

STANDARD TEXT (New IS – vacant school premises)

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 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 selected the SSB as a qualified sponsoring body for the allocation 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 Premises to the SSB.
- 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 preparation and operation of the School on the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED

1. Definitions

- 1.1 “Conditions” means the conditions upon which the School Premises is allocated and the School is to be operated, as set out in Schedule One attached hereto and as may be amended from time to time by mutual agreement between the parties.
- 1.2 “Education Ordinance” means the Education Ordinance, Cap. 279 as may be amended from time to time.
- 1.3 “Education Regulations” means the Education Regulations, Cap. 279A as may be amended from time to time.
- 1.4 “Inland Revenue Ordinance” means the Inland Revenue Ordinance, Cap. 112 as may be amended from time to time.
- 1.5 “Proposed School Plan” means the proposed school plan submitted by the SSB in connection with its application for allocation of a school premises and accepted by the Government with amendments, if any.

- 1.6 “School” means a school which is exempt from tax by virtue of section 88 of the Inland Revenue Ordinance and which provides non-local curriculum for [primary and/or secondary] education at [address of the School Premises].
- 1.7 “School Development Plan” means the school development plan to be submitted by the SSB and as accepted by the Government pursuant to Clause 4.4 hereof.
- 1.8 “School Premises” means the land the boundary of which is delineated in the location plan in Schedule Two attached hereto, together with the school building(s) constructed thereon.
- 1.9 “Tenancy Agreement” means the agreement to be signed between the Government and the SSB with terms and conditions substantially as outlined in the sample agreement in Schedule Three attached hereto.
- 1.10 In this Agreement, words and expressions that are defined in the Education Ordinance shall bear the same meanings in this Agreement, unless otherwise defined.
- 1.11 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.
- 1.12 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 Premises.
- 2.2 After entering into this Agreement, the Government shall grant a tenancy of the School Premises to the SSB by way of the Tenancy Agreement.
- 2.3 Subject to Clause 6 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 Tenancy Agreement.
- 2.4 This Agreement, if not renewed, 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.

3. Implementation of the Proposed School Plan, the School Development Plan and the Conditions

- 3.1 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.
- 3.2 The Conditions shall form part of the terms and conditions of this Agreement.

3.3 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.

4. School Development Plan

4.1 The SSB shall submit to the Government a proposed school development plan providing such information as may be specified by the Government, within six months after the School has commenced operation.

4.2 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.

4.3 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 6.2(b) below.

4.4 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.

5. Tenancy Agreement

5.1 The SSB and the Government shall enter into the Tenancy Agreement after entering into this Agreement.

6. Termination and its Consequences

6.1 The SSB hereby agrees that the Government shall be entitled to

terminate this Agreement forthwith if –

- (a) the Tenancy Agreement is not entered into or is terminated or expires without renewal; or
- (b) the Government resumes all or part of the School Premises for the improvement of Hong Kong or for any other public purpose; or
- (c) the SSB enters into liquidation whether compulsory or voluntary, or the SSB is no longer incorporated in Hong Kong under the [Title of Ordinance] for any other reason; or
- (d) the SSB and/or the School ceases 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.

6.2 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.

6.3 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 fails 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(s) 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 Schedule One; 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.

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

6.5 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, wherever appropriate and possible, provide the Government with information on all contracts made by the SSB in relation to the School; and
- (c) the SSB shall, if appropriate, 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 in all or any of the contracts relating to the operation of the School.

7. Assignment

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

8. Headings

- 8.1 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 and be deemed to indicate the meaning of the clauses or schedules to which they relate.

9. General

- 9.1 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.

10. Service of Notice

- 10.1 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 facsimile and shall be deemed to have been served by hand when delivered, if by post 48 hours after posting and if by facsimile when dispatched.

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

SIGNED for and on behalf of
the Government

By

Signature

Title

Witness

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SIGNED for and on behalf of
the SSB

By

Signature

Title

Witness

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STANDARD TEXT (New IS – vacant school premises)

Schedule One

Conditions for Allocation of School Premises for Operation of International School

1. The SSB shall operate [a/an] [co-educational] 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 [primary] and [secondary] school places at [address of the School Premises] 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. Both the SSB 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. On a yearly basis or upon the Government's request, the SSB shall submit documentary proof of tax exemption status of both the SSB and the School to the Government.
3. The SSB 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.
4. The SSB shall accept the School Premises as handed over by the Government (including the site boundary area, all structure(s) and landscape features and vegetation, such as all trees, within the site boundary area, and architectural design etc.), and shall take immediate possession of the School Premises at a time to be specified by the Government.
5. The School shall start operation in [month] [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.

6. The School shall be operated as [a/an] [co-educational] 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.
7. 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.
8. 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.
9. The SSB shall be responsible for any deposits required for electricity, water or other utilities with the School's own funds.
10. 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 principal and staff.
11. 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.

12. 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.
13. The SSB shall ensure that at least 70% 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 without holding any foreign passports (the British National (Overseas) Passport is not considered a foreign passport)
14. The SSB shall implement all education policies applicable to international schools.
15. The SSB shall submit to the Government annually, beginning one year from the opening of the School, a complete statement of the accounts of the School 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.
16. 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, to provide scholarship and/or other financial assistance for deserving students. The SSB shall use its best endeavours to ensure full utilisation of the scholarship and/or other financial assistance, and reflect the sum set aside and its utilisation rate in the statement of accounts described in Condition 15 above.
17. The School Premises shall remain Government property. Any application for additions, alterations, conversions, improvements or extensions to the School Premises shall be subject to prior written approval by the Government and copied to the Permanent Secretary for Education. The SSB shall be solely responsible for any costs and expenses and liability in carrying out any such approved alteration works or renovations

at the School Premises, and ensure that the works comply with the relevant statutory and/or administrative requirements.

18. The SSB acknowledges that the care and maintenance of the entire boundary area within the School Premises (including all structure(s), landscape features and vegetation, any slopes and retaining walls), shall be the responsibility of the SSB.
19. In accordance with the terms of the Tenancy Agreement, the buildings and facilities of the School when required shall be made available to the Government and any other organisations as may be approved by the Government for conducting public examinations, operating other schools on a temporary basis, or organising educational, community or other activities. Charges may be levied with reference to the schedule of charges as announced in the latest circular issued by the Government.
20. 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 statement of accounts described in Condition 15 above and be utilised solely for the operation of the School.
21. The SSB shall closely monitor the traffic conditions generated by vehicles to and from the School to avoid traffic problem in the area around the School. The SSB shall impose proper traffic management measures to minimise any disruptions to the traffic conditions in the nearby area. The SSB shall also explain to and 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.
22. The SSB and the School shall engage the local communities and the [] District Council from time to time on issues

which may affect the neighbourhood.

23. 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.
24. The SSB 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 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.
25. The SSB shall submit to the Government a complete report on the operating standard of the School prepared by the academic accreditation body(s) as mentioned in Clause 6.3(b) hereof at such time and in such manner as the Government may specify.
26. In the event this Agreement is terminated or not renewed, no compensation shall be paid to the SSB. Outstanding liabilities and accumulated deficits of the School, 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.

STANDARD TEXT (New IS – vacant school premises)

Schedule Two

[Location Plan of the School Premises]

Schedule Three

[Sample Tenancy Agreement]