

# STANDARD TEXT for IS (Greenfield Site)

THIS Service Agreement is made on        day of        .

## PARTIES:

- (1) **[SCHOOL SPONSORING BODY]** of **[Registered Address]** which is incorporated in Hong Kong under the **[Title of Ordinance]** **[with CR No. [ ]]** (hereinafter referred to as “the SSB”);

AND

- (2) **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** as represented by the Permanent Secretary for Education of 11/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong (hereinafter referred to as “the Government”).

## WHEREAS

- A. The Government wishes to provide quality education in accordance with approved education policies and invites organisations to construct and operate international schools which are exempt from tax by virtue of section 88 of the Inland Revenue Ordinance (as defined below).
- B. The SSB has submitted an application in response to the invitation.
- C. The Government has accepted the SSB as a qualified sponsoring body for the allocation of the School Site (as defined below), the construction of the School Premises (as defined below) and the operation of the School (as defined below).
- D. The parties contemplate that the Government shall allocate the School Site to the SSB and, on the application of the SSB and subject to the approval of the Finance Committee (as defined below), the Government shall provide the SSB with the Capital Loan (as defined below) for the sole purpose of the construction of the School Premises.

- E. The SSB has agreed to donate to the School a sum equivalent to the costs of furnishing and equipping the School in accordance with the Conditions (as defined below).
- F. The parties have agreed to proceed with the construction, preparation, and operation of the School on the terms and conditions hereinafter appearing.

## **NOW IT IS HEREBY AGREED**

### **1. Definitions**

- 1.1 “Capital Loan” means the sum of loan approved by the Finance Committee and to be made by the Government to the SSB, subject to the terms and conditions of the Letter of Approval.
- 1.2 “Conditions” means the conditions upon which the School Site is allocated and the School is to be operated, as set out in the Schedule attached hereto and as may be amended from time to time by mutual agreement between the parties.
- 1.3 “Conditions of Grant” means the document to be made between the SSB and the Government (Lands Department) containing the terms and conditions as may be specified by the Director of Lands for Private Treaty Grant.
- 1.4 “Education Ordinance” means the Education Ordinance, Cap. 279 as may be amended from time to time.

- 1.5 “Education Regulations” means the Education Regulations, Cap. 279A as may be amended from time to time.
- 1.6 “Finance Committee” means the Finance Committee of the Legislative Council and as defined in section 2 of the Public Finance Ordinance, Cap. 2.
- 1.7 “Incorporated Company” means [name of the incorporated company], being the local Hong Kong limited company which is exempt from tax by virtue of section 88 of the Inland Revenue Ordinance, and also incorporated under the Companies Ordinance (Cap. 622) with the sole object of operating the School.
- 1.8 “Inland Revenue Ordinance” means the Inland Revenue Ordinance, Cap. 112 as may be amended from time to time.
- 1.9 “Letter of Approval” means a letter to be issued by the Government informing the SSB of the approval of the Finance Committee on the Capital Loan subject to the terms and conditions therein stipulated.
- 1.10 “Private Treaty Grant” means the grant of the School Site to the SSB by way of the Conditions of Grant.
- 1.11 “Proposed School Plan” means the proposed school plan submitted by the SSB in connection with its application for allocation of a school site and accepted by the Government with amendments, if any.

- 1.12 “School” means a school which is exempt from tax by virtue of section 88 of the Inland Revenue Ordinance and provides non-local curriculum for [primary and/or secondary] education, to be operated and managed by the SSB at the School Site (at [address of the School Site]).
- 1.13 “School Development Plan” means the school development plan to be submitted by the SSB and as accepted by the Government pursuant to Clause 5.4 hereof.
- 1.14 “School Premises” means the school building(s) to be constructed by the SSB on the School Site.
- 1.15 “School Site” means the land the boundary of which is shown in the Conditions of Grant, together with any building(s) thereon.
- 1.16 In this Agreement, words and expressions that are defined in the Education Ordinance shall bear the same meanings in this Agreement, unless otherwise defined.
- 1.17 In this Agreement unless the context requires otherwise –
- (a) words importing the singular number shall include the plural and vice versa;
  - (b) words importing any particular gender shall include all other genders; and
  - (c) references to persons shall include bodies of persons whether corporate or incorporate.
- 1.18 Any reference in this Agreement to any statute or statutory provision shall be construed as referring to that statute or

statutory provision as it may from time to time be amended modified extended re-enacted or replaced (whether before or after the date of this Agreement) and including all subsidiary legislation from time to time made under it.

## **2. Government's Obligations to the SSB**

- 2.1 The Government has in principle accepted the SSB's application for the allocation of the School Site.
- 2.2 After entering into this Agreement, the Government shall grant the School Site to the SSB by way of Private Treaty Grant.
- 2.3 On the application of the SSB and subject to the approval of the Finance Committee, the Government shall provide the SSB with the Capital Loan for the sole purpose of the construction of the School Premises. The amount of the Capital Loan shall be no more than the costs equivalent to constructing a standard-design public sector school accommodating the same number of students.
- 2.4 Subject to Clause 7 hereof, the term of this Agreement shall be for a period of ten years from the date of this Agreement and shall be co-terminous with the Conditions of Grant.
- 2.5 This Agreement, if not renewed or otherwise extended in writing, shall automatically terminate upon the expiry of its term. The SSB may apply to the Government in writing for renewing this 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, this Agreement may be renewed for a five-year term at the sole discretion of the Government in accordance with the terms and conditions as specified in the future renewal agreement(s).

## **3. Construction of the School Premises**

- 3.1 The SSB shall construct the School Premises for the scale of operation as detailed in the Proposed School Plan and in compliance with the Conditions of Grant and other statutory regulations.

- 3.2 Any Capital Loan shall only be drawn upon the completion of the construction of the School Premises as evidenced by the issue of the relevant occupation permit(s) by the Building Authority, and shall be used solely to cover the construction cost of the School Premises in strict accordance with the terms and conditions set out in the Letter of Approval.

#### **4. Implementation of the Proposed School Plan, the School Development Plan, and the Conditions**

- 4.1 The SSB shall operate and manage the School in accordance with the Proposed School Plan, the School Development Plan, the Conditions, the Education Ordinance, the Education Regulations, and such other requirements as specified from time to time by the Government.
- 4.2 The Conditions shall form part of the terms and conditions of this Agreement.
- 4.3 In the event that a requirement in the Conditions is in conflict with any requirements in the Education Ordinance or the Education Regulations, the Education Ordinance and the Education Regulations shall prevail.

#### **5. School Development Plan**

- 5.1 The SSB shall submit to the Government a proposed school development plan for the School providing such information as may be specified by the Government, within six months after the School has commenced operation.
- 5.2 The SSB shall ensure that the proposed school development plan is consistent with the Conditions, the Proposed School Plan, the Education Ordinance, and the Education Regulations.
- 5.3 The SSB shall negotiate with the Government in good faith if the Government requests from time to time any reasonable alteration or modification to the proposed school development plan. The SSB shall not unreasonably refuse to comply with such requests. If the SSB shall fail to satisfy the Government

on a proposed school development plan within one year after the School has commenced operation, the Government may terminate this Agreement in accordance with Clause 7.2(b) below.

- 5.4 Upon the acceptance by the Government, the proposed school development plan shall be deemed to be the School Development Plan. Any modifications to the School Development Plan shall require prior written approval of the Government.

## **6. Future Agreement**

- 6.1 The SSB and the Government shall enter into the Conditions of Grant after entering into this Agreement.

## **7. Termination and its Consequences**

- 7.1 The SSB hereby agrees that the Government shall be entitled to terminate this Agreement forthwith if –
- (a) the Conditions of Grant is not entered into or is terminated or expires without renewal or any extension(s) in writing; or
  - (b) the Government resumes all or part of the School Site for the improvement of Hong Kong or for any other public purpose; or
  - (c) the SSB and/or the Incorporated Company and/or the School enter(s) into liquidation whether compulsory or voluntary, or the SSB and/or the Incorporated Company is/are no longer incorporated in Hong Kong under the [Companies Ordinance \(Cap. 622\)](#) for any other reason; or
  - (d) the SSB and/or the Incorporated Company and/or the School cease(s) to be exempt from tax by virtue of section 88 of the Inland Revenue Ordinance; or

- (e) the Government reasonably believes that the School is not in operation; or
- (f) the SSB commits any material breach of the provisions of this Agreement,

whichever occurs earlier.

7.2 The SSB hereby agrees that the Government shall be entitled to terminate this Agreement by giving three months' notice if –

- (a) the Government reasonably believes that the School could not commence operation on the date specified by the Government; or
- (b) the SSB fails to produce a proposed school development plan to the satisfaction of and accepted by the Government within one year after the School has commenced operation or on such other date as mutually agreed between the Government and the SSB.

7.3 The SSB hereby agrees that the Government shall be entitled to terminate this Agreement by giving nine months' notice if the Government reasonably believes that –

- (a) the SSB and/or the Incorporated Company fail(s) to manage and operate the School in accordance with the Proposed School Plan and/or the School Development Plan; or
- (b) the School fails to pursue or attain full accreditation status from any of the academic accreditation body(ies) as stated in the Proposed School Plan and/or the School Development Plan before the expiry of this Agreement, or fails to renew the said full accreditation status by such time as may be specified by the Government; or
- (c) the School fails to provide the Minimum Number of school places as specified in Condition 1 of the Schedule; or
- (d) the student enrolment of the School fails to reach [ ]% of the Minimum Number of school places as approved by



the Government within [ ] years after the School has commenced operation; or

- (e) less than [ %] of the students enrolled with the School are non-local children of families coming to Hong Kong for work or investment, or non-local children holding student visas for entry into Hong Kong for studies.

7.4 The Government and the SSB may by mutual agreement in writing terminate this Agreement at any time.

7.5 On the expiration or 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, upon the Government's request and wherever appropriate and possible, provide the Government with information on all contracts made by the SSB and/or the Incorporated Company in relation to the School; and
- (c) the SSB shall, upon the Government's request, facilitate the Government as far as practicable to prepare for allocating the School to a new operator, including but not limited to assigning or procuring the assignment to the Government and/or the new operator the rights of the SSB and/or the Incorporated Company in all or any of the contracts relating to the operation of the School.

7.6 Nothing in this Agreement shall prejudice any of the terms and conditions of the Conditions of Grant, including any of the terms and conditions governing the Government's power of re-entry or extinguishment of the grantee's rights and interests.

## **8. Assignment**

- 8.1 The SSB shall not be entitled to assign or otherwise dispose of any of its interests, rights, benefits or obligations under this Agreement except for reasonable delegation of the obligations in this Agreement to the Incorporated Company, provided that the SSB shall remain primarily responsible for any such delegated duties.

## **9. Headings**

- 9.1 The headings to the clauses of this Agreement are for ease of reference and convenience of the parties only and shall not affect the interpretation or construction of this Agreement, nor be deemed to indicate the meaning of the clauses or schedules to which they relate.

## **10. General**

- 10.1 This Agreement shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region. No waiver or amendment of any provision of this Agreement shall be effective unless made by a written instrument signed by both parties.

## **11. Service of Notice**

- 11.1 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other addresses as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered by hand or by pre-paid letter or telex or facsimile and shall be deemed to have been served by hand when delivered, if by post 48 hours after posting and if by telex or facsimile when dispatched.

**EXECUTED** under hand in two originals the day and year first before written.

SIGNED for and on behalf of  
the Government of the Hong Kong  
Special Administrative Region

By

Signature

Title

Witness

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SIGNED for and on behalf of  
the SSB

By

Signature

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# STANDARD TEXT for IS (Greenfield Site)

## Schedule

### Conditions for Allocation of School Site for Construction and Operation of International School

1. The SSB shall construct the School Premises for the operation of an international [primary and/or secondary] school (which is exempt from tax by virtue of section 88 of the Inland Revenue Ordinance) offering non-local curriculum, with a minimum provision of [ ] (“Minimum Number”) [primary and/or secondary] school places in compliance with all instructions and directives relating thereto as may from time to time be given or issued by the Government, and also in accordance with the Proposed School Plan, or such other plan(s) as approved in writing by the Government.
2. The SSB, the Incorporated Company and the School shall at all times during the term of this Agreement (and any renewal thereof) be exempt from tax by virtue of section 88 of the Inland Revenue Ordinance. The SSB and the Incorporated Company shall at all times during the term of this Agreement (and any renewal thereof) be incorporated as local Hong Kong limited companies. On a yearly basis or upon the Government’s request, the SSB shall submit documentary proof of tax exemption status of the SSB, the Incorporated Company and the School to the Government. The SSB shall also ensure that (i) the Incorporated Company and the School shall both provide documentary proof of their tax exemption status under section 88 of the Inland Revenue Ordinance, and the Incorporated Company shall provide documentary proof of its Hong Kong limited company incorporation status, to the Government on the date specified by the Government and (ii) the object of the Incorporated Company is restricted only to the operation of the School, and (iii) the SSB retains sufficient control over the Incorporated Company and the School to ensure compliance with the terms of this Agreement. The SSB shall inform the Government immediately if (i) the SSB and/or the Incorporated Company and/or the School is/are no longer exempt from tax by virtue of section 88 of the Inland Revenue Ordinance, and/or (ii) the SSB and/or the Incorporated Company is/are no longer incorporated as a local Hong Kong limited company.

3. The SSB shall inform the Government as soon as possible of any change in the status of the holding company(ies) of the SSB and/or the Incorporated Company and/or the School (including but not limited to any public listing) which may have implications on the School, notwithstanding that the change would not affect the non-profit making status of the School.
4. The SSB shall inform the Government as soon as possible of any significant change(s) in the ownership and/or management structure of the SSB and/or the Incorporated Company and/or the School, and/or their respective holding company(ies) (including but not limited to 20% or more change(s) to the ownership/voting powers/decision making powers).
5. The SSB shall ensure that both the SSB and the Incorporated Company shall, at all times during the term of this Agreement (and any renewal thereof), maintain good organisation structure, proper management and sound financial footing, and operate and manage the School on a self-financing basis without any recurrent nor capital financial assistance from the Government. The SSB shall ensure that the operation and affairs of the School are controlled and managed by the SSB and the Incorporated Company, and that all the transactions, contracts, agreements, financial and accounting and money related matters of the School's daily operations are substantially handled by and in the name of the Incorporated Company.
6. The SSB shall take immediate possession of the School Site on an as-is basis at a time to be specified by the Government and proceed with the construction of the School Premises as soon as practicable, in any event subject to the terms and conditions of the Conditions of Grant and the Letter of Approval.
7. The SSB shall abide by the terms and conditions of the Conditions of Grant and operate the School in accordance with the same.
8. The School shall start operation in [month and year] or on a date to be mutually agreed between the Government and the SSB. However, the Government may require the School to open on an earlier date in other school premises as the Government shall arrange and on such date as the Government deems fit, in order

to meet the demand for school places, if circumstances so warrant.

9. The School shall be operated as an international [primary and/or secondary] school to be run in one daily session in the daytime and with such class organisation (including special classes if applicable) or any other mode of attendance as may be approved by the Government. Subject to further prior approval by the Government, the evening session, if any, shall be registered as a separate school.
10. The SSB shall donate to the School a sum, which shall exclude any loan or subsidy from the Government and other incomes of the School, equivalent to the costs of furnishing and equipping the School to standards not lower than those for aided schools as recommended by the Government. The SSB shall ensure that the School shall apply the sum to purchase all the essential furniture and equipment items within three years after the School has commenced operation. In this connection, the SSB shall produce evidence, one year before the School commences operation, that it will have adequate funds to meet the furniture and equipment costs. In addition, the SSB shall make available half of its furniture and equipment contribution at least two months before the School commences operation and the other half not later than 18 months after the School has commenced operation.
11. The SSB shall seek the prior written approval of the Government concerning the proposed naming of the School, which shall be kept short and concise, and preferably reflect the vision and mission, or educational values advocated by the SSB.
12. The SSB shall be responsible for any expenses arising from the operation of the School.
13. The School shall be operated in compliance with the Education Ordinance, the Education Regulations, other related legislations and such other requirements as specified from time to time by the Government, including but not limited to the appointment of the principal and staff.

14. The SSB shall admit students to the School in accordance with the criteria laid down in the Proposed School Plan and/or the School Development Plan.
15. The SSB shall use its best endeavours to enable student enrolment of the School to reach at least [ ]% of the Minimum Number of school places approved by the Government within [ ] years after the School has commenced operation.
16. The SSB shall ensure that at least [ ]% of the students enrolled with the School are non-local children of families coming to Hong Kong for work or investment, or non-local children holding student visas for entry into Hong Kong for studies. These students shall not be local children who are permanent residents in Hong Kong and do not have any valid passport other than the Hong Kong Special Administrative Region Passport.
17. The SSB shall implement all education policies applicable to international schools.
18. The SSB shall submit to the Government annually, beginning one year from the opening of the School, a complete statements of the accounts of the School and the Incorporated Company audited by a certified public accountant (practising) as defined in the Professional Accountants Ordinance and submitted at such time and in such manner as the Government may specify. Particularly, all the transactions relating to the School's operation, including but not limited to the income and assets, should be reflected in the audited accounts of the School.
19. In each school year, the SSB shall set aside a sum, which shall not be less than 10% of the School's total school fee income ("the Sum"), to provide scholarship and/or other financial assistance for deserving students ("the said purpose"). The SSB shall use its best endeavours to ensure full utilisation of the Sum for the said purpose, and reflect the Sum and its utilisation rate in the statements of accounts described in Condition 18 above. In case the Sum has not been fully utilised in the current school year, any unspent balance thereof shall be used solely for the said purpose until the Sum is fully utilised.

20. The SSB acknowledges that the care and maintenance of the entire boundary area within the School Site (including all structure(s), landscape features and vegetation, any slopes and retaining walls) and the School Premises shall be the responsibility of the SSB and the School.
21. In accordance with the terms of Conditions of Grant, the SSB shall not sub-let, nor (except as provided in this Agreement) in any way part with all or any of the School Site (including the School Premises) to anybody or any organisations except to the Incorporated Company for operating the School without the prior written approval of the Government.
22. 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, setting up polling stations, or organising educational, community or other activities, and shall participate in relevant schemes to open up school facilities for educational, community and other uses as prescribed by this Bureau. Charges may be levied with reference to the schedule of charges as announced in the latest circular issued by the Government.
23. The buildings and facilities of the School shall be made available as far as practicable to community organisations, especially non-profit-making organisations, to support meaningful activities connected with education, recreation, or community services. These activities shall, in no case, compromise the daily operation of the School or the safety/interest of the students of the School. Charges may be levied with reference to the schedule of charges as announced in the latest circular issued by the Government. All rental incomes received from hiring out the buildings and facilities of the School shall be recorded in the statements of accounts described in Condition 18 above and be utilised solely for the operation of the School.
24. The SSB and the School shall closely monitor the traffic conditions in the nearby area and impose proper traffic management measures to minimise any disruptions generated by vehicles to and from the School. The SSB and the School shall also explain to and use its best endeavours to resolve with



parents and local residents on any traffic issues which may arise and to make any adjustment if necessary to the satisfaction of the relevant authorities.

25. The SSB, the Incorporated Company, and the School shall engage the local communities and relevant government departments from time to time on issues which may affect the neighbourhood and address concerns, if any, to their satisfaction.
26. The SSB 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. 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.
27. The SSB and the School shall collaborate with the Government in ensuring that the School will realise and achieve its vision and mission, objectives and performance targets in the School Development Plan. The SSB and the School shall, in accordance with the Proposed School Plan and the School Development Plan, put in place the quality assurance mechanism and provide dedicated services for students with special education needs.
28. The SSB shall submit to the Government a complete report on the operating standard of the School prepared by the academic accreditation body(ies) as mentioned in Clause 7.3(b) hereof at such time and in such manner as the Government may specify.
29. In the event this Agreement is terminated or not renewed, no compensation shall be paid to the SSB nor to the Incorporated Company nor to the School. Outstanding liabilities and accumulated deficits of the School and/or the Incorporated Company, if any, shall be settled by the SSB with its own funds exclusive of Government subsidies (if any) and school incomes. The SSB shall submit accounts up to that date of cessation audited by a certified public accountant (practising) as defined in the Professional Accountants Ordinance at such time and in such manner as the Government may specify.