

教育局常任秘書長法團
與優質教育基金受款人
訂立之協議

**Agreement Between the Permanent Secretary
for Education Incorporated
and the Grantee on Quality Education Fund**

THIS AGREEMENT is made the «AGREEMENT_DATE»

BETWEEN

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

AND

- (2) **The Incorporated Management Committee of «org_name»** whose registered office is «org_address» (hereinafter called the “**Grantee**”);

WHEREAS :-

- A. The Quality Education Fund was established as a charitable fund under a Declaration of Trust made on the 2nd day of January 1998 in Hong Kong;
- B. The Grantor acting as trustee of the Quality Education Fund undertakes in the Declaration of Trust to apply the income and capital of the Quality Education Fund at such time, in such manner, to such extent and subject to such conditions as it may determine for the promotion of quality education in Hong Kong;
- C. The Grantee submitted a proposal dated «submission_date» to the Grantor which, subject to certain modifications agreed between the parties, was accepted by the Grantor and the Grantee’s proposal with the modifications accepted by the Grantor is now annexed hereto in **Schedule I**;
- D. The Grantee is desirous of obtaining a grant for the purpose of the Project as defined in Clause 1(j) of this Agreement;
- E. The Grantor has approved the Grant and the Budget as respectively defined in Clauses 1(g) and (b) of this Agreement; and
- F. The Grantor has agreed to grant and the Grantee has accepted the Grant for the purpose of carrying out the Project based on the Proposal as defined in Clause 1(l) of this Agreement and the Budget and upon the following terms and conditions.

NOW IT IS HEREBY AGREED AS FOLLOWS :-

1. Definitions and Interpretation

In this Agreement including the recitals, unless otherwise defined or the context otherwise requires, the words and expressions in (a) to (m) shall bear the same meanings given below and the rules in (n) to (r) shall apply in interpretation of the terms of this Agreement.

- (a) **“Agreement”** means this Agreement including **Schedules I to III** and all attachments hereto.
- (b) **“Budget”** means the budget items set out in **Part A of Schedule II**.
- (c) **“Commencement Date”** means «start_date» or such later date as may be approved in writing by the Grantor by which the Grantee must commence the Project.
- (d) **“Completion Date”** means «end_date» or such other date as may be approved by the Grantor in writing by which the Grantee must complete the Project in accordance with the terms and conditions of the Agreement and to the satisfaction of the Grantor.
- (e) **“Deliverables”** means all the deliverables, works and materials, including third party materials, of whatsoever nature developed with the Grant and/or generated from the Project and any other related activities. They shall include but not limited to reports, products, records, database and compilations of data and information, summaries, briefings, presentations, diagrams, drawings, charts, tables, graphs, pictures, photographs, plans, models, opinions, comments created, developed, prepared, written or produced by the Grantee being the work product and/or services required to be produced/furnished in carrying out the Project including the deliverables specified in the Proposal.
- (f) **“Designated Account”** has the meaning given to it in Clause 3(a).
- (g) **“Grant”** means the amount in the sum of Hong Kong dollars «amount in full» only («amount») approved by the Grantor to be granted to the Grantee subject to the terms and conditions of this Agreement.
- (h) **“Guidelines”** means the guidelines set out in **Schedule III** and including

- any subsequent revisions from time to time and published on the webpage <http://qef.org.hk> by the Grantor.
- (i) **“Hong Kong”** means the Hong Kong Special Administrative Region of the People’s Republic of China.
 - (j) **“Project”** means the project as particularly described in the Proposal.
 - (k) **“Project Materials”** has the meaning given to in Clause 3(f).
 - (l) **“Proposal”** means the proposal submitted by the Grantee subject to the modifications accepted by the Grantor and as attached at **Schedule I**.
 - (m) **“Term”** means the term of this Agreement starting from the signing of this Agreement by the parties and ending on the date on which the Grantee has duly performed and discharged all of its duties, obligations, undertakings and agreements under this Agreement to the satisfaction of the Grantor.
 - (n) A reference to a clause means a clause of the main body of this Agreement; a reference to a paragraph means a paragraph of any of the Schedules.
 - (o) A reference to:-
 - (i) a day means a calendar day;
 - (ii) a working day means any day not being a Saturday, a Sunday or a public holiday as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong);
 - (iii) a month means a calendar month; and
 - (iv) time means Hong Kong time.
 - (p) Words importing the singular only shall include the plural and vice versa where the context requires.
 - (q) Each gender includes the other where the context requires.
 - (r) A reference to a person includes an individual, corporation, firm or any body of persons, corporate or unincorporated and includes any public body.

2. Execution of the Project

In consideration of the Grant to be given by the Grantor subject to the terms and conditions of the Agreement, the Grantee hereby undertakes with the

Grantor that it shall :–

- (a) commence the Project on the Commencement Date;
- (b) carry out the Project with due diligence and in a conscientious and timely manner in accordance with the Proposal and the Budget subject to terms and conditions of the Agreement;
- (c) complete the Project by the Completion Date in accordance with the terms and conditions of the Agreement and to the satisfaction of the Grantor; and
- (d) strictly adhere to all of the Guidelines.

3. Grantee's Obligations

The Grantee undertakes that it shall:–

- (a) on or before the commencement of the Project, open with a licensed bank in Hong Kong a bank account or to open a designated account in the Institute's finance system (hereinafter called "**the Designated Account**") and maintain the same throughout the Term of the Agreement 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 Project in accordance with the terms of this Agreement;
- (b) throughout the Term of the Agreement, pay into the Designated Account all income arising from activities relating to or exploitation of Deliverables evolved from or developed by the Project to form part of the Grant and to be used exclusively for the purpose of the Project in accordance with the terms of this Agreement, provided that the Grantor may, on application by the Grantee in writing and where it considers it fair and reasonable, waive in writing the application of this clause;
- (c) submit to the Grantor progress reports and a final report on the Project in such format and at such times as stipulated in Part 1 of the Guidelines, each of such reports shall contain a comprehensive evaluation of the extent to which the objectives of the Project as set out in the Proposal have been met;
- (d) submit to the Grantor financial reports, statements and a certificate in such format and at such times as prescribed in Part 1 of the Guidelines and ensure that such financial reports, statements and certificate shall be

prepared in accordance with accounting principles generally accepted in Hong Kong;

- (e) within three (3) months from the Completion Date or forthwith upon termination of this Agreement by the Grantor pursuant to Clause 5, whichever is earlier, submit to the Grantor a statement of account made up to the Completion Date or the date on which all transactions in connection with the Project have been completed, whichever is the later, or date of termination (as the case may be) and to return to the Grantor any unused funds in the Designated Account;
- (f) allow or procure for the Grantor access to all records, database, materials developed, books and accounts relating to the Project, whether compiled, developed, controlled or possessed by the Grantee (**the “Project 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 Project may take place; in this connection, the Grantee shall render all necessary assistance (including obtaining any consent of such third party) to facilitate the Grantor to exercise its rights under this paragraph (f);
- (g) at no cost to the Grantor to provide from time to time to the Grantor such Project Materials as the Grantor may require;
- (h) keep during the Term of this Agreement and up to seven (7) years after the Completion Date or termination of this Agreement as the case may be, all original receipts, payment vouchers and books of accounts relating to the Project and to make the same available for inspection from time to time by the Grantor;
- (i) procure, maintain, handle, dispose and keep record of all assets purchased or acquired with the Grant in accordance with Part 2 of the Guidelines. For the purpose of this Clause, **“assets”** shall have the meaning assigned thereto in Part 2 of the Guidelines;
- (j) acknowledge having received the Grant from the Grantor in any Deliverables, publications and activities regarding the Project by displaying the logo and name of the Quality Education Fund conspicuously where appropriate 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 the Grantor shall be entitled to require the Grantee to withdraw or cease using any promotional material which the Grantor in its absolute discretion considers to be inappropriate or undesirable;

- (k) on reasonable prior notice by the Grantor, to attend, participate and aid in such activities, programmes or events relating to the Project as may be required by the Grantor from time to time; and
- (l) within three (3) months from the Completion Date, submit to the Grantor all of the Deliverables of the Project.

4. Payment of the Grant

- (a) Subject to the terms and conditions of this Agreement, the Grant will be paid into the Designated Account in accordance with the payment schedule set out in **Part C of Schedule II**.
- (b) 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:-
 - (i) the Grantee has failed or is likely to fail to execute the Project in accordance with the Proposal; or
 - (ii) any of the reports, financial statements, certificates, information, materials or other Deliverables submitted by the Grantee under this Agreement are not to a standard satisfactory to the Grantor; or
 - (iii) there is a sufficient credit balance in the Designated Account to justify withholding or deferring by the Grantor payment of the Grant or any part thereof.
- (c) 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.
- (d) The Grantee shall not make any cash payment out of the Grant that is in excess of Hong Kong dollars five thousand (HK\$5,000.00) unless a written prior approval from the Grantor is obtained.
- (e) The Grantee may at its discretion reallocate the funds from one approved item of the Budget to another strictly in accordance with Part 1 of the Guidelines.
- (f) 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 calculated in accordance with Clause 6(b) shall be a debt due to and recoverable by the Grantor.

5. Termination

- (a) The Grantor may terminate this Agreement after giving fourteen (14) working days' notice in writing to the Grantee, if :–
- (i) the Grantee fails to commence, carry out or complete the Project in accordance with the terms and conditions of the Agreement;
 - (ii) the Grantee is in breach of any provision of this Agreement which in the opinion of the Grantor is not capable of remedy or is persistently or wrongfully neglecting to carry out its obligations under this Agreement;
 - (iii) the Grantee commits a breach of any provision of the Agreement which is capable of remedy and fails to remedy the same within fourteen (14) working days from the date of service of notice by the Grantor (or such longer period as specified in the notice) requiring such remedy;
 - (iv) the Grantee has, without the consent in writing of the Grantor, assigned, transferred, sub-contracted or otherwise disposed of the whole or any part of the Grant or any of its interests, rights, benefits or obligations in the Project or this Agreement to any third party or purported to do any of the foregoing acts; or
 - (v) the Grantee has provided or represented to the Grantor any data, facts or information about the Project which is incorrect, untrue or is intended to mislead the Grantor.
- (b) The Grantor may immediately terminate the Agreement upon the occurrence of any of the following events:
- (i) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Grantee's creditors;
 - (ii) if the Grantee is an incorporated body, a shareholders' or members' resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by

the Grantor in advance);

- (iii) a petition is presented for the winding up or dissolution or bankruptcy of the Grantee, which is not dismissed within fourteen (14) days after the petition is presented;
- (iv) the Grantee is or becomes insolvent, or any order is made for the Grantee's bankruptcy or winding up or dissolution;
- (v) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Grantee's business or assets;
- (vi) the Grantee suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (vii) the Grantee 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;
- (viii) the continued engagement of the Grantee or the continued performance of the Agreement is contrary to the interest of national security; or
- (ix) the Grantor reasonably believes that any of the events mentioned in 5(b) (vii)-(viii) above is about to occur.

6. Consequences of Expiry or Termination of this Agreement

- (a) Upon termination of this Agreement pursuant to Clause 5, the Grantee shall forthwith :-
 - (i) account for all monies expended on the Project up to the date of termination to the Grantor with detailed receipts and payment vouchers to support the expenditures;
 - (ii) return all assets referred to in Clause 3(i) and credit balance in the Designated Account and the Grantee shall pay to the Grantor as soon as practicable any amount which has accrued to the Grant under the terms of this Agreement but not yet paid into the Designated Account at the time of termination under this Clause; and
 - (iii) submit to the Grantor all Deliverables of the Project developed up to the date of termination.

- (b) Any interest payable by the Grantee to the Grantor as a debt due under this Agreement shall be calculated at the rate equivalent to 5% above the rate per annum as announced by The Hongkong and Shanghai Banking Corporation Limited from time to time to be its prime lending rate for Hong Kong Dollars.
- (c) The expiry or termination of this Agreement (howsoever occasioned) hereunder shall be without prejudice to :-
 - (i) any antecedents rights or obligations of either party under this Agreement; and
 - (ii) any provisions of this Agreement, including without limitation Clauses 7, 8 and 9, notwithstanding such expiry or termination which by law or by implication shall survive the same and shall continue to be binding on the parties and shall remain in full force and effect.

7. Indemnity

- (a) The Grantee shall indemnify the Grantor and keep the Grantor fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses (including without limiting on 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 :-
 - (i) 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 consultant, contractor, employee or agent;
 - (ii) use of or reliance on the Deliverables in such manner or for such purpose as is intended or reasonably foreseen by the Grantee;
 - (iii) any allegation or claim that the use or possession of the Deliverables developed under this Agreement infringes any copyright or other intellectual property rights of any third party; and
 - (iv) termination of this Agreement under Clause 5.
- (b) The Grantor will not under any circumstances provide any indemnity.
- (c) The provisions of Clause 7 shall survive the expiry, completion or

termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry, completion or termination.

8. Intellectual Property Rights

- (a) The Deliverables and the records, database and 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.
- (b) The Grantee warrants to the Grantor that :—
 - (i) the carrying out of the Project, the performance of this Agreement by the Grantee or the use or possession by the Grantor and/or its authorised users of the Deliverables, records, database and 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
 - (ii) 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.
- (c) 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(a), 8(b) 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.
- (d) Upon receipt of any request from the Grantee for the use of any copyright or other intellectual property rights in relation to the Deliverables and the records, database and materials developed outside the bounds of the Project, 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

- (a) 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 :-
 - (i) to the Grantee's authorised sub-contractors, employees or agents;
 - (ii) 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 the content of the information to be disclosed and to whom the disclosure is to be made;
 - (iii) of information already known to the recipient otherwise than as a result of disclosure by the Grantee;
 - (iv) under compulsion of law.
- (b) Any disclosure permitted under the above sub-clause shall be in strict confidence and shall extend only so far as may be necessary for the purpose specified therein.
- (c) 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.
- (d) 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.
- (e) Without prejudice to Clauses 9(a) to (d), 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.
- (f) The Grantee shall indemnify and keep the Grantor, its authorised users including the Government, assigns and successors-in-title fully and effectively indemnified on the terms set out in Clause 7 as a result of any

breach of confidence (whether actionable based on this Agreement or at law) by the Grantee or any such persons engaged by the Grantee.

10. Probity Clause

The Grantee undertakes that it shall observe the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong) and Part 3 of the Guidelines. The Grantee shall advise its consultants, contractors, employees and agents involved in the Project 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 Project. If offences are committed under the Ordinance by the Grantee, its consultant, contractor, employee and agent in undertaking the Project, the Grantor shall be entitled to terminate this Agreement.

11. Serving of Notice

All notices, requests and other communications permitted or required to be given under this Agreement shall be deemed validly served by hand delivery, fax, email or by prepaid registered letter sent through the post to the parties' registered offices stated above or their respective last known addresses. Any notice served by hand shall be deemed to have been served on delivery; any notice served by fax or by email shall be deemed to have been served on receipt of answerback advice; and any notice served by prepaid registered letter shall be deemed to have been served forty-eight (48) hours after the time at which it was posted. In proving service it shall be sufficient to prove that the notice was properly addressed and delivered or sent or posted, as the case may be.

12. Assignment and Sub-contracting

- (a) Unless otherwise provided for in this Agreement, the Grantee shall not, without the prior written consent of the Grantor, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations in the Project or this Agreement.
- (b) The Grantor may impose conditions either to be complied with by the Grantee and/or any proposed sub-contractors before giving any approval under Clause 12(a) above including without limitation the execution of a sub-contractor's undertaking by the proposed sub-contractor in favour of

the Grantor in such form and substance to be prescribed by the Grantor. Where the Grantor requests the same, a certified copy of the sub-contract shall be deposited with the Grantor within seven (7) working days after the effective date of the sub-contract.

- (c) The Grantee shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of this Agreement. The Grantee shall be responsible for all acts, defaults, omissions and neglect of any of its officers, employees, agents, sub-contractors (at whatever level), and employees and agents of any such sub-contractor as if they were its own.

13. Government Law and Jurisdiction

This Agreement shall be governed by and interpreted in accordance with the laws of Hong Kong and the parties agree to submit to the exclusive jurisdiction to the courts of Hong Kong.

14. Entire Agreement

- (a) This Agreement constitutes the whole agreement between the parties and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Grantee acknowledges that in entering into this Agreement, it has not relied on any statements, warranties or representations given or made by the Grantor. On the other hand, the Grantor has relied on the Warranties when entering into the Agreement.
- (b) All of the provisions of the Agreement shall remain in full force and effect notwithstanding the completion of the Project (except insofar as those obligations which have been fully performed).

15. Contracts (Rights of Third Parties) Ordinance

The parties under this Agreement 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 (Chapter 623 of the Laws of Hong Kong).

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

Signed by «supervisor»,)

«post»)

for and on behalf of «ORG_NAME»)

in the presence of :-

witness:

Name : «witness»

«post»

Signed by «name»,)

«post», for and on behalf of Permanent)

Secretary for Education Incorporated)