

**TERMS AND CONDITIONS OF AGREEMENT  
FOR THE PILOT PUBLIC-PRIVATE PARTNERSHIP PROGRAMME ON  
SMOKING CESSATION**

**PREAMBLE:**

- (A) The Government, as represented by the Director of Health, wishes to invite the Registered Medical Practitioner within the meaning of the Medical Registration Ordinance (Cap. 161), who holds a valid practising certificate issued under the Ordinance and works in the private sector (including universities and non-governmental organisations, and who has registered in the Electronic Health Record Sharing System (eHRSS), enrolled in the Primary Care Directory (PCD) and attended the refresher course on smoking cessation as specified by the Department of Health, to enrol in the Pilot Public-Private Partnership Programme on Smoking Cessation (SCPPP).
- (B) The Registered Medical Practitioner wishes to join the SCPPP as an Enrolled Doctor, and the Registered Medical Practitioner agrees/the Registered Medical Practitioner and his Associated Health Care Provider (as the case may be) jointly and severally agree to be bound by and observe the terms and conditions in the Agreement.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. Definitions**

In the Agreement, unless otherwise defined or the context otherwise requires, the following expressions shall have the meanings as set out below:

“**Additional Encounter**” means any contact other than the First Consultation and the Follow-up Consultation(s) provided by the Enrolled Doctor to the Participant to enable or encourage the latter to complete the smoking cessation plan.

“**Agreement**” means the agreement made between the Government and an Enrolled Doctor/among the Government, an Enrolled Doctor and his Associated Health Care Provider (as the case may be) in respect of the Enrolled Doctor’s participation in the

SCPPP, and reference to the terms and conditions thereof shall be set out in the following:

- (a) the Terms and Conditions of Agreement for the Pilot Public-Private Partnership Programme on Smoking Cessation (Appendix C) (“**T&C**”);
- (b) the Authorisation Form(s) for Payment of Subsidy to a Specified Bank Account (Appendix B) (“**Authorisation Form**”) submitted by the Enrolled Doctor and his Associated Health Care Provider (if any) and accepted by the Government; and
- (c) the Application Form (Appendix A) (“**Application Form**”) submitted by the Enrolled Doctor and his Associated Health Care Provider (if any) and accepted by the Government.

“**Associated Health Care Provider**” means a Health Care Provider specified in the Enrolled Doctor’s Application Form and in the Notification issued by the Government in respect of that Enrolled Doctor.

“**eHRSS**” means the Electronic Health Record Sharing System established under section 5(1) of the Electronic Health Record Sharing System Ordinance (Cap. 625).

“**Eligible Person**” means a person who is eligible to enrol in the SCPMP for receiving the smoking cessation service by meeting the following criteria:

- (a) being a Hong Kong resident who aged 18 or above and holds (i) a valid Hong Kong Identity Card within the meaning of the Registration of Persons Ordinance (Cap. 177), except those who obtained their Hong Kong Identity Card by virtue of a previous permission to land or remain in Hong Kong granted to them and such permission has expired or ceased to be valid; or (ii) a valid Certificate of Exemption within the meaning of the Immigration Ordinance (Cap.115); and
- (b) being a registered healthcare recipient under section 8(1) of the Electronic Health Record Sharing System Ordinance (Cap. 625).”

“**Enrolled Doctor**” means a Registered Medical Practitioner who has registered in the eHRSS, enrolled in the PCD, and attended the refresher course on smoking cessation as specified by the Department of Health, and whose application to enrol in the SCPMP has been accepted by the Government.

**“First Consultation”** means the first medical consultation provided by the Enrolled Doctor to an Eligible Person, the purposes of which is to assist the Eligible Person to complete the enrolment in the SCPPP as a Participant and to work out a smoking cessation plan with the Participant.

**“Follow-up Consultation(s)”** means the medical consultation(s) provided by the Enrolled Doctor to a Participant after the First Consultation, the purpose of which is to follow-up the Participant’s progress and assess the effectiveness of Pharmacotherapy (if prescribed).

**“Government”** means the Government of Hong Kong, including its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions.

**“Health Care Institution”** means the clinic (under the Associated Health Care Provider, if any) where the Enrolled Doctor practises as a Registered Medical Practitioner and provides smoking cessation services in the SCPPP, and which is registered in the eHRSS and enrolled in the PCD.

**“Health Care Provider”** means:

- (a) an organisation registered in the eHRSS and enrolled in the PCD, which employs or engages a Registered Medical Practitioner to provide healthcare services; or
- (b) an organisation registered in the eHRSS and enrolled in the PCD:
  - (i) under whose name a Registered Medical Practitioner provides healthcare services; and
  - (ii) of which the Registered Medical Practitioner is the sole proprietor, partner, shareholder, director or other officer (other than in a capacity referred to in (a) above).

**“HK\$”** means Hong Kong Dollars.

**“Hong Kong”** means the Hong Kong Special Administrative Region of the People’s Republic of China.

**“Intellectual Property Rights”** means patents, trade marks, service marks, trade

names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.

“**IT**” means information technology.

“**Notification**” means the written notification issued by the Government to the Enrolled Doctor notifying him the result of his application to enrol in the SCPPP.

“**Ordinance**” means the Medical Registration Ordinance (Cap. 161).

“**Participant**” means an Eligible Person who has been successfully registered to participate in the SCPPP.

“**Participant Consent Form**” means a form prescribed by the Director of Health to be duly completed and signed by a Participant.

“**PCD**” means the Primary Care Directory launched by the Primary Care Office of the Department of Health.

“**Pharmacotherapy**” means any one type of Pharmacotherapy as specified in Schedule 1 to the T&C.

“**Programme Licence**” means the licence granted to the Enrolled Doctor and his Associated Health Care Provider (if any) to use any software in relation to the use of the SCPPP IT System referred to in Clause 5 of the T&C.

“**Programme Office**” means the Programme Office of the SCPPP under the Department of Health.

“**Programme Term**” means the term of the SCPPP, being the 24-month period from the commencement date of the SCPPP specified by the Government, or such other period as may be specified by the Government from time to time.

“**Quit Day**” means the target day for the Participant to totally abstain from smoking, which shall be discussed and agreed between the Enrolled Doctor and the Participant.

**“Registered Medical Practitioner”** means a person who is a “registered medical practitioner” within the meaning of section 2(1) of the Ordinance and who holds a valid practising certificate issued under the Ordinance.

**“SCPPP”** means the Pilot Public-Private Partnership Programme on Smoking Cessation.

**“SCPPP IT System”** means the SCPPP Information Technology System, a specific IT system for the SCPPP built upon the eHRSS for the collection, storage, sharing and use of data, including clinical data, of the Participants.

**“Specified Account”** means a bank account under the name of the Enrolled Doctor or his Associated Health Care Provider (as the case may be) as specified in the Authorisation Form submitted by the Enrolled Doctor and his Associated Health Care Provider (if any).

**“Subsidy”** means the amounts of subsidy set out in Schedule 1 to the T&C, which is payable by the Government to the Enrolled Doctor or his Associated Health Care Provider (as the case may be) under the Agreement in accordance with the provisions of the T&C for the full and proper performance by the Enrolled Doctor/the Enrolled Doctor and his Associated Health Care Provider (as the case may be) of his/their obligations under the Agreement.

**“Transaction Documents”** means (i) the Application Form (Appendix A); (ii) the Authorisation Form (Appendix B); and (iii) the T&C (Appendix C).

## **2. Rules of Interpretation**

2.1 In the Agreement (including the Transaction Documents), unless otherwise provided or the context otherwise requires:

- (a) any word or expression to which a specific meaning has been attached in any of the Transaction Documents shall bear such meaning whenever it may appear in all other Transaction Documents;
- (b) words importing the singular include the plural and vice versa; words importing a gender include all other genders;
- (c) references to statutes or statutory provisions shall be construed as references to

those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;

- (d) references to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
- (e) words importing a person include an individual, a firm, partnership, corporation, government, governmental body, authority, agency, unincorporated body of persons or associations, corporations and any organisations having legal capacity;
- (f) references to a day mean a calendar day; references to a month or a monthly period mean a calendar month; and references to a year or an annual period mean a calendar year;
- (g) references to a section, clause, sub-clause, paragraph, sub-paragraph, appendix or attachment by number or by letter in a document shall be construed (unless the context otherwise requires) as references to the section, clause, sub-clause, paragraph, sub-paragraph, appendix or attachment of that number or letter contained in that document;
- (h) references to a document shall include all schedules, appendices, annexures and other materials attached to such document, and shall mean the same as from time to time amended or supplemented in accordance with the terms of the Transaction Documents or the Agreement;
- (i) headings are inserted for convenience of reference only and shall not in any way affect, vary, limit or extend the construction of any of the Transaction Documents and the Agreement;
- (j) references to time and dates shall be construed as Hong Kong time and dates;
- (k) references to “Government” shall include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;

- (l) any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done; and
- (m) words importing the whole shall be treated as including a reference to any part of the whole; the words “include” and “including” shall be construed without limitation to the words following.

2.2 Nothing in the Agreement shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.

### **3. General**

3.1 In consideration of the Government’s payment of Subsidy in accordance with the Agreement, the Enrolled Doctor undertakes and agrees/the Enrolled Doctor and his Associated Health Care Provider jointly and severally undertake and agree (as the case may be) to be bound by and observe the terms and conditions of the Agreement.

3.2 The Enrolled Doctor and his Associated Health Care Provider (if any) shall inform the Programme Office in writing within 7 days after any change arises in any information or document submitted to the Government in relation to the SCPPP (including any information submitted in the Enrolled Doctor’s application to enrol in the SCPPP) and of any material change in circumstances affecting the Enrolled Doctor’s eligibility for enrolment in the SCPPP or otherwise his application including any incidents of professional misconduct or negligence (substantiated or alleged).

### **4. Termination and Expiry**

4.1 The Government may at any time terminate the SCPPP without incurring any liability to any Enrolled Doctor or any Associated Health Care Provider.

4.2 The Agreement shall terminate forthwith without any need of notice from the Government to the Enrolled Doctor whatsoever upon the Enrolled Doctor having ceased to be, or being suspended from practicing as, a Registered Medical Practitioner, or having ceased to be enrolled in the PCD.

4.3 The Government may at any time terminate the Agreement forthwith by written notice to the Enrolled Doctor if:

- (a) the Government is of reasonable opinion that the Enrolled Doctor has failed to provide health care services including but not limited to the health care services provided under this Agreement in a professional manner or has otherwise committed professional misconduct or malpractice;
- (b) the Enrolled Doctor or his Associated Health Care Provider (if any) fails to comply with any provision in the Agreement or any direction given or requirement imposed by the Government or the Director of Health in relation to the SCPPP; or
- (c) the Government is of reasonable opinion that the Enrolled Doctor or his Associated Health Care Provider (if any) has submitted any fraudulent claim for Subsidy or has committed any offence under the Prevention of Bribery Ordinance (Cap. 201).

4.4 Notwithstanding anything herein to the contrary, the Government, the Enrolled Doctor or his Associated Health Care Provider (if any) may terminate the Agreement by giving the other party(ies) 14 days' prior written notice and the Agreement shall terminate on the date specified in the notice.

4.5 On termination of the Agreement for whatever reason:

- (a) the Government is under no further obligation to the Enrolled Doctor and his Associated Health Care Provider (if any) without thereby releasing the Enrolled Doctor and his Associated Health Care Provider (if any) from any of his/its liabilities under the Agreement, or affecting any rights and powers conferred upon the Government by the Agreement;
- (b) except for the Subsidy that has been accrued or incurred before the date of termination of the Agreement (“**Termination Date**”), the Government shall cease to have any obligation to pay the Enrolled Doctor or his Associated Health Care Provider (if any and as the case may be) any Subsidy, and no further Subsidy shall be accrued or incurred on or after the Termination Date;
- (c) the Enrolled Doctor, and his Associated Health Care Provider, if any, shall:



- (i) cease to use the Participant Consent Form, and cease to access, use, or otherwise input any data into, the SCPPP IT System;
  - (ii) not procure or permit any Eligible Person to complete or execute any Participant Consent Form or any other forms or documents that may be prescribed by the Government or the Director of Health in relation to the SCPPP;
  - (iii) if required by the Government, remove all software provided by the Government for the purpose of the SCPPP from the computer system used by the Enrolled Doctor and his Associated Health Care Provider (if any) within 14 days of the Termination Date; and
  - (iv) comply with all directions and requirements made by the Government to give effect to the cessation of the Enrolled Doctor's and his Associated Health Care Provider's (if any) eligibility to participate in the SCPPP; and
- (d) the Programme Licence shall terminate forthwith.

4.6 No compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Enrolled Doctor and/or his Associated Health Care Provider (if any)) shall be payable by the Government to the Enrolled Doctor and/or his Associated Health Care Provider (if any) as a result of any early termination of the Agreement by the Government.

4.7 Upon termination of the Agreement or expiry of the Programme Term, the Enrolled Doctor concerned shall immediately cease to be an Enrolled Doctor, provided that the termination of the Agreement or expiry of the Programme Term shall not affect any accrued rights or liabilities of the Government, the Enrolled Doctor or his Associated Health Care Provider (if any) under the Agreement, nor shall it affect the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination or expiry.

4.8 Upon the occurrence of any of the events specified in Clause 4.3 or the alleged occurrence of any such event pending further investigation, the Government may, without prejudice to its rights and remedies under Clause 4 or otherwise, by notice in writing to the Enrolled Doctor ("Suspension Notice") suspend the enrolment of the

Enrolled Doctor in the SCPPP, and/or withhold any sums due to the Enrolled Doctor or his Associated Health Care Provider (as the case may be) under Clause 7.2 (“Suspension”) for a period specified in the Suspension Notice (“Suspension Period”). Throughout the Suspension Period, the Enrolled Doctor and/or his Associated Health Care Provider shall not process enrolment of any Eligible Person or provide services under the SCPPP to any Eligible Person or submit any Subsidy claim to the Government.

Throughout the Suspension Period:

- (a) the Government is under no obligation to the Enrolled Doctor and his Associated Health Care Provider (if any) without thereby releasing the Enrolled Doctor and his Associated Health Care Provider (if any) from any of his/its liabilities under the Agreement, or affecting any rights and powers conferred upon the Government by the Agreement;
- (b) except for the Subsidy that has been accrued or incurred before the Suspension Period, the Government shall cease to have any obligation to pay the Enrolled Doctor or his Associated Health Care Provider (if any and as the case may be) any Subsidy, and no further Subsidy shall be accrued or incurred during the Suspension Period;
- (c) the Enrolled Doctor, and his Associated Health Care Provider, if any, shall:
  - (i) cease to use the Participant Consent Form, and cease to access, use, or otherwise input any data into, the SCPPP IT System;
  - (ii) not procure or permit any Eligible Person to complete or execute any Participant Consent Form or any other forms or documents that may be prescribed by the Government or the Director of Health in relation to the SCPPP;
  - (iii) if required by the Government, remove all software provided by the Government for the purpose of the SCPPP from the computer system used by the Enrolled Doctor and his Associated Health Care Provider (if any) within 14 days from the first day of the Suspension Period; and
  - (iv) comply with all directions and requirements made by the Government to give effect to the Suspension of the Enrolled Doctor’s and his Associated

Health Care Provider's (if any) eligibility to participate in the SCPPP; and

(d) the Programme Licence shall be suspended.

## **5. SCPPP IT System**

5.1 Subject to any third party Intellectual Property Rights subsisting in any materials stored in the SCPPP IT System, all Intellectual Property Rights in the SCPPP IT System are or shall be the sole and exclusive property of the Government and shall be and remain vested in the Government immediately upon creation.

5.2 Save as otherwise expressly provided for in the Agreement or specified by the Government, the Enrolled Doctor and his Associated Health Care Provider (if any) shall provide all computer hardware, software, other equipment, machinery, devices and facility and obtain all utility for the use of the SCPPP IT System at the Enrolled Doctor's own cost and expenses. The Government may, for the purpose of facilitating the Enrolled Doctor's and his Associated Health Care Provider's (if any) use of the SCPPP IT System, grant or procure the grant of a Programme Licence to the Enrolled Doctor and his Associated Health Care Provider (if any) in each case on such terms and conditions as may be specified by the Government or the Intellectual Property Rights owner of the relevant software without prejudice to any of the provisions in this Clause 5.

5.3 The Enrolled Doctor and his Associated Health Care Provider (if any) shall use and operate the SCPPP IT System solely for the purposes of implementing the SCPPP and carrying out their obligations as specified in Clause 6 of the T&C.

5.4 The Enrolled Doctor and his Associated Health Care Provider (if any) undertake not to use or deal with the SCPPP IT System or the Programme Licence or any data, materials, things, documents or records stored in the SCPPP IT System for any purposes other than those specified in the Agreement or by the Government unless with prior written consent of the Government.

5.5 The Enrolled Doctor and his Associated Health Care Provider (if any) warrant and undertake to the Government that (a) any use, operation or possession of the SCPPP IT System and the Programme Licence, and any materials, things, documents or records submitted to the Government for the purposes of or in connection with the performance of this Agreement shall not and will not infringe any Intellectual Property Rights or any other rights of any person; and (b) if any materials, things,

documents and records submitted to the Government the Intellectual Property Rights of which belong to a third party, the Enrolled Doctor and his Associated Health Care Provider shall have obtained from such third party Intellectual Property Rights owner the grant of all necessary licences for itself and the Government and its authorized users to use such materials, things, documents and records in the manner and for any of the purposes contemplated by this Agreement. The costs of the above licences shall be borne by the Enrolled Doctor and his Associated Health Care Provider.

5.6 The Enrolled Doctor and his Associated Health Care Provider (if any) shall not transfer or sub-license the SCPPP IT System or the Programme Licence to other parties for use.

5.7 The Enrolled Doctor and his Associated Health Care Provider (if any) shall be responsible for all liabilities arising out of the Enrolled Doctor's and his Associated Health Care Provider's use of the Programme Licence.

5.8 The Enrolled Doctor and his Associated Health Care Provider (if any) shall not make any modifications to the SCPPP IT System or the software covered by the Programme Licence unless the prior written consent of the Government or the relevant owner of the Intellectual Property Rights has been obtained.

5.9 The Enrolled Doctor and his Associated Health Care Provider (if any) shall be responsible for the safe custody of the software covered by the Programme Licence and all copies thereof.

5.10. The Enrolled Doctor and his Associated Health Care Provider (if any) shall grant or in case he/it is not empowered to do so, shall procure at his/its sole expense the grant of, in favour of the Government and its authorised users including other Enrolled Doctors and their Associated Health Care Providers a royalty-free, non-exclusive, irrevocable, perpetual, worldwide and sub-licensable licence, for all purposes contemplated by this Agreement, to use (including doing any of the acts restricted by copyright under sections 22 to 29 of the Copyright Ordinance (Cap. 528)) any clinical notes and records submitted to SCPPP IT System, and other materials, things, documents and records submitted to the Government for the purposes of or in connection with the performance of the Agreement or required to be kept under the Agreement (including all items referred to in Clauses 9.4 and 9.7).

5.11. The provisions of this Clause 5 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding

such termination.

**6. Obligations of the Enrolled Doctor and his Associated Health Care Provider (if any)**

6.1 The Enrolled Doctor, and his Associated Health Care Provider, if any, shall not enter into any agreement or arrangement with a Participant which has the effect of:

- (a) modifying any provision of any requirement prescribed by the Director of Health for the purpose of or in relation to the SCPPP (including this Agreement);  
or
- (b) sharing any Subsidy received from the Government with the Participant(s).

6.2 During the Programme Term, the Enrolled Doctor, and his Associated Health Care Provider, if any, shall:

- (a) submit to the Government such information or document as required by the Director of Health from time to time in relation to the SCPPP;
- (b) keep sufficient stock of Pharmacotherapy for smoking cessation at the Health Care Institution for effective implementation of the smoking cessation plan where Pharmacotherapy is considered appropriate for the Participant; and
- (c) provide appropriate counseling to the Participants who are enrolled in the SCPPP through the Enrolled Doctor to quit smoking and to implement the smoking cessation plan. In particular, if Pharmacotherapy for smoking cessation is prescribed to the Participants, the Enrolled Doctor and his Associated Health Care Provider (if any) shall arrange follow-up consultations with the Participants for monitoring medication use, provide assistance and support to the Participants to continue quitting smoking or prevent relapse.

6.3 The Enrolled Doctor shall exercise clinical judgment and be held fully accountable for the clinical care and management provided to the Participants in relation to the SCPPP.

6.4 The Enrolled Doctor, and his Associated Health Care Provider, if any, shall deliver at the Health Care Institution the key service components of the SCPPP, namely:

- (a) enrolment of Eligible Persons as Participants in the SCPPP;
- (b) First Consultation;
- (c) Follow-up Consultation(s) within 26 weeks after the Quit Day;
- (d) Follow-up Consultation at 26 weeks after the Quit Day;
- (e) Follow-up Consultation at 52 weeks after the Quit Day; and
- (f) Pharmacotherapy prescription if appropriate

(collectively, the “**Services**”).

The Enrolled Doctor, and his Associated Health Care Provider, if any, shall commence the Services on a specified date and time after the Government’s issue to the Enrolled Doctor and his Associated Health Care Provider (if any) of the Notification confirming its/their enrolment in the SCPPP.

#### Enrolment of Eligible Persons as Participants in the SCPPP

- (a) Enrolment of Eligible Persons in the SCPPP is a fundamental step and forms an integral part of the First Consultation of every Participant. The Enrolled Doctor shall recruit Participants by opportunistic counselling. If a person is ready to quit smoking and willing to receive smoking cessation service by participating in the SCPPP, the Enrolled Doctor shall process the enrolment of the person in the SCPPP by performing the following:
  - (i) confirm that the person has registered in the eHRSS beforehand or facilitate completion of the eHRSS enrolment, and seek the person’s consent for sharing data kept on the eHRSS with the Enrolled Doctor in the context of the SCPPP;
  - (ii) check the original smart Hong Kong Identity Card (“**HKIC**”) or the Certificate of Exemption of the person for his eligibility to join the SCPPP. If the first alphabet of the HKIC symbol of the person is “C” or “U”, the Enrolled Doctor shall call the hotline of the Programme Office during normal business hours for manual verification of his eligibility;

- (iii) log on the Enrolled Doctor account in the SCPPP IT System, retrieve the person's profile from the SCPPP IT System by requesting the person to insert the HKIC into the card reader of the eHRSS. Manual input of personal identifiers is allowed only if the chip of the HKIC is found faulty, the use of the card reader is not feasible, the person is the holder of a Certificate of Exemption, or for other justifiable reasons;
- (iv) upon confirmation of the person's eligibility to participate in the SCPPP, input the data or information as required in the SCPPP IT System;
- (v) print out 2 copies of the Participant Consent Form;
- (vi) explain to the Eligible Person the content of the Participant Consent Form including the undertaking and declarations therein;
- (vii) request the Eligible Person to complete and sign on the 2 copies of the Participant Consent Form;
- (viii) give 1 copy of the signed Participant Consent Form to the Eligible Person and keep the other copy in safe custody to be collected by the Programme Office on regular basis; and
- (ix) confirm the enrolment of the Eligible Person and in accordance with the requirements set out in the SCPPP IT System.

#### First Consultation

- (b) Upon successful completion of enrolment in the SCPPP, the Eligible Person would become a Participant, and the Enrolled Doctor shall forthwith:
  - (i) explain to the Participant the smoking cessation pathway as well as limitations of the SCPPP and other advice as specified by the Programme Office;
  - (ii) set a Quit Day and work out a smoking cessation plan with the Participant and prescribe Pharmacotherapy for smoking cessation if appropriate, and arrange Follow-up Consultation(s) with the Participant; and
  - (iii) input all data or information and submit the claim for Subsidy for the First

Consultation in respect of the Participant in accordance with the requirements set out in the SCPPP IT System.

Follow-up Consultation(s) within 26 weeks after the Quit Day

- (c) After the First Consultation, the Enrolled Doctor shall arrange with the Participant Follow-up Consultation(s) to monitor the progress of the smoking cessation plan. The enrolled Doctor shall arrange a maximum of 3 Follow-up Consultation(s) within 26 weeks after the Quit Day to:
- (i) follow-up the Participant's progress and recent smoking status;
  - (ii) identify problems encountered and anticipated challenges and provide support to the Participant;
  - (iii) assess medication use and problem, may change treatment regime if Pharmacotherapy is prescribed;
  - (iv) schedule the next Follow-up Consultation with the Participant; and
  - (v) input all data or information and submit the claim for Subsidy for the Follow-up Consultation(s) in respect of the Participant in accordance with the requirements set out in the SCPPP IT System.

Follow-up Consultation at 26 weeks after the Quit Day

- (d) The Enrolled Doctor shall arrange a Follow-up Consultation with the Participant at 26 weeks after the Quit Day to:
- (i) follow-up the Participant's progress and recent smoking status;
  - (ii) give encouragement to the Participant if he has successfully quit smoking, or offer counseling and other arrangements to the Participant if he has failed to quit smoking;
  - (iii) schedule the next Follow-up Consultation with the Participant; and
  - (iv) input all data or information and submit the claim for Subsidy for the Follow-up Consultation in respect of the Participant in accordance with



the requirements set out in the SCPPP IT System.

#### Follow-up Consultation at 52 weeks after the Quit Day

- (e) The Enrolled Doctor shall arrange a Follow-up Consultation with the Participant at 52 weeks after the Quit Day to:
  - (i) follow-up the Participant's progress and recent smoking status;
  - (ii) give encouragement to the Participant if he has successfully quit smoking, or offer counseling and other arrangements to the Participant if he has failed to quit smoking.

#### Pharmacotherapy prescription

- (f) The Enrolled Doctor shall prescribe the suitable type of Pharmacotherapy to Participants if appropriate and input all data or information in relation to the prescription and submit the claim for the Subsidy for the Pharmacotherapy so prescribed in respect of the Participant in accordance with the requirements set out in the SCPPP IT System.

6.5 In addition to delivering the key service components of the SCPPP set out in Clause 6.4 above, the Enrolled Doctor shall also:

- (a) encourage Eligible Persons to enrol in the SCPPP;
- (b) check and act on the "To-do List" of the SCPPP IT System;
- (c) provide advice, answer enquiries and support the Participants through the smoking cessation pathway in the First Consultation and the Follow-up Consultations, as well as in the Additional Encounter(s) (if any);
- (d) follow-up with Participants who are absent from the Follow-up Consultation within 12 weeks after the First Consultation;
- (e) follow-up with Participants who are absent from the Follow-up Consultation at 26 weeks after the Quit Day;
- (f) follow-up with Participants who are absent from the Follow-up Consultation at

52 weeks after the Quit Day; and

- (g) promptly enter all data or information arising from the First Consultation and all of the Follow-up Consultations as required by the SCPPP IT System before submitting the claim for Subsidy.

6.6 The Enrolled Doctor, and his Associated Health Care Provider, if any, shall be liable to the Government for any error or omission of data or information entered into or required by the SCPPP IT System and for any loss or damage suffered by the Government due to any negligence or wilful misuse by the Enrolled Doctor and/or his Associated Health Care Provider (if any) of the SCPPP IT System or data or information extracted therefrom.

6.7 The Enrolled Doctor and his Associated Health Care Provider (if any) shall not charge any person any fees for completing or submitting the Participant Consent Form.

## **7. Payment of Subsidy by the Government**

7.1 In consideration of the due and proper performance of all of the obligations of the Enrolled Doctor, and his Associated Health Care Provider, if any, in accordance with the Agreement to the satisfaction of the Government, the Government shall:

- (a) for each Participant who has attended the First Consultation rendered by the Enrolled Doctor, pay the Enrolled Doctor or his Associated Health Care Provider (as the case may be) the **Subsidy for the First Consultation** and the **Subsidy for the Pharmacotherapy** (if prescribed), the amounts of which are stipulated in Schedule 1 to the T&C;
- (b) for each Participant who has attended the Follow-up Consultation(s) within 26 weeks after the Quit Day rendered by the Enrolled Doctor, pay the Enrolled Doctor or his Associated Health Care Provider (as the case may be) the **Subsidy for the Follow-up Consultation(s) within 26 weeks after the Quit Day** and **Subsidy for the Pharmacotherapy** (if prescribed), the amounts of which are stipulated in Schedule 1 to the T&C; and
- (c) for each Participant who has attended the Follow-up Consultation at 26 weeks after the Quit Day rendered by the Enrolled Doctor, pay the Enrolled Doctor or his Associated Health Care Provider (as the case may be) the **Subsidy for the**

**Follow-up Consultation at 26 weeks after the Quit Day**, the amount of which is stipulated in Schedule 1 to the T&C.

7.2 Subject to Clause 4.8 above, the Government will settle the Subsidy payable to the Enrolled Doctor or his Associated Health Care Provider (as the case may be) for the Services provided in a particular month by crediting the Specified Account within 30 days after the last day of that month. An acknowledgement of such crediting issued by the bank with which the Specified Account is maintained shall be deemed to be a receipt issued by the Enrolled Doctor or his Associated Health Care Provider (as the case may be) of the sum so credited and shall be conclusive evidence of due payment of such sum by the Government to the Enrolled Doctor or the Associated Health Care Provider (as the case may be) under the Agreement.

7.3 For the avoidance of doubt, the Government shall have no obligation to pay the Enrolled Doctor or his Associated Health Care Provider (as the case may be) any Subsidy:

- (a) for the Follow-up Consultation at 52 weeks after the Quit Day;
- (b) for any Additional Encounter(s) rendered by the Enrolled Doctor to any Participant;
- (c) if:
  - (i) the Participant is not ready to quit smoking or unwilling to receive smoking cessation service by participating in the SCPPP, or the Enrolled Doctor or his Associated Health Care Provider (if any) has not satisfactorily provided the Services or fulfilled his/its obligations under the Agreement including but not limited to those specified in Clauses 6.4 and 6.5 above;
  - (ii) any data or information provided by the Enrolled Doctor or his Associated Health Care Provider (if any) to the Government under or in relation to the SCPPP is at any time found to be incomplete, untrue, inaccurate or incorrect;
  - (iii) the Enrolled Doctor or his Associated Health Care Provider (if any) is in breach of any provision in the Agreement;

- (iv) the Participant is not an Eligible Person; or
- (v) the Participant has received smoking cessation service (whether from the same Enrolled Doctor and his Associated Health Care Provider (if any) or otherwise) under the SCPPP within the 52 weeks immediately preceding the Quit Day.

7.4 Notwithstanding any provision herein, if the Government certifies at any time that the Government has overpaid the Enrolled Doctor or his Associated Health Care Provider (as the case may be) any amount of Subsidy, the Government may:

- (a) deduct such overpaid amount of Subsidy from any sums which may thereafter be payable by the Government to the Enrolled Doctor or his Associated Health Care Provider (as the case may be); or
- (b) direct the Enrolled Doctor or the Associated Health Care Provider (as the case may be) to forthwith repay the Government the amount of Subsidy overpaid on a date specified by the Government and the Enrolled Doctor or the Associated Health Care Provider (as the case may be) shall comply with the direction. The Government has the right to withhold any sums due to the Enrolled Doctor or the Associated Health Care Provider (as the case may be) until the Enrolled Doctor or the Associated Health Care Provider (as the case may be) has fully repaid the aforesaid amount to the Government.

7.5 The Enrolled Doctor shall submit the Subsidy claims to the Programme Office through the SCPPP IT System. Any Subsidy claim not made within 6 months from the date of the First Consultation or the relevant Follow-up Consultation(s), as the case may be, will be considered as a late Subsidy claim and the Government shall have the absolute discretion to refuse payment of any Subsidy to the Enrolled Doctor or his Associated Health Care Provider (as the case may be) for such late Subsidy claim.

## **8. Directions**

8.1 The Enrolled Doctor, and his Associated Health Care Provider, if any, shall comply with all directions that may from time to time be given by the Government, the Director of Health or any employee, officer or agent of the Government authorised by the Director of Health to exercise his/its rights and perform his/its duties under the Agreement or in relation to the SCPPP.

8.2 If the Enrolled Doctor or his Associated Health Care Provider (if any) fails to comply with any provision of the Agreement or any direction referred to in Clause 8.1 above, without prejudice to the right of the Government to terminate the Agreement in accordance with Clause 4 above, the Government may by notice in writing to the Enrolled Doctor and the Associated Health Care Provider (if any) require the Enrolled Doctor and/or the Associated Health Care Provider (as the case may be) to make good or rectify the non-compliance by the date specified in the notice and in accordance with the requirements in the notice, and the Enrolled Doctor and/or his Associated Health Care Provider (as the case may be) shall comply with such requirements by the date specified accordingly.

## **9. Information and keeping of records**

9.1 The Enrolled Doctor shall keep the Government immediately informed of any change or proposed change to his status as a Registered Medical Practitioner under the Ordinance.

9.2 Without prejudice to Clause 9.1 above, the Enrolled Doctor shall notify the Government forthwith of his becoming aware of:

- (a) any action taken (or proposed to be taken) or any order made (or proposed to be made) to remove the Enrolled Doctor from a register maintained pursuant to the Ordinance on which the Enrolled Doctor's name has been entered;
- (b) any action, disciplinary proceeding or inquiry being taken against the Enrolled Doctor by any person including the Participant ; or
- (c) any complaints filed or claims made (whether or not any legal action is threatened) against the Enrolled Doctor for any act, negligence, misconduct or malpractice.

9.3 The Enrolled Doctor, and his Associated Health Care Provider, if any, shall provide the Government with such information as requested by the Government in relation to any of the matters referred to in Clause 9.1 or 9.2 above.

9.4 The Enrolled Doctor, and his Associated Health Care Provider, if any, shall keep in his/their Health Care Institution(s) for a period of not less than 7 years proper and full record of documents in relation to the SCPPP. Moreover, the Enrolled

Doctor shall keep the copies of the Participant Consent Forms in safe custody pending collection by the Programme Office on regular basis.

9.5 The Enrolled Doctor, and his Associated Health Care Provider, if any, shall submit to the Programme Office complete, true and accurate information as required in the Authorisation Form.

9.6 The Enrolled Doctor, and his Associated Health Care Provider, if any, warrant(s) and undertake(s) with continuing effect that all information and documents provided by him/each of them to the Government from time to time under or in relation to the SCPPP are true, accurate and complete.

9.7 The Government, the Director of Health or any person(s) authorised by the Director of Health may attend at any premises of the Enrolled Doctor and the Associated Health Care Provider (if any), including but not limited to the Health Care Institution(s), at normal business hours to inspect and obtain any data, information or record kept or required to be kept by the Enrolled Doctor and the Associated Health Care Provider (if any) under the Agreement, and to ascertain whether the terms and conditions of the Agreement are complied with by the Enrolled Doctor and the Associated Health Care Provider (if any). For such purposes, the Enrolled Doctor and his Associated Health Care Provider (if any) shall fully co-operate with and give all assistance required by the Government, the Director of Health or the authorised person(s). The Enrolled Doctor and his Associated Health Care Provider (if any) shall submit data, information or record required by the Government, the Director of Health or the authorised person(s) for purposes related to the SCPPP or under the Agreement, and shall ensure that the Government, the Director of Health and the authorised person(s) are given free, uninterrupted and facilitated access to such data, information and record and to the premises at which they are kept. The Enrolled Doctor, and the Associated Health Care Provider, if any, shall, if so requested by the Government, the Director of Health or the authorised person(s), provide them with copies of the relevant data, information and record specified by any of them. The Government, the Director of Health or any person(s) authorised by the Director of Health may contact the Participant to verify the data, information and record if necessary.

9.8 The Government may use any of the personal data of the Enrolled Doctor for the purposes set out in the Statement of Purpose in the Application Form and Authorisation Form. Each of the Enrolled Doctor and his Associated Health Care Provider (if any) further agrees that the Government may publish in any media the

Chinese and English names of the Enrolled Doctor and the Health Care Institution(s) with the address(es) and telephone number(s) at any time for the purposes of the SCPPP.

9.9. The provisions of Clauses 9.4 to 9.8 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

## **10. Government Disclaimers**

10.1 The Government neither warrants nor represents that:

- (a) its title to and property in the SCPPP IT System or the Programme Licence are free and unencumbered;
- (b) the SCPPP IT System or the Programme Licence is free from defects in design;
- (c) the use of the SCPPP IT System or the Programme Licence will meet the Enrolled Doctor's or his Associated Health Care Provider's data processing requirements or the requirements of any machine, equipment or hardware or software used or to be used by the Enrolled Doctor or his Associated Health Care Provider in relation to the SCPPP IT System; and
- (d) the operation of the SCPPP IT System or the Programme Licence will be uninterrupted or error-free.

10.2 Neither the Government nor any of its employees or agent shall be liable to the Enrolled Doctor or his Associated Health Care Provider for any claims, actions, investigations, demands, proceedings, brought or instituted against the Enrolled Doctor or his Associated Health Care Provider, or any liabilities, compensation, damage, loss, costs, charges and expenses however caused which the Enrolled Doctor or his Associated Health Care Provider may sustain or incur in relation to the Enrolled Doctor's enrolment and participation in the SCPPP, the provision of the Services, the use of the SCPPP IT System or the Programme Licence, the inability to obtain any Subsidy, or the clinical judgment and care provided by the Enrolled Doctor to the Participant in relation to the SCPPP.

10.3 The Government will NOT under any circumstances provide any indemnity.

## **11. Confidentiality**

11.1 Each of the Enrolled Doctor and his Associated Health Care Provider (if any) undertakes and agrees to keep all data, information, things and materials provided by the Government in relation to the SCPPP confidential. Neither the Enrolled Doctor nor his Associated Health Care Provider shall disclose any such data, information, things and materials to any person without the prior written consent of the Government.

11.2 The provisions of this Clause 11 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

## **12. Anti-bribery**

12.1 The Enrolled Doctor, and his Associated Health Care Provider, if any, shall observe, and shall procure his/its employees, agents or sub-contractors involved in the SCPPP to observe, the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210) and the Crimes Ordinance (Cap. 200).

12.2 Each of the Enrolled Doctor and his Associated Health Care Provider (if any) acknowledges that he/it has been reminded that:

- (a) dishonesty, theft and corruption on its part or that of his/its employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Cap. 201), sections 17, 18D and 19 of the Theft Ordinance (Cap. 210) and section 161 of the Crimes Ordinance (Cap. 200); and
- (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Cap. 201), is not permitted.

## **13. Indemnity**

13.1 Without prejudice to any other provision of the Agreement, each of the Enrolled Doctor and his Associated Health Care Provider (if any) shall indemnify and keep the Government and its employees and agents (each an “**Indemnified Person**”) fully and effectively indemnified against:



- (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), allegations, actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought, instituted or established against an Indemnified Person (“**Claims**”); and
- (b) any and all liabilities, losses, damages, costs, charges or expenses (including (i) all legal fees and other awards, costs, payments, charges and expenses, and (ii) any loss or damage sustained by or any injury to or death of any person in consequence of any Negligence of the Enrolled Doctor, his Associated Health Care Provider, or any employees, agents or sub-contractors of the Enrolled Doctor or his Associated Health Care Provider) which an Indemnified Person may pay or incur as a result of or in relation to any Claims,

which in any case arise directly or indirectly in connection with, out of or in relation to:

- (i) the performance or breach of any provisions of the Agreement by the Enrolled Doctor or his Associated Health Care Provider, or any employees, agents or sub-contractors of the Enrolled Doctor or his Associated Health Care Provider;
- (ii) the negligence, recklessness, tortious acts, wilful omission, default, unauthorised act or wilful misconduct of the Enrolled Doctor or his Associated Health Care Provider, or any employees, agents or sub-contractors of the Enrolled Doctor or his Associated Health Care Provider;
- (iii) the provision of any data or information in the process of submitting Subsidy claims by the Enrolled Doctor or his Associated Health Care Provider, or any employees, agents or sub-contractors of the Enrolled Doctor or his Associated Health Care Provider;
- (iv) the enrolment in the SCPPP by the Enrolled Doctor and/or his Associated Health Care Provider;
- (v) the clinical judgment and care provided by the Enrolled Doctor to the Participants in relation to the SCPPP;
- (vi) the infringement of any Intellectual Property Rights or any other rights of

any person arising from the use, operation, or possession by the Enrolled Doctor and his Associated Health Care Provider of the SCPPP IT System and the Programme Licence, and any materials, things, documents or records submitted to an Indemnified Person for the purposes of or in connection with the performance of this Agreement; or

- (vii) the non-compliance by the Enrolled Doctor or his Associated Health Care Provider, or any employees, agents or sub-contractors of the Enrolled Doctor or his Associated Health Care Provider with any applicable law, or regulation, order or requirement of any government agency or authority.

13.2 In the event of any person suffering any injury or death in the course of or arising out of the Agreement and whether there be a claim for compensation or not, the Enrolled Doctor, and his Associated Health Care Provider, if any, shall verbally inform the Programme Office as early as practicable and deliver to the Government a written report within 7 days after the occurrence of the injury or death, or on an earlier date specified by the Government.

13.3 For the purposes of this Clause 13, “Negligence” shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).

13.4 The indemnities, payment and compensation given in pursuance of the Agreement by the Enrolled Doctor and/or his Associated Health Care Provider (as the case may be) shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Agreement.

13.5 Without prejudice to Clause 13.1 above, any act, default, neglect or omission of any employee, agent or sub-contractor of the Enrolled Doctor shall be deemed to be the act, default, neglect or omission of the Enrolled Doctor, and any act, default, neglect or omission of any employee, agent or sub-contractor of the Associated Health Care Provider shall be deemed to be the act, default, neglect or omission of the Associated Health Care Provider.

13.6 The provisions of this Clause 13 shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

## **14. Other provisions**

14.1 Each of the Enrolled Doctor and his Associated Health Care Provider (if any) shall at his/its own cost and expense do all things and execute all deed, instruments, transfer or other documents (or procure that the same be done or executed) as may be required by the Government to give full effect to the provisions of the Agreement and shall provide all such documents and materials to the Government within 14 days of the date of the Government's written request or such longer period as may be agreed by the Government in writing.

14.2 The Agreement is governed by and construed in accordance with the laws of Hong Kong and the parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Agreement.

14.3 Nothing in the Agreement will fetter or prejudice the exercise by the Government of any discretion or right it has under any law.

14.4 Nothing in the Agreement shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government, and the Enrolled Doctor and/or his Associated Health Care Provider. Neither the Enrolled Doctor nor his Associated Health Care Provider shall represent himself/itself as an employee, servant, agent or partner of the Government. Neither the Enrolled Doctor nor an Associated Health Care Provider has, nor shall any of them represent that it has, any authority to make any commitments on the Government's behalf.

14.5 Unless otherwise expressly provided for in the Agreement, none of the parties hereunder is authorised to act in the name of, or on behalf of, or otherwise bind the other party(ies). Whether before, during or after the expiry or termination of the Programme Term, neither the Enrolled Doctor nor his Associated Health Care Provider shall use the Government's name in any document, publication, advertisement or publicity material without the prior written consent of the Government.

14.6 Neither the Enrolled Doctor nor his Associated Health Care Provider shall, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of his/its interests, rights, benefits or obligations under the Agreement, whether in whole or in part. The performance of the Agreement by the Enrolled Doctor and his Associated Health Care Provider shall be personal to him/it/them (as the case may be).

14.7 The Government may at any time vary or supplement any terms or conditions of the Agreement by prior written notice to the Enrolled Doctor and his Associated Health Care Provider (if any).

14.8 If any provision of the Agreement that is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions of the Agreement, all of which shall remain in full force and effect.

14.9 A right or a remedy of each party under the Agreement shall be cumulative and not exclusive of any other rights, power or remedies provided by the Agreement, at law or in equity. Without limiting the foregoing, no waiver by any party of any breach by the other party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

14.10 Without prejudice to the generality of Clause 14.9 above, any right of termination of the Agreement or any other right, power or remedy of whatsoever nature conferred upon the Government under the Agreement shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Agreement or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Agreement) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

14.11 Where the Enrolled Doctor or his Associated Health Care Provider (if any) has incurred any liability to the Government, whether at law or in equity and whether such liability is liquidated or unliquidated, the Government may set off, whether by way of equitable set off or at common law, the amount of such liquidated liability and a reasonable estimate of the amount of any unliquidated liability, against any sum then due or which at any time thereafter may become due from the Government to the Enrolled Doctor or his Associated Health Care Provider (as the case may be) under the Agreement or any other contract made between the Government and the Enrolled Doctor or his Associated Health Care Provider respectively.

14.12 The parties hereby declare that nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

## **SCHEDULE 1**

**Subsidy for the First Consultation:**

HK\$257

**Subsidy for the Follow-up Consultation(s) within 26 weeks after the Quit Day:**

HK\$257 for each Follow-up Consultation

**Subsidy for the Follow-up Consultation at 26 weeks after the Quit Day:**

HK\$214

**Subsidy for the Pharmacotherapy (up to a maximum of 12 weeks):**

- |                                |              |
|--------------------------------|--------------|
| - prescription of Champix®     | HK\$270/week |
| - prescription of NRT gum      | HK\$230/week |
| - prescription of NRT patch    | HK\$230/week |
| - prescription of NRT lozenges | HK\$200/week |