:-
- (a) all or any facts which may reasonably be considered to give rise to a situation where the financial or other interests of the Grantee (including its associates and associated persons), its directors, partners, employees, agents or volunteers (including their associates and associated persons), and its authorized sub-contractors and Collaborating Persons (including their associates and associated persons) are or may be in actual or potential conflict or competition with the Grantee's obligations under this Agreement; and
 - (b) any actual or potential financial or other interests the Grantee (including its associates and associated persons), its directors, partners, employees, agents or volunteers (including their associates and associated persons), and its authorised sub-contractors and Collaborating Persons (including their associates and associated persons) may have in, or any association or connection the aforesaid persons may have with: -

- (i) any goods or services to be acquired, procured or provided by the Grantee, its authorized sub-contractors or Collaborating Persons under this Agreement; and
 - (ii) any persons to be employed or engaged by the Grantee, its authorised sub-contractors or Collaborating Persons in relation to the Project.
- 14.3 The Grantee shall ensure that its directors, partners, employees, agents and volunteers (including their associates and associated persons), its authorised sub-contractors and Collaborating Persons (including their associates and associated persons) will inform the Grantee and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which the financial or other interests of such persons, conflict or compete, or may conflict or compete, with the Grantee's obligations under this Agreement.

15. Corrupt Gifts and Payments of Commission

- 15.1 The Grantee itself and it shall procure that any person employed by it or acting on its behalf in relation to this Agreement (including its employees, agents, authorised sub-contractors and Collaborating Persons) shall not:-
 - (a) give or offer to give to any employee or agent of the Grantor or the Government any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the execution of this Agreement or any other contracts of the Grantor or the Government or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other contracts of the Grantor or the Government;
 - (b) enter into this Agreement or any other contracts with the Grantor or the Government in connection with which commission has been paid or agreed to be paid by the Grantee or on its behalf, or to its knowledge.
- 15.2 Any breach of this clause by the Grantee or by any person employed by it or acting on its behalf (whether with or without the knowledge of the Grantee) or the commission of any offence by the Grantee or by any person employed by it or acting on its behalf in relation to this Agreement or any other contracts of the Government shall entitle the Grantor to terminate this Agreement by giving not less than seven (7) days' prior written notice to the Grantee and to recover from the Grantee all or any monies paid under the Grant together with all administrative, legal and other costs and interest calculated in accordance with Clause 7.5 and accrued from the date of breach of this Clause.

16. Force Majeure

- 16.1 If either party to this Agreement should be prevented or delayed in the performance of this Agreement by Force Majeure, the party so prevented or delayed shall be excused from performance for so long as such cause of prevention or delay shall continue. The party affected by the prevention of the delay shall give notice in writing to the other party as soon as possible of the occurrence of the event of the Force Majeure. Force Majeure shall not suspend, alter or affect the Grantee's right to receive reimbursement for those expenses set out in the Approved Budget and incurred by the Grantee prior to such event.
- 16.2 In the event that the Grantee is unable to perform its obligations by reason of the Force Majeure for a period of not less than ninety (90) consecutive days, the Grantor may terminate this Agreement as long as the Grantor has given the Grantee fourteen (14) days' prior written notice of its intention to terminate this Agreement.
- 16.3 In the event that this Agreement is terminated pursuant to Clause 16.2, the Grantee shall be entitled to receive reimbursement for those expenses set out in the Approved Budget and incurred by the Grantee up to the date of termination of this Agreement.
- 16.4 Subject to Clause 16.2, in the event of the cessation of the Force Majeure, the parties will use their best endeavours to achieve, as soon as possible and with all due diligence, the normal pursuit of this Agreement and to regain the time lost. The requirements set out in the Proposal and the Payment Schedule shall be adjusted in such manner as may be mutually agreed by the parties as being reasonably needed by the Grantee to resume normal performance of the Project. In all other respects, the obligation of the parties hereunder shall be unaffected provided that the Grantor and the Grantee may agree appropriate adjustment to the Approved Budget.

17. Publicity

- 17.1 The Grantee shall submit to the Grantor all advertising or other publicity material relating to this Agreement or other work done in connection with this Agreement wherein the Grantor's or the Government's name is mentioned or language used from which a connection with the Grantor can reasonably be inferred or implied. The Grantee shall not publish or use any such advertising or other publicity material without the Grantor's prior written consent (which may be withheld in the Grantor's absolute discretion without giving any reasons); and
- 17.2 The Grantee shall ensure that no one connected with the Grantee or the Project shall use, infer or imply any association with the Project for promoting the individual, financial, political or evangelical interests of the Grantee and/ or any other parties. If the Grantee fails to comply with this Clause, the Grantor shall be entitled to demand the Grantee to refund forthwith all or any part of the Grant that has been paid to the Grantee together with interest calculated in accordance with Clause 7.5 and accrued from the date of such demand or terminate the Project or take any other action as the Grantor may deem fit.

18. Waivers and Concurrent Remedies

- 18.1 No failure or delay by either party in exercising any right or remedy available to it under this Agreement or in law or in equity ("such right or remedy") shall operate as a waiver of such right or remedy. Nor shall any single or partial exercises of any such right or remedy preclude any other or further exercise thereof. Nor shall any 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.
- 18.2 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.

19. Modifications

No amendment or modification of or addition to this Agreement shall be valid unless made in writing and signed by both the authorized signatories of the Grantor and the Grantee.

20. Entire Agreement

This Agreement constitutes the whole agreement between the Grantor and the Grantee and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Grantee acknowledges that in entering into this Agreement, it has not relied on any statements, warranties or representations given or made by the Grantor.

21. Severability

If any provision of this Agreement or its application to any circumstances shall, to any extent, be invalid, illegal or unenforceable, the remaining part of this Agreement and the application of that provision to other circumstances shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22. Proper Law and Jurisdiction

This Agreement shall be governed by and interpreted in accordance with the laws of Hong Kong and the parties agree to submit to the exclusive jurisdiction to the courts of Hong Kong.

23. Disclosure of the Grant Payable to the Grantee

- 23.1 The Grantee hereby acknowledges and agrees that the Grantor may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to the Grantee, disclose to any person in such form and manner as the Grantor deems fit:
- (a) the Grant payable and the actual amount of financial support to the Grantee pursuant to this Agreement;
 - (b) the Proposal, whether in whole or in part; and
 - (c) any details of this Agreement.
- 23.2 The Grantee hereby waives its rights, if any, to make any claims against the Grantor for any loss or liability suffered by the Grantee as a result of or in connection with any disclosure made by the Grantor under this Agreement.

24. No Assignment

- 24.1 The Grantee shall not assign, sub-contract or otherwise dispose of any interest, right, benefit or obligation under this Agreement.
- 24.2 Subject to the prior written approval of the Grantor, the Grantee is allowed to sub-contract its duties and obligations in the manner as specified in the Proposal to the Collaborating Persons. The Grantor's approval is granted on the condition that the Grantee shall be solely liable for any act, default, neglect or omission of any of the Collaborating Persons as if such act, default, neglect or omission were its own. Any change of the Collaborating Persons is only permissible with the prior written approval of the Grantor.

25. Expiry of Agreement

The expiry of this Agreement or any termination hereunder shall be without prejudice to:-

- (a) any antecedents rights or obligations of either party under this Agreement; and
- (b) any provisions of this Agreement capable of being performed or observed notwithstanding such expiry or termination which shall survive the same and shall continue to be binding on the parties and shall remain in full force and effect.

26. Insurance

- 26.1 The Grantee shall at its own cost and expense effect an insurance policy to the Grantor's satisfaction with the Grantor as the co-insured to cover all losses, claims, demands or public liability in relation to this Agreement with an insurance company previously approved by the Grantor in writing (which approval shall not be unreasonably withheld) and shall ensure that such insurance remain in full force and effect during the continuance of this Agreement. The Grantee shall when required, deposit with the Grantor for safe keeping during the continuance of this Agreement such policy of insurance together with the receipt of payment of the current premium.
- 26.2 If the Grantee fails to effect and keep in force the insurance referred to in this Clause or any other insurance which it may be required to effect under the terms of the Agreement then and in any such cases the Grantor may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by Grantor as aforesaid from any monies due or which may become due to the Grantee or recover the same as a debt due from the Grantee.

27. Notice

- 27.1 Each notice, demand or other communication given or made under this Agreement shall be in writing and delivered or sent to the relevant party at its address or facsimile number set out in the Proposal (or such other address or facsimile number as the addressee has by five (5) days' prior written notice specified to the other party).
- 27.2 Such notices, demands or other communications shall be addressed as provided in Clause 27.1 and, if so addressed, shall be deemed to have been duly given or made as follows, whichever is earlier:-

- (a) if sent by personal delivery, upon delivery at the address of the relevant party;
- (b) if sent by post, two (2) business days for local post and five (5) business days for overseas post after the date of posting;
- (c) if sent by facsimile, when dispatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission.

28. Recovery of Sums Due

Where the Grantee has incurred any liability to the Government, whether at law or in equity and whether such liability is liquidated or unliquidated, the Government may set off, whether by way of equitable set off or at common law the amount of such liquidated liability and a reasonable estimate of the amount of any unliquidated liability, against any sum then due or which at any time thereafter may become due from the Government to the Grantee under this Agreement or any other contract made between the Government and the Grantee.

29. Contracts (Rights of Third Parties) Ordinance

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).

July 2017