

SUBJECT TO REVISION/ UPDATE.

DATED [date]

Permanent Secretary for Education Incorporated

and

[Name of Grantee]

**Agreement
in respect of
a Grant from the Gifted Education Fund**

THIS AGREEMENT (this “**Agreement**”) is made on the [date].

BETWEEN

- (1) **Permanent Secretary for Education Incorporated**, a corporation sole incorporated under and by virtue of the Permanent Secretary for Education Incorporation Ordinance (Cap. 1098) whose principal place of business is at 11th Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong (the “**Grantor**”); and
- (2) [name of Grantee] whose registered office is at [address of Grantee] (the “**Grantee**”);

WHEREAS: –

- A. The “Gifted Education Fund” was established under the Declaration of Trust in Hong Kong.
- B. The Grantor acting as trustee of the Gifted Education Fund undertook in the Declaration of Trust to apply the income and in the exceptional circumstances mentioned in and pursuant to paragraph 5 of the Declaration of Trust a small portion of the principal of the Gifted Education Fund, to furthering the following objects:
 - (a) support the operation of the Hong Kong Academy for Gifted Education;
and
 - (b) support and promote other worthwhile initiatives, schemes and

programmes that aim to enhance the quality of gifted education in Hong Kong.

- C. The public was invited to submit applications for grants under the Gifted Education Fund.
- D. The Grantee is desirous of obtaining a grant under the Gifted Education Fund for the purpose of organising a Programme and has submitted a Proposal in relation thereto.
- E. The Grantor has approved a Grant to the Grantee. All the approved items of the Programme to be financed are listed in the Budget.
- F. The Grantor has agreed to grant and the Grantee has accepted the Grant for the purpose of carrying out the Programme based on the Proposal and the Budget and upon the following terms and conditions.

NOW IT IS HEREBY AGREED AS FOLLOWS: –

1. Interpretations

1.1 For the purposes of this Agreement, the following expressions shall bear the same meanings as set out below: –

<p>“Associate”</p>	<p>in relation to any person means:</p> <ul style="list-style-type: none">(a) a relative or partner of that person; or(b) a company one or more of whose directors is in common with one or more of the directors of that person;
<p>“Associated Person”</p>	<p>in relation to another person means:</p> <ul style="list-style-type: none">(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. <p>“control” 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</p> <p>that the affairs of the first mentioned person are conducted in accordance with the wishes of that other person;</p>
<p>“Audited Accounts”</p>	<p>means an account statement prepared in respect of the Programme in accordance with the relevant laws of Hong Kong and the Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants, and duly signed by the auditor appointed by the Grantee;</p>
<p>“Budget”</p>	<p>means the budget approved by the Grantor as listed in Part A of Schedule II to this Agreement;</p>
<p>“Commencement</p>	<p>has the meaning given to it in Clause [2(a)];</p>

Date”	
“Completion Date”	has the meaning given to it in Clause [2(c)];
“Declaration of Trust”	means the declaration of trust made on the 15 th day of November 2016 under which the Gifted Education Fund was established;
“Deliverables”	means any or all reports, plans, documents, summaries, protocols, procedures, guidelines, menus, models, analyses, compilations of data or information, software, charts, diagrams and papers, however stored, processed or retrieved, which the Grantee is required to produce hereunder (including the Reports and Audited Accounts required under Clause [5]);
“Designated Account”	has the meaning given to it in Clause [3.1(b)];
“Force Majeure”	means (a) any supervening outbreak of war affecting Hong Kong and/or any other parts of the PRC, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion,

	<p>revolution, military or usurped power, overthrow (whether by external or internal means) of the Government and/or the government of the PRC, civil war, riot, civil disturbances, influenza pandemic, Severe Acute Respiratory Syndrome affecting Hong Kong and/or any other part of the PRC, fire if not caused or contributed to by the Grantee, its Associate or Associated Person or any employee or agent or ex-employee or ex-agent thereof, civil commotion or acts of God; or</p> <p>(b) any supervening catastrophic event which is similar to the foregoing if not caused or contributed to by the Grantee, its Associate or Associated Person or any employee or agent or ex-employee or ex-agent thereof,</p> <p>and which, in either (a) or (b) above, prevents the performance of the Grantee’s duties and obligations hereunder;</p>
<p>“Gifted Education Fund Secretariat”</p>	<p>means the Gifted Education Fund Secretariat under the Education Bureau of the Government;</p>

“Government”	means the Government of Hong Kong;
“Grant”	means, subject to Clause 3.1(b), a grant in the sum of Hong Kong Dollars [total grant amount] Only payable by instalments to the Grantee under the Gifted Education Fund for carrying out and completing the Programme in accordance with this Agreement;
“Guidelines”	means the General Guidelines on Management and Monitoring of the Programmes annexed in Schedule III to this Agreement as the same may be revised from time to time and published on the EDB’s website (which is https://www.edb.gov.hk/en/GEFund as at the date hereof) by the Grantor;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Hong Kong Dollar” or “HK\$”	means the lawful currency of Hong Kong;
“Payment Schedule”	means the schedule of payment in Part B of Schedule II to this Agreement, according to which

	the Grantor shall pay the Grant into the Designated Account by instalments;
“PRC”	means the People’s Republic of China;
“Programme”	means an off-school advanced learning programme for gifted students in Hong Kong that the Grantee shall carry out using the Grant;
“Programme Materials”	means all Deliverables, works of authorship and materials of whatever media (including those in electronic format) developed, written, prepared, produced or created by the Grantee, its directors, employees, agents or sub-contractors in relation to the Programme and/or this Agreement (whether individually or jointly with the Grantor) (including all reports, studies, data, diagrams, charts, photographs, drawings, specifications, documents) and all drafts and working papers relating to any of the above items;
“Programme Start Date”	means the date specified as the Programme Start Date in Schedule I of this Agreement;
“Proposal”	means the set of proposal dated [date] with

	clarification submitted by the Grantee and revised thereafter pursuant to the Grantor's request; a copy of which is annexed in Schedule I to this Agreement; and
“Reports”	means all of Progress Report, Interim Financial Report, Final Report, Final Financial Report and Audited Accounts as required under Clause [5.3].

1.2 Unless otherwise expressly stated to the contrary, the following rules of interpretation shall apply: –

- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;
- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated);
- (c) headings are inserted for ease of reference only and shall not affect the construction of this Agreement;
- (d) references to a document shall (i) include all schedules, appendices,

- annexures and other materials attached to such document; and (ii) mean the same as from time to time amended or supplemented;
- (e) references to “Grantor” or “Grantee” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;
 - (f) references to a Clause or Sub-clause in, or a Schedule to, a document are to a clause or sub-clause in, or a schedule to, that document;
 - (g) references to “laws” and “regulations” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity, regardless of the jurisdiction;
 - (h) a time of a day shall be construed as a reference to Hong Kong time;
 - (i) references to a day and a month mean a calendar day and a calendar month respectively;
 - (j) the expressions “include” and “including” shall be construed without limitation to the words following; and
 - (k) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition.

2. Execution of the Programme

In consideration of the Grantor granting the Grant, the Grantee hereby undertakes with the Grantor that it shall: –

- (a) commence the Programme on [date] or such later date as may be approved by the Grantor in writing (“**Commencement Date**”);
- (b) carry out the Programme with due diligence and in a conscientious and timely manner in accordance with the Proposal and the Budget;
- (c) complete the Programme by [date] or such earlier or later date as may be approved by the Grantor in writing (“**Completion Date**”); and
- (d) strictly adhere to the Guidelines.

3. Grantee’s Obligations

3.1 The Grantee undertakes during the term of this Agreement to: –

- (a) use the Grant wholly and exclusively for the Programme;
- (b) open and maintain with a licensed bank in Hong Kong under the Banking Ordinance (Cap. 155) an interest-bearing bank account solely and exclusively for the purpose of the Programme or set up a separate ledger in the Grantee’s accounting system (“**Designated Account**”) for the sole purpose of keeping and operating all monies of the Grant. For the avoidance of doubt, all interest earned on monies in the Designated Account shall form part of the Grant and be used exclusively for the purpose of the Programme in accordance with the terms of this Agreement. Save for the interest earned on monies in the Designated Account, the Grantee shall not generate any income from the

Programme;

- (c) submit to the Grantor Reports, Programme Materials and other Deliverables as required under this Agreement;
- (d) within three (3) months from the Completion Date or forthwith upon termination of this Agreement by the Grantor, return to the Grantor any unused funds in the Designated Account;
- (e) allow or procure for the Grantor access to all Programme Materials and to take copies thereof, and subject to reasonable prior notice, access to the premises of the Grantee or any third party on which any activities relating to the Programme may take place;
- (f) at no cost to the Grantor, provide from time to time to the Grantor, such Deliverables (including Audited Accounts as mentioned in Clause 5), as the Grantor may require;
- (g) acknowledge having received the Grant from the Grantor in any publications and activities regarding the Programme by displaying the name of the Gifted Education Fund conspicuously where appropriate or as required by the Grantor, provided always that the Grantee shall not advertise, or hold itself out as an agent, employee, servant, or partner, of the Grantor; nor imply that the Grantor is in any way responsible for its acts and/or omissions, and provided further that if so required by the Grantor, the Grantee shall withdraw or cease using any promotional

material; and

- (h) subject to reasonable prior notice, attend, participate and aid in such activities, programmes or events relating to the Programme as may be required by the Grantor from time to time, during and after, and notwithstanding the early termination of this Agreement or completion of the Programme.

4. Payment of the Grant

- 4.1 Subject to the terms of this Agreement, the Grantor shall pay the Grant into the Designated Account by instalments in accordance with the Payment Schedule.
- 4.2 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 Programme in accordance with the Proposal; or
 - (b) the Grantee fails to submit any Deliverables (including Reports and Audited Accounts);
 - (c) any of the Deliverables submitted by the Grantee under this Agreement is not satisfactory to the Grantor; or
 - (d) there is a credit balance in the Designated Account that is greater than

the instalment of the Grant due to be paid.

- 4.3 The Grantor reserves the right to recover the full amount of the Grant paid to the Grantee if the Grantee fails to submit any of the Deliverables in the manner and substance as set out in Clause [5.3].
- 4.4 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 for any reasons whatsoever.
- 4.5 The Grantee may at its discretion reallocate the funds from one approved item of the Budget to another strictly in accordance with paragraph 3 of the Guidelines.
- 4.6 Unless otherwise agreed by the Grantor in writing, any expenditure incurred by the Grantee on any matter not listed in the Budget shall be for the Grantee's own account with no recourse to the Grant. Should the Grantee have applied or spent any of the Grant on any matters not listed in the Budget, the Grantee shall make good and pay back the amount into the Designated Account, failing which the amount with interest thereon at the rate mentioned in Clause [6.5] shall be a debt due to and recoverable by the Grantor. The interest shall accrue from the date the Grantee applied or spent any of the Grant on any matters not listed in the Budget until the date the amount is paid back.

5. Books and Records, Financial Accounts and Reports

5.1 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 Programme (including the cash and bank books, the sales and purchases day books, the ledger of accounts for recording all transactions, all income and expenses and all assets and liabilities in relation to the Programme).

5.2 The Grantee undertakes: –

(a) to keep, during the term of this Agreement and up to seven (7) years after the Completion Date, all original receipts, payment vouchers and books of accounts relating to the Programme and to make the same available for inspection, verification and copying from time to time by the Grantor or the Grantor’s representatives; and

(b) to procure, maintain, handle, dispose and keep record of all assets purchased or acquired with the Grant.

5.3 The Grantee shall provide the following Deliverables to the Grantor in the manner specified below: –

Deliverables	Period which the Deliverable is to cover	Submission deadline	No. of copies required
A progress report (“ Progress Report ”)	[date]	[date]	One (1) original

containing a comprehensive evaluation of the extent to which the objectives of the Programme as set out in the Proposal have been met in the format set out in Annex H to the Guidelines.			and one (1) softcopy
An interim financial report (“ Interim Financial Report ”) reporting on financial position in the format set out in Annex F to the Guidelines prepared in accordance with accounting principles generally accepted in Hong Kong.	[date]	[date]	One (1) original and one (1) softcopy
A final report (“ Final Report ”) containing a comprehensive evaluation of the extent to which the objectives of the Programme as set out in the Proposal have been met in the format set out in Annex L to the Guidelines.	[date]	[date]*	One (1) original and one (1) softcopy
A final financial report (“ Final Financial Report ”) reporting on the financial	[date]	[date]*	One (1) original and one (1)

position of the Programme in the format set out in Annex I to the Guidelines prepared in accordance with accounting principles generally accepted in Hong Kong.			softcopy
A full set of Programme Materials	[date]	[date]*	One (1) softcopy
Audited Accounts made up to (i) the Completion Date; or (ii) date of termination of this Agreement (as the case may be and whichever is earlier).	[date]	[date]*	One (1) original and one (1) softcopy
Written or oral advice to the Grantor in response to any requests of the Grantor in connection with this Agreement.	[date]	Whenever requested by the Grantor	As determined by the Grantor

(*) or forthwith upon termination of this Agreement by the Grantor, whichever is earlier.

6. Termination

6.1 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 the Grantee: –

- (a) fails to commence or proceed with the Programme with due diligence after the Commencement Date;
- (b) fails to submit Interim Financial Report or Progress Report on its due date;
- (c) is in breach of any of its undertakings as stated in this Agreement or is persistently or wrongfully neglecting to carry out its obligations under this Agreement;
- (d) has, without the consent in writing of the Grantor, assigned or purported to assign the whole or any part of the Grant or any interest or benefit in the Programme to any third party;
- (e) being a corporation has been ordered by the Court to be wound up or dissolved; or has been presented a petition for the winding up or dissolution of the Grantee, which is not dismissed within fourteen (14) days after the petition is presented; or if a receiver has been appointed over any of its assets; or
- (f) has provided or represented to the Grantor any data, facts or information about the Programme which is incorrect, untrue or is intended to mislead the Grantor.

6.2 Notwithstanding Clause [6.1], if the Grantee has received a termination notice from the Grantor and if the termination notice relates to a breach which is capable of being remedied by the Grantee and the Grantee takes immediate action to remedy such breach to the satisfaction of the Grantor within fourteen (14) working days from the date of the notice, the Grantor may, at its sole discretion, allow this Agreement to continue to take effect.

6.3 Subject to Clause [6.2], where a termination notice is served under Clause [6.1], this Agreement shall terminate upon expiry of the notice period of fourteen (14) working days, in which event the Grantee shall: –

(a) forthwith: –

(i) account for all monies expended on the Programme up to the termination under this Clause to the Grantor with detailed receipts and payment vouchers to support the expenditures;

(ii) return all assets purchased or acquired with the Grant and credit balance in the Designated Account; and

(iii) submit to the Grantor all Deliverables developed up to the termination under this Clause; and

(b) pay to the Grantor as soon as practicable any amount which has accrued to the Grant under the terms of this Agreement but which has not yet been paid into the Designated Account at the time of termination under this Clause.

6.4 The Grantor may immediately terminate this Agreement upon the occurrence of any of the following events: –

- (a) the Grantee or any of its consultants, contractors, employees and agents has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
- (b) the continued engagement of the Grantee or the continued performance of this Agreement is contrary to the interest of national security; or
- (c) the Grantor reasonably believes that any of the events mentioned above is about to occur.

6.5 Any interest payable under this Agreement shall be calculated at the rate equivalent to the best lending rate per annum for Hong Kong Dollars as announced by The Hongkong and Shanghai Banking Corporation Limited from time to time.

7. Indemnity

The Grantee shall indemnify the Grantor and keep the Grantor fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses (including without limitation, the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which the Grantor may agree to pay in settlement of any proceedings and liabilities of whatever nature arising out of or in connection with: –

- (a) the performance or attempted performance of this Agreement and resulting from any trespass, negligence, defamation, breach of statutory duty, nuisance or breach of this Agreement by the Grantee and/or its consultants, contractors, employees or agents;
- (b) use of or reliance on the Deliverables in such manner or for such purpose as is intended or reasonably foreseen by the Grantee;
- (c) any allegation or claim that the use or possession of the Programme Materials developed under this Agreement infringes any copyright or other intellectual property rights of any third party; and
- (d) termination of this Agreement under Clause [6].

8. Intellectual Property Rights

8.1 The Programme Materials developed and the copyright and other intellectual property rights in such items shall be and shall remain the exclusive property of the Grantor and shall vest in the Grantor at the time they are created.

8.2 The Grantee warrants to the Grantor that: –

- (a) the carrying out of the Programme, the performance of this Agreement by the Grantee or the use or possession by the Grantor and/or its authorised users of the Programme Materials developed by the Grantee specifically under this Agreement or any part thereof for any purposes does not and will not infringe any copyright or other intellectual property rights of any party; and

(b) the exercise of any of the rights granted under this Agreement by the Grantor and its authorised users will not infringe any copyright or other intellectual property rights of any party.

8.3 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 Clauses [8.1, 8.2 and 9] 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.

8.4 Upon receipt of any request from the Grantee for the use of any copyright or other intellectual property rights in relation to the Programme Materials developed outside the bounds of the Programme, the Grantor may at its sole discretion determine whether or not to grant its approval. Without limiting the discretion of the Grantor in any way, the Grantor may take into consideration any agreement which can be reached with the Grantee in respect of the ownership of the copyright and other intellectual property rights of any new products and any arrangement on the sharing of proceeds generated from such new products.

9. Confidentiality

9.1 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, 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 of 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 or public otherwise than as a result of disclosure by the Grantee; and
- (d) under compulsion of law;

9.2 Any disclosure permitted under Clause [9.1] shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified therein.

9.3 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.

9.4 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.

9.5 Without prejudice to Clauses [9.1 to 9.4], 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.

10. 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, including without limitation Clauses [3.1(d), 5.2, 7 to 23], 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.

11. Probity Clause

The Grantee undertakes that it shall observe the Prevention of Bribery Ordinance (Cap. 201) and paragraph 20 of the Guidelines. The Grantee shall advise its consultants, contractors, employees and agents involved in the Programme that they are not allowed to offer or solicit or accept from any person any money, gifts or advantages as defined in the Prevention of Bribery Ordinance (Cap. 201) or lavish entertainment in relation to the Programme. The Grantor may terminate this Agreement immediately if the Grantee or any of its consultants, contractors, employees and agents is convicted of an offence under the Prevention of Bribery Ordinance (Cap. 201).

12. Serving of Notice

12.1 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 below (or such other address or facsimile number as the addressee has by five (5) days' prior written notice specified to the other party): –

To the Grantor: –

Address: 11th Floor, East Wing, Central Government Offices, 2
Tim Mei Avenue, Tamar, Hong Kong

(c/o Room E328, 3/F, East Block, Education Bureau
Kowloon Tong Education Services Centre, 19 Suffolk

Road, Kowloon Tong, Kowloon)

Attention: Permanent Secretary for Education Incorporated
(c/o Gifted Education Fund Secretariat)

Facsimile number: 2490 6858

To the Grantee: –

Address: [address]

Attention: [recipient]

Facsimile number: [fax number]

12.2 Such notices, demands or other communications shall be addressed as provided in Clause [12.1] and, if so addressed, shall be deemed to have been duly given or made as follows: –

- (a) if sent by personal delivery, upon delivery at the address of the relevant party;
- (b) if sent by post, two (2) working days for local post and five (5) working days for overseas post after the date of posting; or
- (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.

13. Time of Essence; Waivers and Concurrent Remedies

- 13.1 Time is of the essence of this Agreement but no failure or delay by any 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.
- 13.2 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.

14. Modification

Subject to the provisions of this Agreement, no amendment or modification of or addition to or waiver of this Agreement shall be valid unless made in writing and signed by the authorised signatories of each party to this Agreement.

15. Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements (whether oral or in writing), understandings

or arrangements between them in relation to the subject matter hereof, and the parties confirm that they have not entered into this Agreement upon the basis of any statements, undertaking, warranties or representation that are not expressly stated in this Agreement.

16. Severability

If any provision of this Agreement or its application to any circumstances shall, to any extent, be invalid, illegal or unenforceable, the remainder of this Agreement and the application of that provision to other circumstances shall not be affected thereby.

17. Relationship of the Parties

Nothing contained or implied in this Agreement is intended to or will create a partnership, joint venture or association of any kind between the parties hereto. Save as expressly provided in this Agreement, neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of, or pledge the credit of or otherwise bind or oblige the other party hereto. Nothing contained in this Agreement shall be so construed as to constitute either party to be the agent of the other.

18. Governing Law

This Agreement shall be governed by and interpreted in accordance with the

law of Hong Kong and the parties agree to submit to the exclusive jurisdiction to the courts of Hong Kong in relation to any matters arising out of the Agreement.

19. Force Majeure

- 19.1 A party affected by an event or events of Force Majeure may be excused from performance of the obligations under this Agreement for so long as such event shall continue. The affected party shall as soon as possible give notice in writing to the other party of the occurrence of the event of Force Majeure.
- 19.2 Should performance by the Grantee of its obligations hereunder be prevented or affected by Force Majeure for a period of twenty-eight (28) consecutive days or longer, the Grantor shall be entitled, at the expiration of such period, to terminate this Agreement by not less than fourteen (14) days' notice in writing to the Grantee.
- 19.3 Subject to the provision in Clause [19.2], in the event that performance of obligations hereunder is delayed by Force Majeure, the parties shall diligently endeavour to achieve expeditiously the normal pursuit of this Agreement and to make up for the time lost. The [Completion Date] shall be extended by the number of days of delay actually caused by such event of Force Majeure unless a different extension shall be agreed between the parties. In all other respects the obligations of the parties hereunder shall be unaffected.

20. Execution of Further Documents

The Grantee shall at [its] own cost and expense do and execute any further things and document(s) (or procure that the same be done or executed) as may be required by the Grantor to give full effect to the provisions in this Agreement and shall provide all such documents and materials 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.

21. Assistance in Legal Proceedings

If and whenever requested to do so by the Grantor, the Grantee shall provide to the Grantor all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the Grantor may become involved or any internal disciplinary hearing of the Grantor that arises out of or in connection with the Agreement or the Grantor's presence at the Grantor's premises. If requested by the Grantor, the Grantee shall arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

22. Settlement of Disputes

22.1 Any dispute or difference between the parties arising out of or in connection with this Agreement which is not resolved within twenty-eight (28) days may first be referred to mediation in accordance with the then current Hong Kong International Arbitration Centre Mediation Rules.

22.2 If the matter cannot be resolved by mediation or any party to this Agreement does not wish the matter to be referred to mediation, any party may within ninety (90) days from the failure of the mediation or the refusal to mediate (as the case may be) require that the matter be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609). Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Ordinance (Cap. 609).

22.3 Subject to Clauses [22.4 and 22.5], the then current Hong Kong International Arbitration Centre Domestic Arbitration Rules (the “**Arbitration Rules**”) shall apply to any arbitration instituted in accordance with this Clause.

22.4 Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

22.5 Article 20.1 of the Arbitration Rules shall be deleted and replaced by: –

“20.1 The arbitration proceedings are private and confidential between the parties and the arbitrator. No information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Notwithstanding the above, disclosures are permissible where disclosures:

- (a) are necessary for enforcement of the arbitral award or any settlement agreement between the parties;
- (b) are required by the parties’ auditors or for some other legitimate business reason;
- (c) are required by law or an order of the courts of Hong Kong; or
- (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.”

22.6 All provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.

23. Contracts (Rights of Third Parties) Ordinance

The parties hereto hereby declare that nothing in this Agreement confers or purports to confer on any person not being a party to this Agreement any benefit

or any right to enforce any term of this Agreement under or pursuant to or for the purposes of the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

[signing page to follow]

TEMPLATE

AS WITNESS whereof this Agreement has been entered into the day and year first above written.

SIGNED by [name of signatory])

[post of signatory])

for and on behalf of)

Permanent Secretary for Education Incorporated)

in the presence of: –)

witness:

Name: [name of witness]
[post of witness]

SIGNED by [name of signatory])

[post of signatory])

for and on behalf of **[name of Grantee]**)

in the presence of: –)

witness:

Name: [name of witness]
[post of witness]

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TEMPLATE