

THIS AGREEMENT dated the [Date]

PARTIES

1. The Government of the Hong Kong Special Administrative Region, as represented by the Chief Secretariat Executive (Grant Management) of the Food and Health Bureau at 9/F, Rumsey Street Multi-storey Carpark Building, 2 Rumsey Street, Sheung Wan, Hong Kong (the “**Government**”); and
2. [Name of Institution], of [Address], Hong Kong (the “**Institution**”); and
3. [Name of Principal Applicant] at [Dept], [AI], [Address], Hong Kong (the “**Principal Applicant**”).

RECITALS

- (A) The Principal Applicant and the Institution wish to seek financial support from the Government in order to conduct the Project.
- (B) The Principal Applicant and the Institution have submitted an Application for grant under the Health and Medical Research Fund established by the Government.
- (C) The Government has decided to approve the Application subject to the terms and conditions hereinafter contained in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1 INTERPRETATION

- 1.1 In this Agreement, unless the context requires otherwise, the expressions used shall have the meanings given to them in the Schedule of Definitions attached hereto.
- 1.2 Unless the context requires otherwise, words importing the singular include the plural and vice versa, and words importing a gender include every gender. Further, unless the context requires otherwise, words importing the whole shall be treated as including a reference to any part of the whole.
- 1.3 References herein to Clauses, Annexes and Schedules are to clauses in and annexes and schedules to this Agreement unless the context requires otherwise, and Annexes and Schedules to this Agreement shall form part of this Agreement.
- 1.4 Headings to any provision, schedule and annexes of this Agreement are inserted for convenience of reference only and shall not in any way vary, limit or extend the interpretation of this Agreement.

- 1.5 In the event of any conflict between:
- (a) Clauses 1 to 38, and Annex A and Schedules, Clauses 1 to 38 and the Schedules shall prevail over Annex A;
 - (b) Clauses 1 to 38, and Annex B and Schedules, Annex B shall prevail over Clauses 1 to 38 and the Schedules; and
 - (c) Annex A and Annex B, the Annex B shall prevail.
- 1.6 Notwithstanding anything expressed or implied in this Agreement, the Principal Applicant and the Institution are jointly and severally liable under this Agreement and are responsible for ensuring that all requirements, obligations and duties of the Institution, the Principal Applicant or both are complied with.
- 1.7 Time shall be of the essence of this Agreement.

2 DURATION AND SCOPE OF PROJECT

- 2.1 In consideration of the Government agreeing to make the Grant, the Principal Applicant and the Institution shall carry out and complete the Project in accordance with the terms and conditions of this Agreement.
- 2.2 The Principal Applicant and the Institution shall commence the Project on the Commencement Date and complete the programme required to be conducted pursuant to this Agreement to the satisfaction of the Government on or before the End Date.
- 2.3 The Principal Applicant and the Institution shall not be regarded as having completed the Project until all the requirements, services, tasks and Objectives set out herein have been completed or achieved to the reasonable satisfaction of the Government, including without limitation the submission of all the Deliverables required hereunder.

3 PREPARATION AND SUBMISSION OF DELIVERABLES

- 3.1 The Principal Applicant and the Institution shall prepare and submit to the Government reports in accordance with Clause 4.
- 3.2 The Principal Applicant and the Institution shall give such assistance as may reasonably be required to the Government Representative regarding the Deliverables, including without limitation explanation of the methodology, results of analysis, and recommendations in the Deliverables. The Principal Applicant and the Institution shall give full and proper consideration to all comments and suggestions made by the Government Representative on the Deliverables, and where such comments and suggestions are made in writing, the Principal Applicant and the Institution shall provide written response thereto.

4 REPORTING

Financial statement[s] and Audited Account

4.1 The Principal Applicant and the Institution shall submit to the Government:

- (a) certified financial statement[s]; and
- (b) an Audited Account.

4.2 The certified financial statement[s] shall be prepared by the official finance office of the Institution in accordance with the generally accepted accounting principles in Hong Kong (including the Accounting Standards and Accounting Guidelines as the Hong Kong Institute of Certified Public Accountants may issue and update from time to time). [Each of the] certified financial statement[s] shall cover the XX-month period from the Commencement Date and shall specify the manner in which, and the purposes for which, the Grant has been expended in the period covered by the statement, and certify that the Grant was expended in accordance with this Agreement. The certified financial statement[s] shall include a record of, at least, income received during the report period, expenditure (broken down into categories including manpower, equipment, consumables, travel allowance/reimbursement, cash, gifts or gift vouchers), funds committed but not spent during the period covered by the relevant certified financial statement and the remaining balance, if any.

4.3 The Audited Account shall be supported by an auditor's report. The auditor's report shall include statements expressing the auditor's opinion on: (a) whether the Audited Account is prepared in accordance with this Agreement; and (b) whether the expenditure incurred for the Project is made in accordance with this Agreement. The auditor's report shall also make full disclosure of any non-compliance with the Approved Budget. In particular, all expenditure related to travel allowance/reimbursement, cash, gifts or gift vouchers shall be described clearly.

4.4 Subject to Clause 20.2, the Institution shall submit the:

- (a) certified financial statement within [XXX+2] months from the Commencement Date; and
- (b) Audited Account within 6 months after the End Date.

Interim report

4.5 The Principal Applicant and the Institution shall submit to the Government an interim report in writing within [XXX+2] months from the Commencement Date. The interim report shall cover the XXX-month period from the Commencement Date and provide details of and explanation for the progress of the Project. The report shall be in the form required by the Government and shall also include, amongst other things, a summary of the results and a statement identifying the Intellectual Property Rights obtained (i.e. those created, assigned or licensed) during the period covered by the report.

Final report and dissemination report

- 4.6 Subject to Clause 20.2, the Principal Applicant and the Institution shall submit to the Government a final report in respect of the Project within 6 months after the End Date. The final report shall relate to the entire period of the Project or, if this Agreement is terminated before Closure of the Project, to the period from the Commencement Date to the date of termination of this Agreement. The report shall be in the form required by the Government. The final report shall contain, at least, an executive summary summarising the major findings of the entire Project or, if this Agreement is terminated before Closure of the Project, the Project so far as it was carried out up to the date of termination of this Agreement, an introduction and literature review, a description of the methodology and approaches used, details of results, discussion of the significance of the findings, conclusions and recommendations, if any, relevant references and source materials, a list of Intellectual Property Rights obtained (i.e. those created, assigned or licensed), a list of meetings and conferences attended, a list of peer-reviewed publications copies of reprints, and a list of manuscripts submitted for publication or in preparation.
- 4.7 The Principal Applicant and the Institution shall submit to the Government a dissemination report (which shall be an abbreviated report of the final report) together with the final report. In addition to the requirements referred to in Clause 4.6, the Principal Applicant and the Institution shall ensure that the final report and dissemination report shall conform to any guidelines issued by the Government.

Copies of Reports

- 4.8 The Principal Applicant and the Institution shall submit, by each due date for submission, the following reports in a format required by the Government under this Agreement:

Financial statement	1 printed copy and electronic version
Audited Account	1 printed copy and electronic version
Interim report	1 printed copy and electronic version
Final report	1 printed copy and electronic version
Dissemination report	1 printed copy and electronic version

Unless the Government otherwise directs, all Deliverables shall be prepared in English only.

5 PAYMENT

- 5.1 Subject to the provisions of this Agreement, the Government shall pay the Institution in consideration for the due and proper performance of the Project by the Principal Applicant and the Institution in accordance with this Agreement up to a maximum of the amount referred to in the definition of Grant in the Schedule of Definitions.
- 5.2 The Institution may make claims for reimbursement pursuant to the provisions below and the Guidance Notes - Grant Application for Health Care and Promotion Scheme.

Claims for reimbursement may only cover the period between the Commencement Date and the End Date. The Institution is required to submit a duly completed Reimbursement Claim Form signed by the Institution and the Principal Applicant to request payment by the Government no more frequently than every two months from the Commencement Date. Within 6 weeks after satisfactory progress of the Project, verification and acceptance by the Government of each Reimbursement Claim Form submitted by the Institution under this Agreement, the Government shall make payment by reimbursing the Institution. Under no circumstances may the Institution claim any reimbursement of the value of more than 80% of the Grant if any of the Deliverables required under this Agreement has not been submitted to the satisfaction of the Government.

- 5.3 A final Reimbursement Claim Form shall be submitted together with the Audited Account referred to in Clause 4.1. Unless otherwise agreed by the Government in writing, the Government shall not be liable for any claim for Grant submitted after the Closure of the Project.
- 5.4 Items that can be qualified for reimbursement under the Grant are described in the Guidance Notes - Grant Application for Health Care and Promotion Scheme that are updated from time to time and posted in the Research Fund Secretariat website at <http://rfs.fhb.gov.hk>. Subject to the other provisions of this Agreement, and the exceptions (if any) set out in the Guidance Notes - Grant Application for Health Care and Promotion Scheme issued by the Government from time to time, only costs that are incurred directly for the proper performance of the Project shall be reimbursed.
- 5.5 The Government is entitled not to pay for any expenditure or cost in any category in excess of the approved amount as specified in the Approved Budget or in excess of the Approved Budget.
- 5.6 Without prejudice to Clause 5.5, and subject to the exceptions (if any) set out in the Guidance Notes - Grant Application for Health Care and Promotion Scheme issued by the Government from time to time, the Government shall not be liable to pay for any expenditure or cost which has not been properly incurred and is not directly related to the performance of the Project under this Agreement.
- 5.7 For avoidance of doubt, the Institution shall not be entitled to charge any interest or claim any compensation or relief of whatsoever nature against the Government for any delay or withholding of payment of any of the Grant by the Government for any reason whatsoever.
- 5.8 Without prejudice to any rights, powers and remedies that the Government may have pursuant to this Agreement or otherwise, the Government is entitled to withdraw or discontinue the provision of any Grant in the event that the Project:
 - (a) is not considered to be progressing in a satisfactory manner after due assessment by the Government; or
 - (b) is not commenced on the Commencement Date.

6 DISCLOSURE OF INFORMATION

6.1 The Institution and the Principal Applicant hereby acknowledge and agree that the Government may, whenever it considers appropriate and without any further reference to the Institution or the Principal Applicant, publicise and disclose in any manner to any person in such form and manner as the Government deems fit:

- (a) the Grant payable to the Institution pursuant to this Agreement; and
- (b) information set out in Sections 1 to 9 of the Application.

6.2 The Government may, without reference to the Principal Applicant or the Institution disclose to any persons as it thinks fit, the Application, whether in whole or in part, for the purpose of obtaining an independent expert opinion on any of the following:

- (a) a fair and transparent peer review of the Project;
- (b) an assessment of whether the aims and objectives described in the Application have been achieved;
- (c) an assessment of whether the terms and conditions of this Agreement have been complied with; or
- (d) any evaluation of a claim or suspicion of double-funding or scientific misconduct.

6.3 Each of the Principal Applicant and the Institution hereby waives its rights, if any, to make any claims against the Government for any loss or liability suffered by the Principal Applicant and the Institution as a result of or in connection with any disclosure made by the Government under Clauses 6.1 and 6.2.

7 USE OF GRANT

7.1 Neither the Principal Applicant nor the Institution shall use the Grant for any purpose other than the performance of the Project in accordance with the Approved Budget and this Agreement.

8 ACCOUNTS

8.1 The Institution shall:

- (a) ensure that proper accounting controls and financial prudence are exercised over the Project and the Grant;
- (b) maintain separate proper books of accounts with respect to the Project and this Agreement including without limitation:
 - (i) all sums of money received and expended by the Institution and the

matters in respect of which the receipt and expenditures take place;

- (ii) all sales and purchases by or on behalf of the Institution; and
 - (iii) the assets and liabilities of the Institution, in relation to the Project; and
- (c) make available for inspection by the Government, at any time upon prior appointment during the continuance of this Agreement and within 7 years after the Closure of the Project, the said books of accounts as well as original receipts, payment vouchers and other documents substantiating the nature and amount of each expenditure and transaction.

9 EVALUATION OF PROJECT

9.1 The Principal Applicant and the Institution shall provide to the Government such information relating to the Project as the Government may reasonably request for the purpose of auditing and evaluating the Project.

9.2 The Principal Applicant and the Institution shall:

- (a) upon 14 days' written notice given by the Government; and
- (b) at times agreed to by the parties during the performance of this Agreement, and up to 7 years after the Closure of the Project;

make themselves available for visits by Government officers or their agents for the purpose of auditing and evaluating the Project and use of the Grant.

9.3 The Government shall have the right to communicate with the certified public accountant (practising) (as defined under the Professional Accountants Ordinance (Cap. 50)) preparing the Audited Account of the Project on matters concerning the Audited Account and the supporting statements without obtaining the consent of the Principal Applicant or the Institution.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 Save for the Licensed Property, the Intellectual Property Rights in the Materials shall vest in and belong to the Government and the Institution absolutely and immediately upon creation. The Institution agrees that the Government, its authorised users, assigns and successors-in-title may do the acts restricted by the copyright referred to in the Copyright Ordinance (Cap. 528) ("the acts restricted by the copyright") in connection with the Materials for any purpose whatsoever at any time without the consent of or reference to the Institution and without any payment (including any royalties) to any person. The Government agrees that the Institution and its authorised users may do the acts restricted by the copyright in connection with the Materials for the purpose of carrying out and completing the Project only at any time without the consent or reference to the Government and without any payment (including any royalties) to any person.

- 10.2 Subject to Clause 10.3, in the event and to the extent that any of the Intellectual Property Rights in the Materials is deemed for any reasons not to vest in either party pursuant to Clause 10.1, the other party shall upon request, do such acts and/or execute such documents as may be required to give effect to Clause 10.1.
- 10.3 The provision on the vesting of Intellectual Property Rights under Clause 10.1 shall not apply to Licensed Property. The Institution shall obtain at its own expense for the benefit of the Government, its authorised users, assigns and successors-in-title a non-exclusive, irrevocable, perpetual, royalty-free, worldwide, transferrable and sub-licensable licence from the owners of Intellectual Property Rights of the Licensed Property to do the acts restricted by the copyright in the Licensed Property so far as it relates to its exercise of the rights pursuant to Clause 10.1. Upon request, the Institution shall do all such acts and sign all documents reasonably necessary to enable the Government to obtain, defend and enforce its rights in the Licensed Property.
- 10.4 The Principal Applicant and the Institution further jointly and severally warrant and undertake to the Government that no Intellectual Property Rights of any person has been or will be infringed as a result of the performance of their obligations hereunder and as a result of the exercise of any of the rights granted under this Agreement to the Government, its authorised users, assigns and successors-in-title.
- 10.5 Without prejudice to the generality of Clause 35, each of the Principal Applicant and the Institution shall indemnify and keep indemnified the Government, its authorised users, assigns and successors-in-title against all actions, costs, claims, demands, damages, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where that settlement has first been notified by the Government to the Principal Applicant and the Institution) and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the design, development, use, possession or operation of the Materials infringes any Intellectual Property Rights of any person.
- 10.6 The Principal Applicant and the Institution shall have the right to use the Materials for non-commercial academic purpose. For the avoidance of doubt, the Principal Applicant and the Institution agree that they shall not use the Materials for any purpose other than non-commercial academic purpose. Subject to Clause 10.1, neither party to this Agreement shall be entitled to license the right to do any of the acts restricted by the copyright in connection with the Materials or assign the Intellectual Property Rights in the Materials without the written consent of the other party. All monies received from such licence or assignment shall be shared equally between the parties.
- 10.7 The Institution and the Principal Applicant hereby waives and undertakes to procure at its own expense all the authors of the Materials (including the Licensed Property) to waive all moral rights (whether past, present or future) in the Materials (including the Licensed Property). Such waiver shall operate in favour of the Government, its authorised users, assigns and successors-in-title, and shall take effect upon the vesting of the Intellectual Property Rights in the Government pursuant to Clause 10 or any

other provisions of this Agreement or, as the case may be, upon the grant of licence over the Licensed Property to the Government, its authorised users, assigns and successors-in-title.

10.8 For the avoidance of doubt, it is hereby declared that the provisions of this Clause shall survive the expiration, completion or termination of this Agreement, howsoever occasioned.

11 **INVENTION**

11.1 Where the Institution, the Principal Applicant, any member of the Project Team or any other person employed, used or engaged in relation to the Project has invented any new product or new process in the course of or as a result of the Project (“the Invention”), the Invention and any patent application or patent arising in respect of it shall, subject to the provisions set out below, be held by the Government and the Institution as co-owners of equal undivided shares.

11.2 Neither party shall submit any patent application without the written consent of the other party, provided that where the Government is not desirous of paying the fees, costs, charges and expenses connected with obtaining the patent for the Invention, the Government shall be entitled to assign its share or interest in the patent application(s) to the Institution at a consideration to be negotiated in good faith and agreed by the parties at the relevant time.

11.3 Where a patent application is to be filed by the parties as co-owners, all fees, costs, charges and expenses connected with obtaining, maintaining and protecting the patent (or patents) arising out of the Invention and preventing infringement shall be borne and paid by the parties in equal proportions.

11.4 Neither party shall assign or charge its share or interest in any patent application or patent(s) or grant a licence under any patent arising out of the Invention to any third party without the written consent of the other.

11.5 All profits arising from the use of the Invention or arising from the exploitation or sale of any such patent or from licences granted under it shall be divided equally between the parties.

11.6 For the avoidance of doubt, it is hereby declared that the provisions of this Clause shall survive the expiration, completion or termination of this Agreement, howsoever occasioned.

12 **CONDUCT OF THE PROJECT**

The Principal Applicant and the Institution jointly and severally warrant and undertake to the Government that:

- (a) the Project shall be performed and completed in an impartial, timely and diligent manner;

- (b) they, the Project Team and each of the Institution's directors, employees, agents, contractors, consultants and other personnel engaged in the Project have all the required qualifications, resources, ability, experience, expertise, skills and capacity to perform the requisite duties and services as set out in this Agreement, in a professional manner and in accordance with the terms and conditions of this Agreement;
- (c) they, the Project Team and each of the Institution's directors, employees, agents, contractors, consultants and other personnel engaged in the Project shall devote to their obligations hereunder such of its time, attention and skill as may be necessary for the proper performance of those obligations;
- (d) they shall comply with the reasonable requests of the Government and shall use their best endeavours to promote the interests of the Government in the performance of the Project;
- (e) they shall carry out their duties and obligations in accordance with the Project and this Agreement and comply with the instructions and directions as the Government may give in relation to the Project from time to time;
- (f) the use or possession of the Materials by the Government, the Principal Applicant or the Institution will not subject any of them to any claim for infringement of any Intellectual Property Rights of any person;
- (g) all information supplied and statements and representations made by or on behalf of the Principal Applicant or the Institution in relation to this Agreement and the Project, and in the Application are true, accurate and complete;
- (h) the Institution shall provide the facilities and services necessary for the efficient conduct of the Project;
- (i) they shall comply with the Clearance Requirements;
- (j) they shall exercise financial prudence in carrying out the Project;
- (k) they shall notify the Government effectively and as early as possible of any event which is likely to prejudice the Project outcome (whether in a qualitative, quantitative or financial aspect) or the timely completion of the Project;
- (l) they shall do nothing, or permit or cause anything to be done, which is likely to constitute or constitutes a breach of this Agreement;
- (m) the Principal Applicant is and shall continue to remain subject only to permitted substitution hereunder an employee of the Institution and shall have the principal responsibility for the scientific oversight and management of the Project;
- (n) they shall ensure that they are fully and clearly aware of the risks in respect of any drug or device, which is or will be the subject of any intervention to be conducted in the Project, before the relevant interventions take place;

- (o) they have the full capacity, power and authority to enter into this Agreement and to perform all their obligations hereunder including without limitation the vesting of the Intellectual Property Rights in the Government or the grant of the rights referred to in Clauses 10.1 and 10.3;
- (p) save for the Licensed Property the Materials developed by the Principal Applicant or the Institution under this Agreement shall be or shall consist of original works created, developed or made by the Principal Applicant or the Institution for the Government during the course of or in connection with this Agreement;
- (q) the provision of the Materials or any of the services by the Principal Applicant or the Institution in performing this Agreement, the use, operation or possession of the Materials by the Government, its authorised users, assigns and successors-in-title for any of the purposes contemplated by this Agreement does not and will not infringe any Intellectual Property Rights of any persons;
- (r) the exercise by the Government, its authorised users, assigns and successors-in-title of any of the rights granted under this Agreement will not infringe any Intellectual Property Rights or any other rights of any persons;
- (s) in respect of any Licensed Property and other materials supplied or used by the Principal Applicant or the Institution in the performance of this Agreement and in respect of which any Intellectual Property Rights are vested in a third party:
 - (i) the Institution has or shall have a valid and continuing licence under which it is entitled to sub-license such Licensed Property and other materials and the third party Intellectual Property Rights for itself and its authorised users and for the benefits of the Government, its authorised users, assigns and successors-in-title for any purposes contemplated by this Agreement; or
 - (ii) prior to the use and incorporation of such Licensed Property and other materials in performing this Agreement, the Institution shall have obtained from the third party having valid and subsisting right in such Intellectual Property Rights the grant of all necessary clearances for itself and for the benefits of the Government, its authorised users, assigns and successors-in-title authorising the use of such Licensed Property and other materials for any purposes contemplated by this Agreement.
- (t) they shall forthwith notify the Government in writing upon they or one of them or any of their respective directors, becoming aware of the occurrence of any event or circumstance provided in any sub-clause of Clause 19.1;
- (u) they shall use the Grant solely and exclusively for the purpose mentioned in Clause 7.1. Neither the Institution nor the Principal Applicant shall change the Application or the Approved Budget or any part thereof without the Government's prior written approval;

- (v) they shall cause all Grant and all other receipts relating to the Project to be paid into the Project Account and to be kept therein until such Grant and such other receipts are spent or paid or returned to the Government in accordance with this Agreement, and shall cause all payments relating to the Project to be paid out of the Project Account, and shall ensure that all receipts and payments in respect of the Project are properly and timely recorded;
 - (w) they shall, upon request, allow the Government or any person on its behalf to enter at all reasonable times into and upon any premises of or controlled by the Institution or the Principal Applicant, where any document or record pertaining to the Project is kept or any item arising out of the Project is being carried out, experimented, manufactured, displayed or stored, for the purpose of inspection or copying, or for verifying the accuracy of any information given by the Institution or the Principal Applicant to the Government, or otherwise verifying that the Institution and the Principal Applicant have complied with their obligations under this Agreement;
 - (x) the obligations expressed to be assumed by the Institution and Principal Applicant in this Agreement are legal and valid obligations binding on them and enforceable against them in accordance with the terms thereof;
 - (y) they are able to pay their debts as they fall due and have not commenced negotiations with any one or more of their creditors with a view to the general readjustment or rescheduling of their indebtedness or made a general assignment for the benefit of or a composition with their creditors;
 - (z) no actions or steps have been taken or legal proceedings have been started or threatened against the Institution or Principal Applicant for its bankruptcy, winding up, dissolution, insolvency, administration, reorganisation or reconstruction (whether by voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of the Institution or Principal Applicant or of any or all of its assets or revenues; and
- (aa) they shall comply with the requirements of the Fifth Schedule.

13 **PROJECT TEAM**

- 13.1 The Principal Applicant and the Institution undertake that the Project shall be performed by members of the Project Team who have been approved in writing by the Government for the purposes of performing the Project.
- 13.2 In the event of the death, incapacity or termination of employment with the Institution of any approved member of the Project Team before the Closure of the Project, the Institution shall at its own expense and as soon as practicable arrange to substitute or replace the member concerned.

- 13.3 If there is a likely occurrence that the Principal Applicant would for any reason cease to be a member of the Project Team, the Principal Applicant and the Institution shall seek the prior written approval of the Government of any such proposed change and the proposed replacement to be made, such approval shall not be unreasonably withheld or delayed. The Institution agrees to enter into, and to procure the replacement Principal Applicant to enter into, a deed of novation with the Government.
- 13.4 The Institution shall ensure that the incoming Principal Applicant proposed under Clause 13.3 is no less qualified in terms of relevant experience and qualifications than the outgoing Principal Applicant and is available at all the material times to act as such replacement or substitute. The Institution shall without delay forward a curriculum vitae of the proposed substitute or replacement to the Government Representative and shall warrant that it is complete and accurate in all material respects. In the event that the Government reasonably objects to or is not reasonably satisfied with the proposed substitute or replacement, the Institution shall forthwith forward a curriculum vitae of another substitute or replacement, who shall be no less qualified or experienced as aforesaid.
- 13.5 The Institution shall enter into contracts of employment with all persons whose salaries are reimbursed from the Grant. Such contracts should provide for the rate of pay normally applicable to the appropriate grades of the persons employed by the Institution.
- 13.6 The Institution shall comply with the relevant Ordinances such as the Employment Ordinance (Cap.57), the Employee's Compensation Ordinance (Cap. 282), the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the Minimum Wage Ordinance (Cap. 608).

14 **EQUIPMENT**

Risk in and Title to the Equipment

- 14.1 The risk in and the legal and beneficial title to the Equipment shall vest in and remain with the Institution as and when it passes upon procurement of the Equipment by the Institution.
- 14.2 The Institution hereby warrants and undertakes that unless otherwise directed or approved by the Government in writing, (a) it shall retain the legal and beneficial title to the Equipment from the date of procurement of the Equipment until at least 2 years after the Closure of the Project; and (b) it shall not sell, lease, mortgage, charge, create any encumbrance or otherwise part with possession of the Equipment or any part thereof during the period from the date of procurement of the Equipment until at least 2 years after the Closure of the Project.
- 14.3 For any piece of Equipment whose unit price is more than HK\$200,000, notwithstanding that the risk in and legal and beneficial title to the Equipment have passed to the Institution, the Government may at any time within 2 years after the Closure of the Project, or at any time upon the termination of this Agreement pursuant

to Clause 18 or Clause 19, by reasonable notice direct the Institution to deliver and hand over any or all of such Equipment to the Government or Government's nominee at the Institution's sole cost and expense. Upon service of a notice on the Institution in the manner aforementioned, the legal and beneficial title and ownership to and in that piece of Equipment specified in the notice shall vest in the Government absolutely and the Institution shall forthwith at its own cost and expense arrange physical delivery of the Equipment to the Government. The Institution agrees that it shall do such acts and/or execute such documents as may be required to give effect to this Clause.

Equipment List

- 14.4 Unless otherwise directed by the Government, the Institution shall submit to the Government a full list of Equipment which has been procured up to the End Date within 6 months after the End Date or, as the case may be, the termination of this Agreement promptly after the termination of this Agreement and in any event not later than 60 days after the termination of this Agreement.

15 PROCUREMENT OF EQUIPMENT, GOODS AND SERVICES

- 15.1 The Institution shall exercise the utmost financial prudence in the procurement of the Equipment, other goods and services for or incidental to the Project and shall, unless otherwise agreed in writing by the Government, adhere to the procurement procedures of the Institution or shall meet the minimal requirements in Clauses 15.1 (a) to (c) below:
- (a) for every procurement of the Equipment, other goods or services the aggregate value of which does not exceed HK\$50,000, written price quotations from at least two suppliers or service providers shall be obtained. The procurement contract should, unless otherwise agreed by the Government, be awarded to the supplier or service provider submitting the lowest price quotation;
 - (b) for every procurement of the Equipment, other goods or services the aggregate value of which exceeds HK\$50,000 but does not exceed HK\$1,400,000, written price quotations from at least five suppliers or service providers shall be obtained. The procurement contract should, unless otherwise agreed by the Government, be awarded to the supplier or service provider submitting the lowest price quotation; and
 - (c) for every procurement of the Equipment, other goods or services the aggregate value of which is more than HK\$1,400,000, there shall be open tendering. The procurement contract should be awarded to the supplier or service provider in accordance with the terms of the tender.
- 15.2 All quotations and tendering documents issued by the Institution for procurement of goods and services shall be kept by the Institution for at least 7 years after the Closure of the Project or for any other period as may otherwise be specified by the Government. The Institution shall upon request by the Government forthwith produce the same for inspection by the Government at all reasonable times.

- 15.3 The Institution shall ensure that all the procurement for the Equipment, goods and services for and incidental to the Project are carried out in an open and fair manner. The Institution shall ensure a system for declaration and management of interest is in place and followed and observe the Corruption Prevention Best Practices developed by the Independent Commission Against Corruption in procurement for Equipment, goods and services as updated from time to time.

16 **HIRING OF PROJECT STAFF**

- 16.1 The Institution shall abide by the principle of openness and competitiveness in hiring staff for the Project. The Institution shall ensure a system for declaration and management of interest is in place and observe the Corruption Prevention Best Practices developed by the Independent Commission Against Corruption in conducting recruitment of staff as updated from time to time.

17 **ACKNOWLEDGEMENTS AND DISCLOSURE OF RESULTS**

- 17.1 The Principal Applicant and the Institution shall properly acknowledge the contribution of the Government, specifically “the Health and Medical Research Fund, the Food and Health Bureau, The Government of the Hong Kong Special Administrative Region” to the Project in any relevant correspondence, public announcement, advertising material, report or other material produced by, on behalf of or through the Principal Applicant or the Institution in any manner relating to the Project.
- 17.2 The Principal Applicant and the Institution shall inform the Government Representative in writing of any discovery, development, application or technical knowledge arising in the course of the Project that may be of commercial or other exploitation value (including non-commercial or academic value, hereinafter in this Clause referred to as “Project information or results”).
- 17.3 The Principal Applicant and the Institution shall not make commercial use of any Project information or results without the prior written consent of the Government Representative. The Principal Applicant and the Institution shall obtain the Government Representative’s approval in advance of any proposed discussion or negotiation with any person with a view to using the same commercially or exploiting the same. The Government reserves the right to be represented in any such discussion or negotiations to be held.

18 **TERMINATION BY NOTICE**

- 18.1 The Government may, at any time or times prior to the Closure of the Project at its option, suspend or defer any payment of the Grant, terminate this Agreement or reduce the scope of the Project by giving to the Institution 45 days’ prior written notice. If this Agreement is terminated or the Project is reduced in scope, the Government shall, subject to Clauses 18.3 and 18.4, be liable only for:

- (a) payment of that part of the Grant which is payable under this Agreement up to the effective date of the termination or reduction; and
- (b) any reasonable costs incurred by the Principal Applicant or Institution and directly attributable to the termination or reduction (excluding costs arising out of or in relation to the termination of any employment contract).

18.2 Upon receipt of a notice of termination or reduction, the Principal Applicant and the Institution shall:

- (a) stop work as specified in the notice;
- (b) take all possible steps to minimise loss arising out of or in relation to that termination or reduction;
- (c) in the case of reduction in the scope of the Project, continue to work on any part of the Project not affected by the notice; and
- (d) repay to the Government as soon as practicable so much of the Grant not spent as relates to any part of the Project affected by the notice as at the date of the notice.

18.3 In the event of reduction in the scope of the Project, the amount of the Grant as set out in this Agreement shall be reduced proportionately to the reduction in the scope of the Project.

18.4 Save as provided in this Clause, the Government shall not be liable to make any payment or compensation to the Principal Applicant, the Institution or any other persons as a result of a suspension or deferment of payment of any part of the Grant, or the termination or reduction in scope of this Agreement.

19 **TERMINATION**

19.1 In addition to any rights and powers that the Government may have pursuant to this Agreement or otherwise, the Government may, forthwith terminate this Agreement by written notice to the Principal Applicant and the Institution if: -

- (a) the Principal Applicant or the Institution fails to comply with any terms, conditions or undertakings in this Agreement which is not capable of being remedied, or in the case of a breach capable of being remedied, the Institution or Principal Applicant fails to remedy the breach to the satisfaction of the Government within 30 days after receipt of a notice in writing from the Government requiring it to do so or within such other period as the Government may in its sole discretion allow;
- (b) the Principal Applicant or the Institution persistently or flagrantly fails to comply fully and punctually with its obligations and duties under this Agreement;

- (c) the Principal Applicant or the Institution has failed to commence the Project on the Commencement Date or proceed with the Project with due diligence after the Commencement Date;
- (d) the Principal Applicant or the Institution has, without the prior written approval of the Government, assigned, transferred, sub-contracted or otherwise disposed of any or all of its interests, rights, benefits or obligations under this Agreement to any other third party or purported to do so;
- (e) the Principal Applicant or the Institution has abandoned this Agreement;
- (f) the Principal Applicant or the Institution fails to submit any reports, financial accounts or other documents in accordance with this Agreement, or any of the data, facts or information represented to or provided by the Principal Applicant or the Institution to the Government about the Project or this Agreement is incomplete, incorrect, untrue, inaccurate or misleading;
- (g) the Principal Applicant or the Institution or any of its Project Team, directors, employees, agents, consultants, contractors and other personnel who are in any way involved in the Project commits any offence under the Prevention of Bribery Ordinance (Cap. 201), or commits any other criminal offence which in the opinion of the Government has affected the Principal Applicant's or the Institution's abilities to perform this Agreement;
- (h) the Principal Applicant or the Institution engages in any conduct which is reasonably considered by the Government to be prejudicial to the Project;
- (i) the Principal Applicant or the Institution stops or suspends payment to its creditors generally, or is unable or admits its inability to pay debts generally as they fall due or is declared or becomes bankrupt or insolvent;
- (j) any resolution is passed, any proceedings initiated, or any order made which may result in the winding up, or dissolution, insolvency, administration, reorganisation or reconstruction of the Principal Applicant or the Institution (otherwise than a solvent reorganisation or reconstruction which the Government has approved in advance prior to its implementation) or a receiver, provisional liquidator, liquidator, administrator, administrative receiver, conservator, custodian, trustee or similar officer of the Principal Applicant or the Institution or of any or all of the Principal Applicant's or the Institution's assets or revenues is appointed, or if the Principal Applicant or the Institution makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of the above, or any event occurs under the laws of any jurisdiction that has a similar or analogous effect;
- (k) the Principal Applicant's or the Institution's use of any Intellectual Property Rights for the purpose of or otherwise in connection with the performance of this Agreement is held by a court or is alleged to constitute an infringement of any person's Intellectual Property Rights;

- (l) the Government, by written notice, has requested the Principal Applicant or the Institution to provide any of the Deliverables and the Principal Applicant or the Institution has failed to provide so within 30 days of the date of written notice; or
- (m) the Government is not reasonably satisfied that the purposes or activities of the Institution or the Principal Applicant remain compatible with the Objectives.

20 CONSEQUENCES OF EXPIRY OR TERMINATION

20.1 Upon the expiry or termination of this Agreement, this Agreement shall be of no further force and effect, but without prejudice to:

- (a) the Government's rights and claims under this Agreement or otherwise at law against the Principal Applicant and/or the Institution arising from antecedent breaches of this Agreement by the Principal Applicant or the Institution (including any breach(es) which entitle the Government to terminate this Agreement);
- (b) the rights and claims which have accrued to a party prior to the termination of this Agreement; and
- (c) the continued existence and validity of those provisions which are expressed to survive the expiry or termination of this Agreement (including Clauses 4.1 to 4.8, 8.1(c), 9.2, 10, 12(f), 12(n) to 12(s), 20, 22 to 27, 30 to 33 and 35) or which in their context appropriately survive the expiry or termination of this Agreement and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.

20.2 Upon the expiry or termination of this Agreement, the Principal Applicant and the Institution shall:

- (a) within 30 days, return to the Government all the unspent Grant and provide an accounting thereof;
- (b) within 60 days after the expiry or termination of this Agreement, deliver to the Government an Audited Account of the Project made up to such completion or expiry or termination;
- (c) within 60 days after the expiry or termination of this Agreement, deliver to the Government a final report made up to such completion or expiry or termination; and
- (d) at the request of the Government, the Principal Applicant and the Institution shall promptly enter into and perform all deeds of assignment, transfer or novation in favour of the Government or any person whom the Government may designate, for the assignment, transfer or novation of any contract, arrangement or other subject matter whatsoever on such terms and conditions as the Government may stipulate; and procure any other third party whom the Government considers

necessary for effecting or perfecting such assignment, transfer or novation to enter into and perform any such deeds of assignment, transfer or novation.

- 20.3 Without prejudice to any of the Government's other rights and remedies, upon termination of this Agreement pursuant to Clause 19 or upon occurrence of any event set out in Clause 19.1 (a) to (m), the Principal Applicant and/or the Institution shall, upon the request of the Government, immediately repay to the Government all or any sums provided by the Government to the Principal Applicant or the Institution pursuant to this Agreement together with all administrative, legal and other costs and interest (regardless of whether the Principal Applicant or the Institution has already spent the Grant or not).

21 COMPLIANCE WITH LAW

- 21.1 The Principal Applicant and the Institution shall ensure that in performing the Project and their other obligations under this Agreement, and in expending the Grant, they shall comply with all relevant Hong Kong laws, regulations and by-laws, including without limitation, all those relating to employment terms and conditions.
- 21.2 The Principal Applicant and the Institution shall comply with international standards in respect of safety and welfare of study subjects recruited including but not limited to codes of practice or guidelines which are or may from time to time be issued by The International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) or the Government.

22 CONFIDENTIALITY

- 22.1 Each of the Institution and Principal Applicant shall treat as confidential all information, drawings, specifications, documents, contracts, design materials and all other data (including without limitation any personal particulars, records and Personal Data (as defined in the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO")) and materials of any nature (in or on whatever media)) accessible by the Institution or Principal Applicant under this Agreement or which the Government has for the purposes of or in the course of performing this Agreement disclosed, supplied, made available or communicated to the Institution or Principal Applicant, provided that this Clause 22.1 shall not extend to any information which was rightfully in the possession of the Institution or Principal Applicant prior to the commencement of the negotiations leading to this Agreement or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).
- 22.2 Each of the Institution and Principal Applicant shall indemnify and keep indemnified the Government, its authorised users, assigns and successors-in-title against all costs, claims, demands, expenses and liabilities of whatsoever nature arising from or incurred by reason of any actions and/or claims made in respect of information subject to the PDPO which action and/or claim would not have arisen but for the negligence or omission of the Institution or Principal Applicant, any of its employees, sub-contractors or agents (or any one acting on its or their behalf) in connection with the provision or receipt of any services provided under this Agreement, as well as any

liability or claim in respect of any act done or omission in the performance of this Agreement that contravenes the Unsolicited Electronic Messages Ordinance (Cap. 593).

- 22.3 Each of the Institution and Principal Applicant hereby agrees that it will use the confidential information described in Clause 22.1 solely for the purposes of this Agreement and that it will not, at any time whether during or after the completion, expiry or termination (howsoever occasioned) of this Agreement use or allow to be used the same for any other purposes without the Government's prior written consent.
- 22.4 Each of the Institution and Principal Applicant undertakes to take all such security measures for the protection of the information, documentation and materials which it is obliged by Clause 22.1 to keep secret and treat as confidential as it takes for the protection of its own confidential or proprietary information, documentation and materials.
- 22.5 Each of the Institution and Principal Applicant shall ensure that each of its employees, agents and associates, sub-contractors, consultants and any other persons engaged in any work in connection with this Agreement are aware of and comply with the provisions of this Clause 22 and the Official Secrets Ordinance (Cap. 521) and each of the Institution and Principal Applicant shall indemnify and keep indemnified the Government, its authorised users, assigns and successors-in-title against all actions, costs (including without limitation, the fees and disbursements of lawyers, agents and expert witnesses), claims, demands, expenses, loss, damage and liabilities whatsoever which the Government, its authorised users, assigns and successors-in-title may suffer, incur or sustain as a result of any breach of confidence (whether under this Agreement or general law) by any such persons.
- 22.6 Each of the Institution and Principal Applicant undertakes, if so requested by the Government, to sign the Government's separate confidentiality agreement in a form prescribed by the Government and to procure each of its employees, agents, associates, sub-contractors and consultants to whom any confidential information is required to be disclosed to do so.
- 22.7 Each of the Institution and Principal Applicant further agrees that it will not at any time whether itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or otherwise deal in any confidential information supplied to it by the Government or obtained by it while performing this Agreement.
- 22.8 Each of the Institution and Principal Applicant shall promptly notify the Government of any breach of confidence, the PDPO or the Official Secrets Ordinance by any of the persons referred to in this Clause 22 and give the Government all reasonable assistance in connection with any proceedings which the Government may institute against any such persons for any such breach.
- 22.9 The provisions of this Clause 22 shall survive the expiry, completion or termination (howsoever occasioned) of this Agreement and shall continue in full force and effect notwithstanding such expiry, completion or termination.

23 **ASSIGNMENT**

- 23.1 Neither the Principal Applicant nor the Institution shall assign, or otherwise dispose of any interest, right, benefit or obligation under this Agreement without the prior written consent of the Government.

24 **SUB-CONTRACTING**

- 24.1 Each of the Principal Applicant and the Institution shall not without the prior written consent of the Government sub-contract the whole or any part of the Project to any person whatsoever PROVIDED that nothing in this Clause shall prevent the Principal Applicant or the Institution from obtaining advice and/or assistance from such advisers and/or other persons as they may consider necessary for the proper performance of their duties and obligations under this Agreement. In giving consent for the engagement of sub-contractors, the Government will require the sub-contractor to enter into a direct covenant with the Government to indemnify the Government against any loss or damage caused to the Government as a result of any negligence, recklessness or wilful misconduct of the sub-contractor or any failure by the sub-contractor to perform its obligations under the sub-contract. For the avoidance of doubt, where all or any part of the Project is sub-contracted to any person under this clause, the Institution shall remain liable for the full remuneration thereof and any act or omission (except criminal liability) of any such person as if such act or omission (except criminal liability) were their own.

25 **NOTICES**

- 25.1 Each notice, demand or other communication given or made under this Agreement shall be in writing and delivered or sent to the relevant party at its address, facsimile number or e-mail address set out below (or such other address, facsimile number or e-mail address as the addressee has by 5 days' prior written notice specified to the other party): –

To the Government: Research Fund Secretariat
Food and Health Bureau
9/F, Rumsey Street Multi-storey Carpark Building
2 Rumsey Street, Sheung Wan, Hong Kong
Attention: Chief Secretariat Executive
(Grant Management)
Facsimile Number: 2102 2444
E-mail address: rfs@fhb.gov.hk

To the Institution: [Research Office]
[Institution]
Attention: [Title Name of officer-in-charge from AI]
Facsimile Number: [Fax No. of AI]
E-mail address: [Email of RO]

To the Principal Applicant: [Department]
[Institution]
Attention: [Title LAST NAME First Name of PA]
Facsimile Number: [Fax No. of PA]
E-mail address: [Email of PA]

25.2 Such notices, demands or other communication shall be addressed as provided in Clause 25.1 and, if so addressed, shall be deemed to have been properly given hereunder and shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; (c) if dispatched by mail (whether registered or not), on the day on which the same shall have been tendered for delivery by the postal authority in Hong Kong and (d) if sent by e-mail, when actually received in a form readable by the addressee.

26 **WAIVER**

26.1 No failure or delay by either party in exercising any right, power or remedy available to it under this Agreement or in law or equity shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by either 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.

27 **VARIATION**

27.1 Subject to the provisions of this Agreement, no waiver, cancellation, alteration or amendment of or to the provisions of this Agreement shall be valid unless made in writing and duly signed by all parties.

28 **CHANGES IN THE SCOPE OF THE PROJECT**

28.1 Subject to the provisions of this Agreement, the Government may at any time during the course of the Project by giving 30 days' written notice to the Principal Applicant and the Institution, make such changes as are reasonable to the scope of the Project to be carried out under this Agreement. Subject to Clauses 5 and 18.3, the cost of such changes (if any) and the impact of such changes on the charging and payment provisions of this Agreement shall be mutually agreed by the Government, the Principal Applicant and the Institution.

29 **FORCE MAJEURE**

29.1 In the event of Force Majeure, the party so prevented shall be excused from the performance of the obligations under this Agreement for so long as such cause shall continue. The party so prevented shall give notice in writing to the other party as soon as possible of the occurrence of the event of Force Majeure.

29.2 Should performance by the Principal Applicant and the Institution of their obligations hereunder be prevented by Force Majeure for a period of 30 consecutive days or longer, the Government shall be entitled at the expiration of such period to terminate this Agreement by not less than 30 days' written notice to the Principal Applicant and the Institution.

29.3 Subject to Clause 29.2, in the event that performance of the obligations hereunder is delayed by Force Majeure, the parties shall diligently endeavour to achieve expeditiously the normal pursuit of this Agreement immediately upon the cessation of the event of Force Majeure and to regain the time lost. The completion date of the Project shall be extended by the number of days of the delay that was caused whether directly or indirectly by such event of Force Majeure unless a different extension shall be agreed between the parties. In all other respects the obligations of the parties hereunder shall be unaffected.

30 **USE OF THE GOVERNMENT'S NAME**

30.1 The Principal Applicant and the Institution agree not to use the Government's name in any document, publication, advertisements or publicity material without the prior written consent of the Government except pursuant to the Principal Applicant and the Institution's performance of the Project and to the extent that the relationship between the Government, the Principal Applicant and the Institution in relation to the Project is public knowledge. Notwithstanding Clause 22, the Principal Applicant and the Institution may (without obtaining the Government's prior written consent) publish or otherwise disclose the fact of their engagement by the Government under this Agreement.

31 **RELATIONSHIP OF THE PARTIES**

31.1 Each of the Principal Applicant and the Institution shall not represent itself as an employer, employee, servant, agent or partner of the Government.

32 **GOVERNING LAW**

32.1 This Agreement shall be governed by and construed in accordance with the laws of Hong Kong.

33 **CONFLICT OF INTEREST**

33.1 Each of the Principal Applicant and the Institution shall during the term of this Agreement and for 6 months thereafter:

- (a) ensure that it (including its associates and associated persons), each member of the Project Team and each of the Principal Applicant's or Institution's directors, employees, agents, contractors, consultants and other personnel and their respective associates and associated persons undertake no service, task or job or do anything whatsoever for or on behalf of the Principal Applicant or the

Institution or any third party (other than in the proper performance of this Agreement) which conflicts or which may be seen to conflict with the Principal Applicant's or the Institution's duties to the Government under this Agreement, unless and to the extent the Government permits otherwise and before giving such permission, the Government has been fully informed by the Principal Applicant and the Institution, in a timely fashion of all the circumstances in which the permission is sought; and

- (b) forthwith notify the Government in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Principal Applicant or the Institution or any of their respective associates and associated persons, or any member of the Project Team, or any of the Principal Applicant's or Institution's directors, employees, agents, contractors, consultants and other personnel and their respective associates and associated persons, conflict or compete, or may conflict or compete, with the Principal Applicant's or the Institution's duties to the Government under this Agreement.

33.2 The Principal Applicant and the Institution shall render their advice or recommendation under this Agreement to the Government on an impartial basis without giving favour to any particular product or service in which the Principal Applicant or the Institution or any of their respective associates and associated persons, or any member of the Project Team, or any of the Principal Applicant's or Institution's directors, employees, agents, contractors, consultants and other personnel and their respective associates and associated persons has a commercial interest. The Principal Applicant and the Institution shall notify the Government immediately in writing of any actual or potential financial, professional, commercial, personal or other interests the Principal Applicant or the Institution or any of their respective associates or associated persons, or any member of the Project Team , or any of the Principal Applicant's or Institution's directors, employees, agents, contractors, consultants and other personnel and their respective associates or associated persons may have in, or any association or connection the Principal Applicant or the Institution or any of the aforesaid persons may have with, any product or service proposed or recommended by the Principal Applicant and the Institution under this Agreement.

33.3 The Principal Applicant and the Institution shall ensure that their respective associates and associated persons, each member of the Project Team and each of the Principal Applicant's or Institution's directors, employees, agents, contractors, consultants and other personnel and their respective associates and associated persons to inform the Institution and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation where the financial interests of such persons, conflict or compete, or may conflict or compete, with the duties of the Principal Applicant or the Institution to the Government under this Agreement.

33.4 Subject to the terms and conditions of this Agreement, the academic freedom of the Principal Applicant and the Institution is preserved.

34 **NO DOUBLE FUNDING**

34.1 The Principal Applicant and each member of the Project Team shall not submit the same or reasonably similar proposal for the Project to another funding source in Hong Kong or elsewhere for consideration of or application for funding unless otherwise agreed by the Government.

34.2 The Principal Applicant and each member of the Project Team shall not permit the programme conducted under the Project to receive financial assistance from any other Government agency unless otherwise agreed by the Government in writing.

35 **INDEMNITY; COSTS; AND LIMITATION OF GOVERNMENT'S LIABILITY**

35.1 The Principal Applicant and the Institution shall indemnify and keep indemnified the Government against:

- (a) all or any claims (whether or not successful, compromised or settled), actions, investigations, liabilities, demands, proceedings or judgments, joint or several, threatened, brought or established against the Government; and
- (b) all liabilities, losses, damages, costs, charges or expenses (including all costs, charges and expenses which the Government may pay or incur in disputing any such claim or defending or such action or proceedings instituted against the Government),

and which in any case arise directly or indirectly, in connection with or out of, or which relate in any way to-

- (i) a breach of any provisions of this Agreement by the Principal Applicant or the Institution, regardless of whether the breach was caused by the Principal Applicant or the Institution, or any of their respective employees, agents or sub-contractors (or any person acting on his or their behalf);
- (ii) the negligence, recklessness or wilful misconduct of the Principal Applicant, the Institution or any of their respective employees, agents or sub-contractor in the provision of the Project; or
- (iii) any unauthorised act or omission of the Principal Applicant, the Institution or any of their respective employees, agents or sub-contractors.

35.2 In consideration of the Institution giving the indemnities referred to in Clauses 10.5, 22.2, 22.5 and 35.1 above, the Government agrees that in relation to those claims and proceedings referred to therein:

- (a) it will keep the Institution informed of all negotiations and progress of the proceedings and take such action reasonably requested by the Institution to avoid,

compromise or defend the said claims or proceedings; and

(b) it will not take any steps or actions to compromise or settle the said claims and proceedings without the consent of the Institution, which shall not be unreasonably withheld or delayed.

35.3 Notwithstanding any provisions of this Agreement, the Principal Applicant and the Institution shall be liable for all costs, expenses, liabilities and responsibilities in performing their duties under this Agreement.

35.4 The Government shall not make or be liable for any payment in excess of the Grant. To the maximum extent permitted by law, the Government accepts no liabilities for the safety or welfare of any project participants recruited to any intervention conducted at or relating to the Institution, or any injury (including death) or any loss, deficit, damage or liability incurred in respect of or arising from the Project or any intervention conducted at or relating to the Institution. The Government is entitled in its sole discretion to accept or reject any applications for supplementary grant for the Project.

35.5 For the avoidance of doubt, it is hereby declared that the provisions of this Clause shall survive the expiration, completion or termination of this Agreement, howsoever occasioned.

36 SETTLEMENT OF DISPUTES

36.1 Any dispute or difference between the parties arising out of or in connection with this Agreement which is not resolved within 28 days may first be referred to mediation in accordance with the then current Hong Kong International Arbitration Centre Mediation Rules.

36.2 If the matter cannot be resolved by mediation or any party to this Agreement does not wish the matter to be referred to mediation, any party may within 90 days from the failure of the mediation or the refusal to mediate (as the case may be) require that the matter be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609 of the Laws of Hong Kong) (“Arbitration Ordinance”). Any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Ordinance.

36.3 Subject to Clauses 36.4 and 36.5, the then current Hong Kong International Arbitration Centre Domestic Arbitration Rules (the “Arbitration Rules”) shall apply to any arbitration instituted in accordance with this Clause.

36.4 Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

36.5 Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

“20.1 The arbitration proceedings are private and confidential between the parties and the arbitrator. No information relating to the arbitration shall be

disclosed by any person without the written consent of each and every party to the arbitration. Notwithstanding the above, disclosures are permissible where disclosures –

- (a) are necessary for enforcement of the arbitral award or any settlement agreement between the parties;
- (b) are required by the parties' auditors or for some other legitimate business reason;
- (c) are required by law or an order of the courts of Hong Kong; or
- (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.”

36.6 All provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause 36.

36.7 Unless this Agreement has already been terminated or suspended in effect, the Principal Applicant and the Institution shall continue the Project during the resolution of the dispute.

37 **SEVERABILITY**

37.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

38 **EXCLUSION OF RIGHTS**

38.1 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).

IN WITNESS WHEREOF, this Agreement has been entered into and executed in **THREE ORIGINAL COPIES** as of the day, month and year first above written.

SIGNED BY [Name of CSE(GM)])
Chief Secretariat Executive (Grant Management))
Food and Health Bureau)
for and on behalf of)
THE GOVERNMENT OF THE HONG KONG)
SPECIAL ADMINISTRATIVE REGION)
in the presence of:

[Witness of the Government Representative]
Food and Health Bureau
The Government of the Hong Kong Special
Administrative Region

SIGNED BY)
)
)
)
duly authorised for and on behalf of)
[INSTITUTION])
)
)
in the presence of:

Name:
Address:

SIGNED BY)
Holder of HKID card number:)
[Post])
[Department])
[AI])

in the presence of:

Name:
Address:

Schedule of Definitions

In this Agreement, unless the context requires otherwise, the following expressions have the following meanings:

“Application”

means the Application Form for Health Care and Promotion Scheme submitted by the Principal Applicant and the Institution to the Government for the Grant, a copy of which is annexed hereto and marked **Annex A**.

“Approved Budget”

means the budget approved by the Government at the **First Schedule**;

“associate” in relation to any person means:

- (a) a relative or partner of that person; or
- (b) a company one or more of whose directors is in common with one or more of the directors of that person;

“associated person” in relation to another person means:

- (a) any person who has control, directly or indirectly, over the other; or
- (b) any person who is controlled, directly or indirectly, by the other; or
- (c) any person who is controlled by, or has control over, a person at (a) or (b) above;

“Audited Account”

means an account in respect of the Project containing auditor’s report, balance sheet, income and expenditure account, cash flow statement and notes to accounts, prepared in accordance with the relevant laws of Hong Kong and generally accepted accounting principles in Hong Kong (including the Accounting Standards and Accounting Guidelines as the Hong Kong Institute of Certified Public Accountants may issue and update from time to time) and duly audited, dated and signed by a certified public accountant (practising) as defined under the Professional Accountants Ordinance (Cap. 50) which is not in any way connected with the Project;

“Clearance requirements”

means the ethical, safety and licensing requirements necessary to conduct the Project, a copy of which is annexed hereto and marked **Second Schedule**;

“Closure of the Project”

means completion of all the requirements, services, tasks and Objectives set out in this Agreement to the satisfaction of the Government;

“Commencement Date”

means the date specified as the Commencement Date in the **Third Schedule**;

“control” in relation to another person means the power of a person to secure:

- (a) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or
- (b) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or
- (c) by virtue of holding office as a director in that or any other person that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person;

“Deliverable” or “Deliverables”

means all reports, plans, documents, summaries, protocols, procedures, guidelines, menus, models, analyses, data, software, charts, diagrams and papers, however stored, processed or retrieved, which the Principal Applicant and the Institution are required to produce hereunder (including the Audited Account);

“director”

means any person occupying the position of a director by whatever name called and includes without limitation a de facto or shadow director;

“End Date”

means the date specified as the End Date in the **Third Schedule**, being the last day for the completion of the programme required to be carried out pursuant to this Agreement;

“Equipment”

means the instruments or machinery that the Institution is permitted to procure for the purpose of the Project in accordance with this Agreement as described in the **Fourth Schedule**;

“Force Majeure” means:

- (a) any supervening outbreak of war affecting Hong Kong, hostilities (whether war be declared or not), invasion, acts of foreign enemies, usurped power, overthrow (whether by external or internal means) of the Government, civil war, riot, civil disturbances, fire if not caused or contributed to by the Institution, its associates or associated persons or any employee or agent or ex-employee or ex-agent thereof, civil commotion or acts of God; or
- (b) any supervening catastrophic event which is similar to the foregoing, if not caused or contributed to by the Institution, its associates or associated persons or any employee or agent or ex-employee or ex-agent thereof,

and which, in (a) and/or (b) above, prevent(s) the performance of the duties or obligations of any party hereunder;

“Government Representative”

means the Head of the Research Office of the Food and Health Bureau or any other person from time to time nominated as such by him and notified to the Institution in writing;

“Grant”

means a maximum of HK\$[APPROVED AMOUNT] payable in aggregate to the Institution, for carrying out and completing the Project in accordance with this Agreement;

“HK dollar”, “HK\$”

means the Hong Kong dollar, the lawful currency of Hong Kong;

“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;

“Licensed Property”

means any works or materials produced or created solely and exclusively in relation to services other than the Project, the Intellectual Property Rights of which are owned by third parties, and which are incorporated into the Materials or used by the Principal Applicant or the Institution in the performance of the Project hereunder;

“Materials”

means all Deliverables, works and materials of whatever media (including those in electronic format) developed, written, prepared, produced or created by the Principal Applicant, the Institution, the Project Team, the Principal Applicant’s or the Institution’s directors, employees, agents, contractors, consultants and other personnel solely and exclusively in relation to the Project (whether individually or jointly with the Government) including without limitation all reports, studies, data, diagrams, charts, photographs, drawings, specifications, contractual documents and all drafts and working papers thereof;

“month”

means calendar month;

“Objectives”

means the aims/objectives of the Project as specified in the Application;

“partner”

means a partner within the meaning of the Partnership Ordinance (Cap. 38);

“person”

means any individual, corporation, firm, or any unincorporated body;

“Project”

means the programme as described in the Application (to the extent not inconsistent with those set out in the Special Condition), and those requirements, services, tasks and Objectives in relation to such programme to be performed or achieved by the Principal Applicant and the Institution in accordance with this Agreement including without limitation those set out in the Special Condition, if any;

“Project Account”

means an interest-bearing Hong Kong dollar account established and maintained by the Institution and Principal Applicant with a licensed bank in Hong Kong under the Banking Ordinance (Cap. 155) solely and exclusively for the purpose of the Project in accordance with this Agreement;

“Project Team”

means the team of officers, agents or employees of, or the consultants to, the Institution and/or of or to its sub-contractors, assisting in the provision of the Project pursuant to this Agreement, including as of the date hereof the individuals referred to the Application;

“Reimbursement Claim Form”

means the form as prescribed by the Government from time to time to be completed and submitted by the Principal Applicant and the Institution for claiming reimbursement under this Agreement;

“relative”

means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parent and the adopting parent and a stepchild to be a child of both the natural parent and the stepparent;

“Special Condition”

means the additional conditions, if any, applying to the Project issued by the Government to the Principal Applicant and the Institution, a copy of which is annexed hereto and marked **Annex B**, if any.

FIRST SCHEDULE**APPROVED BUDGET**

Item/Category	Approved budget (HK\$)
Staff	[Approved sub-total of staff cost]
Other Expenses	[Approved sub-total of Other Expenditure]
Equipment	[Approved sub-total of Equipment]
Total	

SECOND SCHEDULE**CLEARANCE REQUIREMENTS**

The Institution must meet the following clearance requirements:

1. Research involving humans

All research involving humans shall be conducted in accordance with guidelines of Hong Kong and elsewhere.

The Institution shall obtain approval from a relevant ethics committee of the Institution before commencement of the Project, and shall be maintained for the duration of the Project. The Institution and ethics committee shall be responsible for monitoring the conduct of the Project and ensuring that ethical approval is obtained for amendments to the Project.

2. Licensing

The Institution shall obtain all relevant licences, permits and certificates required in Hong Kong to enable the completion of the Project.

THIRD SCHEDULE

Commencement Date: ___ / ___ / ____ (dd-mm-yyyy)

End Date: ___ / ___ / ____

FOURTH SCHEDULE

No equipment items. OR

Equipment

	Item	Number	Cost (HK\$)
1	[Description of Equipment item]		[Subtotal]
2			
3			
4			
5			

FIFTH SCHEDULE

The Principal Applicant and the Institution shall meet the following requirements for managing incentives:

1. Travel allowance/reimbursement

The Principal Applicant and the Institution shall keep adequate records of individual claims and payments for travel allowance/reimbursement. The minimum information required for each record shall include the following:

- Project title
- Name and signature of claimant
- Name and signature of team member handling the claim
- Date of travel
- Amount claimed
- Amount reimbursed
- Date of payment

The Principal Applicant and the Institution shall ensure that receipts shall be obtained where available (e.g. taxi), and these records shall be made available to the independent auditor on request for preparing the Audited Account.

2. Cash, gifts or gift vouchers

i. Cash or cash voucher

The use of cash or cash vouchers as incentives for encouraging participation is strongly discouraged. The Principal Applicant and the Institution shall implement a governance system to adequately monitor the disbursement of cash or cash vouchers to ensure accountability and traceability.

ii. Gifts or gift vouchers

The Principal Applicant and the Institution shall keep adequate records of the disbursement of gifts or gift vouchers to participants. The minimum information required for each record shall include the following:

- Project title
- Name and signature of recipient
- Name and signature of team member handling the gift/gift voucher
- Description of gift/gift voucher
- Date of disbursement

The Principal Applicant and the Institution shall implement a governance system to adequately monitor the disbursement of gifts or gift vouchers to ensure accountability and traceability. This is especially important where the needs of the project require participants to be anonymous.

The Principal Applicant and the Institution shall closely monitor participant recruitment and the volume of gifts/gift vouchers purchased and disbursed to ensure that there is a minimum of unused items at the completion of the project. The Principal Applicant and the Institution shall absorb the cost of any unused items. The Government shall be liable only to pay for those gifts and gift vouchers that are disbursed according to the approved project protocol and this schedule.

The expenditure on travel allowance/reimbursement, cash, gifts or gift vouchers shall be reported clearly in the certified financial statement and Audited Account required in Clause 4.

ANNEX A

Application Form for Health Care and Promotion Scheme submitted by the Principal Applicant and the Institution and application related correspondence.

ANNEX B

Special Condition: NONE. Or

[To be advised on a case-by-case basis, if required.]