

Service Agreement Template
(subject to revision/ update on need basis)

Service Agreement

**Agreement between Permanent Secretary for
Education Incorporated
and <<name of the Grantee>> on a Grant
from the
Gifted Education Fund**

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THIS AGREEMENT is made on the «day» of «month» 2020.

BETWEEN

- (1) **Permanent Secretary for Education Incorporated**, a corporation sole incorporated under and by virtue of Permanent Secretary for Education Incorporation Ordinance Cap. 1098 whose principal place of business is at «address of Grantor» (the “**Grantor**”).

AND

- (2) «org_name» whose registered office is, «org_address» (the “**Grantee**”);

WHEREAS: –

- A. The Gifted Education Fund was established under a Declaration of Trust made on the 15th day of November 2016 in the Hong Kong Special Administrative Region of the People’s Republic of China (“**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

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- (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 «purpose» (“**Programme**”).
- E. A copy of the proposal dated «date» submitted by the Grantee under the Gifted Education Fund and revised thereafter pursuant to the Grantor’s request is now annexed hereto in **Schedule I (“Proposal”)**.
- F. The Grantor has approved a grant to the Grantee in the sum of Hong Kong Dollars «amount_in_full» Only (“**Grant**”). All the approved items of the Programme to be financed are budgeted and listed in Part A of **Schedule II (“Budget”)**.
- G. 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. Execution of the Programme

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

- (a) commence the Programme on «start_date» (“**Commencement Date**”) or such later date as may be approved in writing by the Grantor;
- (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 «end_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 “General Guidelines on Management and Monitoring of the Programmes” annexed hereto in **Schedule III** (“**Guidelines**”) as the same may be revised from time to time and published on the EDB’s website, and on the date of the Agreement on the webpage <https://www.edb.gov.hk/en/GEFund> by the Grantor.

2. Grantee’s Obligations

2.1 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

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- 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) to submit to the Grantor reports, Programme Materials and Audited Accounts as required under Clause 4.2 and other Deliverables (defined in Clause 2.2) as required under this Agreement;
 - (d) within three (3) months from the Completion Date or forthwith upon termination of this Agreement by the Grantor under Clause 5, to return to the Grantor any unused funds in the Designated Account;
 - (e) to 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, to provide from time to time to the Grantor, such Deliverables (including Audited Accounts as mentioned in Clause

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- 4), as the Grantor may require;
- (g) to 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, to 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.

2.2 For the purposes of this Agreement:

“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,

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studies, data, diagrams, charts, photographs, drawings, specifications, documents) and all drafts and working papers relating to any of the above items.

“**Deliverables**” means 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 4).

3. Payment of the Grant

3.1 Subject to the terms of this Agreement, the Grantor shall pay the Grant into the Designated Account in instalments in accordance with the payment schedule set out in Part B of Schedule II (“**Payment Schedule**”).

3.2 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 the reports and Audited Accounts required under Clause 4);
- (c) any of the Deliverables submitted by the Grantee under this Agreement are not to a standard satisfactory to the Grantor; or

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(d) there is a credit balance in the Designated Account that is greater than the instalment of the Grant due to be paid.

3.3 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 for any reasons whatsoever.

3.4 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.

3.5 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 be found to 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 5.4 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.

4. Books and Records, Financial Accounts and Reports

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- 4.1 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). The Grantee shall keep such books and records for a minimum period of seven (7) years after the commencement date of this Agreement, 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.
- 4.2 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 / Required Time for Submission	No. of Copies Required
A report (“ 1st Progress Report ”) containing a comprehensive evaluation of the extent to which the objectives of the	<<start date and end date of the period>>	<<submission deadline>>	One (1) hardcopy and one (1) softcopy

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<p>Programme as set out in the Proposal have been met up to the due date of such report in the format set out in Annex C to the Guidelines.</p>			
<p>A report (“2nd Progress Report”) containing a comprehensive evaluation of the extent to which the objectives of the Programme as set out in the Proposal have been met up to the due date of such report in the format set out in Annex C to the Guidelines.</p>	<p><<start date and end date of the period>></p>	<p><<submission deadline>></p>	<p>One (1) hardcopy and one (1) softcopy</p>
<p>A report (“Final Report”) containing a comprehensive evaluation of the extent to which the objectives of the Programme as set out</p>	<p><<start date and end date of the period>></p>	<p><<submission deadline>></p>	<p>One (1) hardcopy and one (1) softcopy</p>

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<p>in the Proposal have been met in the format set out in Annex F to the Guidelines.</p>			
<p>A financial report (“1st Interim Financial Report”) reporting on financial position up to the due date of such report in the format set out in Annex A to the Guidelines prepared in accordance with accounting principles generally accepted in Hong Kong.</p>	<p><<start date and end date of the period>></p>	<p><<submission deadline>></p>	<p>One (1) hardcopy and one (1) softcopy</p>
<p>A financial report (“2nd Interim Financial Report”) reporting on financial position up to the due date of such report in the format set out in Annex A to the Guidelines prepared in accordance with</p>	<p><<start date and end date of the period>></p>	<p><<submission deadline>></p>	<p>One (1) hardcopy and one (1) softcopy</p>

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accounting principles generally accepted in Hong Kong.			
A financial report (“ Final Financial Report ”) reporting on financial position in the format set out in Annex D to the Guidelines prepared in accordance with accounting principles generally accepted in Hong Kong.	<<start date and end date of the period>>	<<submission deadline>>	One (1) hardcopy and one (1) softcopy
Programme Materials (full set)	<<start date and end date of the period>>	<<submission deadline>>	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).	<<start date and end date of the period>>	<<submission deadline>> or forthwith upon termination of this Agreement by the Grantor under Clause 5, whichever is earlier.	One (1) hardcopy and one (1) softcopy
Written or oral advice to the Grantor	<<start date and end date of the	Whenever requested by	As determined by the Grantor

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in response to any requests of the Grantor in connection with this Agreement.	period>>	the Grantor	
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4.3 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 from time to time by the Grantor; and
- (b) to procure, maintain, handle, dispose and keep record of all assets purchased or acquired with the Grant.

5. Termination

5.1 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 an 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

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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) dies or becomes bankrupt or being a corporation shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or if a receiver has been appointed over any of its assets; and
- (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.

5.2 Notwithstanding Clause 5.1 above, 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.

5.3 Subject to Clause 5.2 above, where a termination notice is served under Clause 5.1, this Agreement shall terminate upon expiry of the notice period of 14 working days, in which event the Grantee shall:

- (a) forthwith:

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- (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 Programme Materials 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.

5.4 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.

6. 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

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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, the Grantee's 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 5.

7. Intellectual Property Rights

7.1 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.

7.2 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

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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.

7.3 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 7.1, 7.2 and 8 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.

7.4 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.

8. Confidentiality

8.1 The Grantee undertakes not to, during the continuance of this Agreement or

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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; and
- (c) of information already known to the recipient otherwise than as a result of disclosure by the Grantee;
- (d) under compulsion of law;

8.2 Any disclosure permitted under Clause 8.1 shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified therein.

8.3 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.

8.4 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.

8.5 Without prejudice to Clauses 8.1 to 8.4, 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.

9. 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 7 and 8 hereof, 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.

10. Probity Clause

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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 or lavish entertainment in relation to the Programme. The Grantor may terminate the Contract immediately if the Grantee or any of its consultants, contractors, employees and agents is convicted of an offence under the Prevention of Bribery Ordinance.

11. Serving of Notice

11.1 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: Permanent Secretary for Education Incorporated

Address: «address of Grantor»

Attention: «attention»

Facsimile Number: «facsimile number of Grantor»

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To the Grantee: «name of the Grantee»

Address: «address of the Grantee»

Attention: «attention»

Facsimile Number: «facsimile number of Grantee»

11.2 Such notices, demands or other communications shall be addressed as provided in Clause 11.1 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.

12. Time of Essence; Waivers and Concurrent Remedies

12.1 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

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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.

12.2 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.

13. 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.

14. 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.

15. Severability

If any provision of this Agreement or its application to any circumstances shall,

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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.

16. 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.

17. 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.

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

Signed by «name»,)
«post», for and on behalf of Permanent)
Secretary for Education Incorporated)
in the presence of: –)
witness:

Name: «witness»

«post title», Education Bureau

Signed by «Head of org»,)
«post»)
for and on behalf of «org_name») in
the presence of: –
witness:

Name: «witness»

«post title», «org_name»