

STANDARD TEXT

(for ex-aided DSS schools with SMC)

THIS SSB Service Agreement is made on day of .

PARTIES:

(1) **[name of SSB]** of **[address of SSB]** (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 (hereinafter referred to as the "Government").

WHEREAS

- A. The Government wishes to provide quality education in accordance with approved education policies and has invited school sponsoring bodies to switch their existing aided schools into DSS (as defined below) schools.
- B. The SSB has submitted an application in response to the invitation.
- C. The Government has in principle accepted the SSB's application for admission of the school (as defined below) to the DSS with effect from September **[year]**.
- D. In pursuance of the above, the parties agree to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED

1 Definitions and Interpretation

1.1 In this Agreement, words and expressions that are defined in the Education Ordinance shall bear the same meanings in this Agreement, unless otherwise defined.

1.2 **"Conditions"** means the conditions for admission of the School to the DSS, the details of which are set out in Schedule One attached hereto, as the same may be amended from time to time by mutual agreement of the parties.

1.3 **"DSS"** means the Direct Subsidy Scheme under which the Government subsidizes selected schools based on their enrolment and in accordance with terms and

conditions specified by the Government, which may be amended from time to time, whilst allowing participating schools in the scheme maximum freedom with regard to curriculum, fees levels and admission of students.

- 1.4 **"Education Ordinance"** means the Education Ordinance, Cap. 279, as may be amended from time to time.
- 1.5 **"Proposed Plan of Joining DSS"** means the proposed plan submitted by the SSB in connection with its application for admission of the School to the DSS and accepted by the Government with amendments, if any.
- 1.6 **"School"** means the [name of aided school] to be switched from aided to DSS status which provides [secondary / primary] education at [address of aided school].
- 1.7 **"School Development Plan"** means the proposed school development plan to be submitted by the SMC and as accepted by the Government pursuant to Clause 5.4 hereof.
- 1.8 **"SMC"** means the incorporated or registered school management committee pursuant to Clause 3 hereof.
- 1.9 **"SMC Service Agreement"** means an agreement to be entered into by the Government and the SMC on the terms and condition substantially as outlined in the sample agreement in Schedule Two attached hereto.

1.10 In this Agreement unless the context requires otherwise –

- (a) words importing the singular 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.

1.11 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.

1.12 In the event of any conflict between –

- (a) the main body of this Agreement and Schedule One, the main body of this Agreement shall prevail; and
- (b) the provisions of this Agreement (including Schedule One attached thereto) and the provisions of the Education Ordinance, the provisions of the Education Ordinance shall prevail.

2 Government's Obligations to the SSB

2.1 Upon the admission of the School to the DSS, 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 SMC of the School

3.1 Subject to the Education Ordinance, at a reasonable time before the admission of the School to the DSS, the SSB shall ensure that the SMC of the School shall be a company limited by guarantee incorporated under the Companies Ordinance or a corporate body registered under some other ordinances as shall be prescribed by the Government.

3.2 The SSB shall ensure that SMC shall be a charitable institution registered with the Inland Revenue Department under Section 88 of the Inland Revenue Ordinance.

3.3 The SSB shall submit to the Government a draft memorandum of association and articles of association of the proposed SMC or such other documents as appropriate for approval no later than six months before the School has commenced operation under DSS.

3.4 Upon request by the Government, the SSB shall make such amendments to the draft documents submitted to the Government under Clause 3.3 as appropriate as the Government sees fit.

- 3.5 Subject to Clause 3.4, no addition, alteration or amendment shall be made to the documents approved by the Government under Clause 3.3, 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.
- 3.6 The SSB shall ensure that the object of the SMC shall be for the sole purpose of advancement of education by operating the School.
- 3.7 The SSB shall ensure that any person who 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.
- 3.8 The members of the SMC shall be the same persons as that of the directors of the SMC and the same persons as that of the members of the management committee as defined in the Education Ordinance.
- 3.9 Without limiting Clause 3.1, the SSB of a DSS school shall notify the Government if it decides to establish an incorporated management committee (IMC) in respect of the school under the Education Ordinance. The SSB shall follow the relevant provisions in relation to the establishment of an IMC in accordance with the Education Ordinance.

4 Implementation of the Proposed Plan of Joining DSS

- 4.1 To the extent that the promises and undertakings are relevant to the SSB, the SSB has the obligation to take all such steps as may be necessary to implement the promises and undertakings in accordance with the Proposed Plan of Joining DSS, 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 Plan of Joining DSS and the Education Ordinance.
- 4.3 The Conditions shall form part of the terms and conditions of this Agreement.

5 School Development Plan

- 5.1 The SSB shall ensure that the SMC shall submit to the Government a proposed school development plan for acceptance by the Government providing such information as may be specified by the Government, within six months after the School has commenced operation under DSS.
- 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 Plan of Joining DSS 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 the SSB shall ensure that it shall be incorporated into the SMC Service Agreement. Any modifications to the School Development Plan shall require prior written approval of the Government.

6 SMC Service Agreement

6.1 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 under DSS or on such other date as mutually agreed in writing between the parties.

6.2 If the SMC shall fail to enter into the SMC Service Agreement with the Government in accordance with Clause 6.1 above, the Government shall be entitled to terminate forthwith this Agreement.

6.3 The SSB acknowledges that the SMC Service Agreement shall include a right for the Government to terminate the SMC Service Agreement 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.

6.4 This Agreement shall come to an end upon the termination of the SMC Service Agreement.

7 Assignment and Termination

7.1 The SSB shall not be entitled to assign, transfer or otherwise dispose of any of its interest, rights, benefits or obligations under this Agreement.

7.2 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.

8 Headings

8.1 The headings to the clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

9 General

- 9.1 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.

10 Waiver

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

11 Saving

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

12 Severability

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

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

for Permanent Secretary for Education

Witness

()

SIGNED for and on behalf of
[name of SSB]

By

Signature

Title

Witness

()

Schedule One

Conditions for Admission of an Aided School to the Direct Subsidy Scheme (DSS)

The Conditions set out below shall apply to the School while it is in operation under the DSS.

1. The SSB shall ensure that the SMC shall operate a non-profit-making DSS [co-educational/boys/girls] [primary/secondary] school at [address of aided school] from the school year [school year] onwards.
2. The School shall start operation under the DSS in September [year].
3. The School shall be operated as a DSS [co-educational/boys/girls] [primary/secondary] 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 in writing. The evening session, if any, shall be registered as a separate school.
4. The School shall be entitled to recurrent and non-recurrent subsidy applicable to a DSS school at the Government's prevailing standard and practice.
5. The School will be given an option to revert to aided status only if the Government changes the formula for calculating the DSS subsidy such that the School's financial viability is adversely affected regardless of the number of years after its joining the DSS.
6. The School shall be operated in compliance with the Education Ordinance; the Education Regulations, other relevant legislations and such other requirements as specified from time to time by the Government.
7. 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.
8. The SSB shall procure the SMC to:
 - (a) finance any possible deficit of the School under the DSS era by means of injecting funds which are not returnable;
 - (b) ensure the School shall be in a sound financial situation; and
 - (c) after it has joined the DSS for 5 years, ensure that the School shall at all times accumulate operating reserve sufficient to meet at least 2 months operating expenses.

If the SMC fails to perform any of the above obligations, the SSB shall perform such obligations.

9. The SSB has obligation to take all such steps as may be necessary to ensure that the SMC shall make its best endeavours to implement as far as practicable the proposals included in the Proposed Plan of Joining DSS.

10. 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.
11. The SSB shall ensure that the SMC shall admit students in accordance with the criteria laid down in the School Development Plan.
12. The SSB shall ensure that the SMC shall implement all education policies applicable to DSS schools.
13. 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.
14. The SSB shall ensure that the SMC shall facilitate, whenever possible, internships of trainee teachers.
15. Any application for additions, alterations or improvements to the school premises for which approval by the Government is required 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 SMC. The SMC 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 organisations as may be approved by the Government for conducting public examinations, operating other schools on a temporary basis or organising 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.
18. 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 under DSS.
19. The SSB acknowledges that subject to the Education Ordinance and such other requirements as specified from time to time by the Government, the SMC shall comprise the principal, representatives from the SSB, parents and teachers, other community members or professionals and, when appropriate, alumni.
20. The SSB shall ensure that the SMC shall produce a proposed school development plan to the satisfaction of and accepted by the Government within one year after the School has commenced operation under DSS. 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 under DSS, enter into an agreement with the SMC to ensure that the latter is accountable for the management and performance of the School according to the principles set out in this Agreement and the School Development Plan.
22. 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.
23. The SSB shall submit to the Government annually, beginning one year from the School's commencement of operation under DSS, a complete statement of the accounts of the School audited by a certified public accountant (practicing) as defined in the Professional Accountants Ordinance and submitted not later than six calendar months from the close of the year to which it relates. The Permanent Secretary for Education and Director of Audit or any officer duly authorized by them may, if they consider it necessary in the public interest, have access to the records and accounts of the School.
24. The SSB acknowledges that the term of the SMC Service Agreement shall be for a period of ten years renewable as hereinafter mentioned.
25. The Government may conduct the following compliance vetting –
 - (a) to check if the admission conditions and requirements 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.
26. 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.
27. 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 future.
28. 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 under DSS. 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 27 above. The School shall be governed by the School Development and Accountability (SDA) Framework and required to plan and report as required under the SDA Framework including the use of key performance measures and the administration of stakeholders' survey when a comprehensive review is conducted in respect of the School.

29. 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 period specified by the Government provided that the period of time thus specified shall be reasonable;
 - (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.
30. If the Government considers that the SMC fails to improve as may be required under Clause 29 above, the Government may, without prejudice to its rights and powers under the Education Ordinance –
 - (a) appoint additional school managers to the SMC for such period as it thinks fit;
 - (b) not 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 its expiry by giving the SMC nine months' notice to that effect; or
 - (d) take any other measures as it thinks fit.
31. The Government and the SSB may by mutual agreement terminate the SSB Service Agreement and the SMC Service Agreement at any time.
32. The SSB acknowledges that 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 no later than 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.
33. The SSB acknowledges that in the event the SMC Service Agreement is terminated or not renewed, no compensation shall be paid to the SSB or the 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 within reasonable time after the date of cessation of managing the School. The SMC shall submit within six calendar months

from that date of cessation accounts up to that date of cessation audited by a certified public accountant (practicing) as defined in the Professional Accountants Ordinance at such time and in such manner as the Government may specify.

Schedule Two

[SMC Service Agreement]