



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

And

[THE PROVIDER]

SERVICE ARRANGEMENT
Section 38 Health Act 2004

ARRANGEMENT STRUCTURE

This Arrangement consists of two parts:

Part 1 consists of 37 standard clauses

Part 2 consists of 10 Schedules

Note 1-The 37 standard clauses are generic for all service arrangements.

There are two sets of Schedules, one for agreements in relation to the provision of Acute Hospital Services and a separate set dealing with the provision of Non Acute Services.

Note 2-See also Clause 37.12 (Counterparts).

DRAFT 14th April 2015

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SERVICE ARRANGEMENT – PART 1

This **SERVICE ARRANGEMENT** is made on ● for a period commencing on ● (the “**Commencement Date**”) until 31 December 2018.

BETWEEN

1. **HEALTH SERVICE EXECUTIVE**, Statutory Body, having its principal headquarters at Oak House, Lime Tree Avenue, Millennium Park, Naas, Co. Kildare, details in respect of which are set out in Part A of Schedule 1 (Contact Details), or any successor body, (the “**Executive**”);

AND

2. **[NAME OF PROVIDER]**, of *[address]*, details in respect of which are set out in Part B of Schedule 1 (Contact Details), (the “**Provider**”).

BACKGROUND

- (A) The Executive is required by statute to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. The Health Acts (as defined below) empower the Executive to enter into an arrangement with the Provider to provide health and personal social services.
- (B) The Executive wishes to secure the provision of the Services (as defined below) and the Provider wishes to provide such services.
- (C) Now therefore the Executive and the Provider enter into this Arrangement for the provision of Services to Service Users on the terms and conditions specified below, as hereinafter defined, and in relation to the catchment area which may be defined.

THE PARTIES AGREE as follows:

1. Definitions and Interpretation

1.1 In this Arrangement:

“**FOI Acts**” has the meaning given in Clause 28.1;

“**Additional Services**” has the meaning as may be given in Clause 4.2;

“**Additional Services Addendum**” has the meaning as may be given in Schedule 3 (Service Delivery Specification);

“**Arrangement**” means this contract and the Schedules hereto, together with any amendments thereto agreed in writing between the parties;

“**Authorised Person**” has the meaning given in Clause 12.2;

“**Board of the Provider**” means the board or other governing body of the Provider;

“**Business Day**” means a day (other than a Saturday or a Sunday) on which banks are open for business in Ireland;

“**C&AG**” means the Comptroller and Auditor General;

“**Catchment Areas**” means areas as may be described in Schedule 3 (Service Delivery Specification);

“**Claiming party**” has the meaning given in Clause 32.1;

“**Clinical Indemnity Scheme**” means the scheme relating to claims alleging medical malpractice or clinical negligence operated by the State Claims Agency;

“**Code of Governance**” means the *Framework for the Corporate and Financial Governance of the Health Service Executive* prepared by the Executive pursuant to Section 35 of the Health Act 2004;

“**Codes of Practice**” means the codes of practice for the provision of the Services as the same may be amended from time to time, and any other guidance, circulars, policies, directions, protocols, standards, any document of a similar nature that has issued or may be issued by the Executive and/or the Child and Family Agency to the Provider from time to time and any clinical guidance provided by the professional colleges; as may be included in Schedule 2 (Quality & Safety);

“**Commencement Date**” means the date on which this Arrangement comes into effect;

“**Contract Change Note (CCN)**” means the contract change note referred to in Clause 37.10 (Variation) and as included in Schedule 10 (Change Control);

“**DPA**” refers to the Data Protection Acts 1988 and 2003;

“**Duration of this Arrangement**” means a period commencing on the commencement date and continuing until the date specified unless terminated

provided always that the details of the Schedules shall be agreed annually by the parties;

“**Employment Ceiling**” has the meaning given in Schedule 9 (Staffing);

“**EMR**” refers to the Executive’s Employment Monitoring Returns;

“**euro**” or “**EUR**” means the currency unit of the participating Member States of the European Union as defined in Recital (2) of Council Regulation 974/98/EC on the introduction of the euro;

“**Financial Regulations**” means the financial regulations of the Executive as the same may be amended or varied from time to time;

“**Financial Year**” has the meaning given in Schedule 6 (Funding);

“**First Notification Letter**” has the meaning given in Clause 14.1;

“**First Performance Notice**” means a notice given in accordance with Clause 14.1(d);

“**Force Majeure**” has the meaning given in Clause 32.1;

“**Funding**” has the meaning given in Clause 4 (Funding);

“**Health Acts**” means the Health Acts 1947 to 2013 (as amended from time to time);

“**HIPE**” refers to the Executive’s Hospital Inpatient Enquiry system;

“**HIQA**” refers to the Health Information and Quality Authority;

“**HSE Group**” means any of the voluntary hospitals and such other providers who receive funding from the Executive pursuant to section 38 and/ or 39 of the Health Act 2004 as the Executive may notify to the Provider from time to time;

“**ICT**” means information and communication technology;

“**IMR**” has the meaning given in NHO Service Schedule 6 (Funding), where applicable’;

“**Major Incident**” means an occurrence:

- (i) causing an unexpected surge in demand for the Services or
- (ii) materially impacting on any aspect of the Services (where, for the purposes of this definition, “materially impacting” means an occurrence causing an unexpected surge in demand which results in an increase of [5 % or greater] in demand for the resources of the Provider)

which the Provider could not reasonably have foreseen or taken steps to avert, with the direct result that the resources of the Provider (in terms of Provider Personnel, stock and beds or otherwise) are insufficient to deal fully with that occurrence at the same time as providing the Services in full compliance with this Arrangement;

“**Minister**” means the Minister for Health;

The National Incident Management System (NIMS) - is a confidential highly secure web based system. It is an end to end risk management tool that allows Health Enterprises to manage incidents throughout the incident lifecycle. This includes:

- Reporting of incidents (including Serious Reportable Events)
- Management of investigations
- Recording of investigation conclusions
- Recording of recommendations
- Tracking recommendations to closure
- Analysis of incident, investigation and recommendations data and other functionality.

National Incident Report Form (NIRF) is the form which reflects all incident questions required to be entered on the NIMS system.

“Non-claiming party” has the meaning given in Clause 32 (Force Majeure);

“Non-Compliance” means a failure by the Provider to observe its obligations under this Arrangement or a failure by the Provider to comply with reasonable directions of the Executive;

“NSP” means the National Service Plan of the Executive approved by the Minister pursuant to section 31 of the Health Act 2004 from time to time;

“Office Working Hours” means 9.00a.m. to 5.00p.m.;

“Person Centred” has the meaning outlined in HIQA’s national standards for “Safer Better Healthcare”, as amended from time to time;

“Pre-contractual Statement” has the meaning given in Clause 37.9 (Entire Agreement);

“Provider Personnel” means all officers, employees, volunteers, agents and contractors employed, engaged, supplied or utilised by the Provider or by any subcontractor or agent of the Provider for any purpose whatsoever including without limitation for the purpose of providing or assisting directly or indirectly the provision of Services to Service Users;

“Public Procurement Law” means Council Directive 2014/24/EU, co-ordinating the procurement procedures for the award of public works contracts, public supply contracts and public service contracts, the EC (Award of Public Authorities' Contracts Regulations), 2006, (S.I. 329 of 2006), Council Directive 2007/66/EC (and as implemented by S.I. 130 of 2010) (where applicable) concerning the review procedures in respect of the award of public contracts, and any other legislation in relation to public procurement law having the force of law in Ireland from time to time, any duties and obligations in relation to public procurement arising under common law, decisions of the courts of law in Ireland and the General Court and the Court of Justice of the European Union in relation to public procurement law, all the guidelines issued by the Department of Finance, the Department of Public Expenditure and Reform or other Government Department authorised to issue public procurement law guidance and all other duties and obligations in relation to public procurement, whether arising under European Union law, national law or otherwise;

“Reorganisation or Restructuring” means:

- (a) any reconstruction, reorganisation or change in the constitution of the Provider or its associated undertakings, including without limitation in the case of a company, any variation in the share capital of the company, a capitalisation issue, rights issue, sub division, consolidation or reduction in the capital of the company, compromise or arrangement sanctioned by the court under section 201 of the Companies Act 1963;
- (b) the acquisition of all or any part of the Provider's undertaking by any other person; or
- (c) any merger, de-merger, amalgamation or sub-division, howsoever effected, relating to the Provider;

"Review Meetings" means the meetings held pursuant to Clause 13.2;

"Review Process" has the meaning given in Clause 13.1;

"Second Notification Letter" has the meaning given in Clause 14.2;

"Second Performance Notice" means a notice given in accordance with Clause 14.2(d);

An *incident*, as defined by the HSE Safety Incident Management Policy is an event or circumstance which could have, or did lead to unintended and/or unnecessary harm. Incidents include adverse events which result in harm; near misses which could have resulted in harm, but did not cause harm, either by chance or timely intervention; and staff or service user complains which are associated with harm. Incidents can be clinical or non-clinical and include Incidents associated with harm to:

- patients, service users, staff and visitors
- the attainment of HSE objectives
- ICT systems
- data security e.g. data protection breaches
- the environment

"Serious Reportable Event" means a serious, largely preventable patient safety *incident* that should not occur if the available preventative measures have been implemented by healthcare providers;

"Services" means the services set out in Schedule 3 (Service Delivery Specification) and to be provided by the Provider in accordance with the terms of this Arrangement;

"Service Users" means each person who is referred or presents to the Provider as part of the provision of the Services;

"Standards for Governance" means such corporate governance standards as the Executive may require Providers to comply with, as amended from time to time;

State Claims Agency - Under the National Treasury Management Agency (Amendment) Act, 2000 the management of personal injury and third party property damage claims against the State and of the underlying risks was delegated to the National Treasury Management Agency (NTMA). When performing these functions the NTMA is known as the State Claims Agency.

State Indemnity - Indemnity is a protection against possible damage or loss, typically a promise of payment should damage or loss occur. In this document reference to State indemnity can be taken to refer to the State indemnity set out in legislation for personal injury (not clinically related) and third party property damage. Where State indemnity applies the State makes a commitment to protect against losses where the State was negligent. Negligence on the part of the State must be proven.

State Indemnity Confirmation Statement – the State Indemnity Confirmation statement briefly sets out the scope of State Indemnity. This document operates in lieu of a certificate of insurance.

“Strategic Claim” means any claim, action, demand or proceedings (each a **“Claim”**) other than a claim within the meaning of Section 7 of the National Treasury Management Agency (Amendment) Act, 2000 against the Provider, in respect of which any of the following apply (as determined by the Executive):

- (a) the Claim could result in the judicial interpretation of a point of law or legislation relevant to the Executive (including, but not limited to, the Health Acts and any statutory instruments made thereunder);
- (b) the Claim has the potential to have national policy, financial or other implications;
- (c) the Claim may influence or direct future Executive policy or guidelines;
- (d) the Claim may or could have a material impact on the Funding or Services provided under this Arrangement; or
- (e) the Claim is otherwise of strategic importance to the Executive;

“Unapproved Services” has the meaning given in Clause 4.3; and

“Year” means a calendar year from 1st January to 31st December, save that in the first year of this Arrangement, it shall be the period from the Commencement Date to 31st December.

1.2 In this Arrangement:

- (a) references to Clauses, paragraphs and Schedules are to Clauses, paragraphs and Schedules to this Arrangement;
- (b) references to a **“company”** shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (c) references to a **“person”** shall be construed so as to include any individual, firm, company, government, state or agency of a state, local authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);

- (d) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (e) any reference to a “**day**” or a “**Business Day**” shall mean a period of twenty-four (24) hours running from midnight to midnight except in Clause 33 (Notices) where it means a weekday (excluding a Saturday, Sunday or any public or bank holiday);
- (f) references to times are to times in Ireland;
- (g) references to a “**month**” shall mean a calendar month;
- (h) a reference to any other document referred to in this Arrangement is a reference to that other document as amended, varied, novated or supplemented at any time;
- (i) any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or other similar expression shall be construed as illustrative and shall not limit the sense or meaning of the words preceding those terms;
- (j) references to the singular include the plural and vice versa;
- (k) references to the masculine include the feminine and vice versa; and
- (l) the Interpretation Act 2005 applies to this Arrangement in the same way as it applies to an enactment.

1.3 All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Arrangement.

1.4 In the event of any conflict between Part 1 of this Arrangement and the Schedules to this Arrangement, Part 1 of this Arrangement shall prevail, unless explicitly stated otherwise.

2. Appointment and Principles

2.1 The Executive hereby appoints the Provider to provide the Services subject to the terms and conditions of this Arrangement, and the Provider hereby accepts such appointment. For the avoidance of doubt, the parties agree that the Funding is payable for the provision of the Services and the extent of the Services to be provided shall be specified in Schedule 3 (Service Delivery Specification).

2.2 The Provider hereby commits to support, implement and advance any such change and modernisation of health and personal social services, as required by the Executive, in line with Government policy over the course of the Duration of this Arrangement.

2.3 As a condition to the provision of the Funding and in accordance with the terms of this Arrangement, the parties agree that in carrying out their respective obligations under this Arrangement, they shall endeavour, within the agreed Funding and without prejudice to any statutory rights or obligations of the Executive, to:

- (a) develop and deliver the Services to a high quality and standard and in line with national health strategy, including the implementation of “Healthy Ireland - A Framework for Improved Health and Wellbeing 2013-2025”;
- (b) seek to respond to the assessed needs of Service Users and to improve accessibility to the Services;
- (c) pursue, where possible, a collaborative approach with other voluntary, community and statutory service providers and agencies;
- (d) pursue the development of processes that enable local communities and Service Users to be involved in decision-making in the planning and delivery of the Services;
- (e) demonstrate their commitment to the principle of accountability, as set out in this Arrangement, in relation to the management of public funds and public trust in terms of systems of controls, record keeping, monitoring and evaluation;
- (f) comply with the Codes of Practice with a view to continuous quality improvement;
- (g) recognise the importance of providing Person Centred, needs-led services which reflect best practice and are responsive to Service Users;
- (h) recognise the need to provide the Services in a cost efficient manner;
- (i) comply with the government decision in relation to procurement which mandates “Heath” to act a one voice to the market, and recognise and cooperate with the Executive’s Shared Services in this regard;
- (j) protect, recognise and acknowledge any proprietary interest of the Executive, the State or any other statutory body in all property, whether real or personal, used in relation to or in connection with the Services; and
- (k) maintain the best standards of business ethics to include taking all reasonable steps to prevent their employees or agents from making, receiving, providing or offering gifts of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to this Arrangement or for showing or forbearing to show favour or disfavour to any person in relation to this Arrangement or for the purpose of influencing individuals, firms or bodies corporate to act contrary to both parties’ interests.

2.4 Notwithstanding any other provision of this Arrangement, the parties agree that the requirements, requests and obligations arising from this Arrangement are limited to and applicable only in respect of the Services and Funding provided pursuant to this Arrangement.

2.5 The Executive reserves all of its statutory powers, discretion and rights in respect of the management and delivery of health and personal social services and may carry out strategic reviews of the provision of such services from time to time. For the avoidance of doubt and except as specifically agreed in writing from time to time in accordance with the Schedules to this Arrangement, the Executive makes no commitment, provides no warranty, representation, or guarantee to the Provider as to:

- (a) the nature, continuation or amount (if any) of services to be provided under this Arrangement; nor
- (b) the proportion or mix of services which may be required from time to time; nor
- (c) the number of providers which may be engaged from time to time to provide services to the Executive; nor
- (d) the continued retention of the Provider as a provider for the provision of services to the Executive;

and no expectation or continuity of provision of services for the Executive or entry into of any future arrangement with the Executive is committed, guaranteed, represented or warranted.

3. Roles and Responsibilities

3.1 Duties of the Executive

- (a) Subject to the Executive's statutory responsibilities and obligations, with respect to the provision of the Services generally and to the Executive's responsibilities in relation to public funds, and having regard to the level of funding made available to it by the Exchequer, the Executive will agree the allocation of funding to be made available to the Provider in respect of the delivery of the Services in accordance with the NSP.
- (b) Subject to the Executive's statutory responsibilities and obligations, with respect to the relationship of the Executive with the Provider, and having regard to the Executive's responsibilities in relation to public funds and the provisions of this Arrangement, the Executive shall:
 - (i) endeavour to contract and deal with the Provider at all times in accordance with the Code of Governance of the Executive;
 - (ii) respect the independent identity and operational autonomy of the Provider in the provision of the Services under this Arrangement (subject to the rights and obligations contained in this Arrangement);
 - (iii) where the Executive, in its sole discretion, considers it appropriate, take such steps as the Executive thinks fit to assist the Provider in its compliance with all applicable legal obligations directly related to the provision of the Services, but for the avoidance of doubt, the

Provider acknowledges that the Executive shall in no way be liable under this Arrangement or otherwise for the failure of the Provider to comply with its legal obligations, compliance with which shall remain solely and entirely the responsibility of the Provider;

- (iv) subject to any obligations of confidentiality (including obligations in respect of the “in camera” rule) imposed on the Executive, provide the Provider with any information that the Executive has, which is necessary for the performance by the Provider of its obligations under this Arrangement; and
- (v) put in place an agreed payments arrangement in respect of the Funding to be made available under this Arrangement.

3.2 Duties of the Provider

(a) General

- (i) The Provider shall provide the Services in accordance with the specifications outlined in Schedule 3 (Service Delivery Specification), the Codes of Practice as outlined in Schedule 2 (Quality and Safety), and with such instructions as may be issued by the Executive in writing from time to time throughout the Duration of this Arrangement.
- (ii) The Provider acknowledges that the Executive will be relying on the Provider’s knowledge, experience, expertise and competence in the Provider’s performance of its obligations under this Arrangement, and on the accuracy of all statements, reports or returns made by the Provider in connection with its obligations pursuant to this Arrangement.

(b) Provision of the Services

The Provider shall, within the limits of the funding payable set out in Schedule 6 (Funding):

- (i) make available and provide access to the Services as set out in Schedule 3 (Service Delivery Specification) for the Duration of this Arrangement;
- (ii) develop and deliver services consistent with the Executive’s NSP and corporate plan as may be prepared by the Executive;
- (iii) make available to each Service User those Services that are consistent with the individual needs of that Service User having regard to resources and the Services;
- (iv) carry out faithfully and diligently all duties and responsibilities which may be required to ensure the provision of the Services in a timely and efficient manner, to a standard which is in all respects to the reasonable satisfaction of the Executive;
- (v) comply with the Executive’s policies and objectives as outlined in the NSP;

- (vi) comply with the relevant policies, objectives and directions of the Minister as may be issued from time to time; and
- (vii) respect the individuality of the Service User and the principle of promotion of the well-being of each Service User in accordance with Clause 7 of this Arrangement.

(c) **Other Obligations of the Provider**

The Provider shall:

- (i) endeavour to contract and deal with the Executive at all times in accordance with the Code of Governance of the Executive;
- (ii) act to the best of its skill and ability and in a competent and efficient manner so as to give to the Executive the full and complete benefit of the Provider's knowledge, experience, expertise and competence in providing the Services;
- (iii) comply with all applicable laws and regulations and the procedures and requirements of any relevant governmental bodies (including, in relation to the premises from which the Provider operates, all planning and building regulations), and any safety or security requirements of the Executive notified to the Provider from time to time, in providing the Services (including, without limitation, any statutory safety requirements in force for the time being) and procure that the same are complied with in all respects by all Provider Personnel;
- (iv) comply with the requirements of the National Treasury Management Agency (Amendment Act) 2000 and subsequent orders in terms of incident reporting, risk management and claims management.
- (v) comply with the requirements of the HSE Safety Incident Management Policy 2014.
- (vi) Use the National Incident Management System (NIMS) as the primary ICT system to report and manage incidents.
- (vii) adopt and comply with the Standards for Governance and furnish the Executive with a statement confirming compliance with the Standards for Governance in such form and at such intervals as the Executive may request;
- (viii) not employ any person who has availed of any public sector exit scheme, including but not limited to the voluntary early retirement or voluntary redundancy schemes;
- (ix) not pay nor subsidise salaries, expenses or other perquisites which exceed those normally paid within the public sector, including, but not limited to, bonus payments and benefits in kind;
- (x) comply in full with all elements of Department of Health Circular 11/2013 as may be updated, amended or replaced from time to time

and all requirements of Government pay policy as may be notified to the Provider from time to time;

- (xi) obtain and maintain all licences, permits and permissions necessary to provide the Services in accordance with applicable laws and regulations and shall notify the Executive immediately in the event that such licences, permits and permissions are not obtained or maintained;
- (xii) respect and comply with the statutory role and regulatory and public accountability responsibilities of the Executive and other relevant statutory bodies and at all times co-operate fully with the Executive, any committees of the Board of the Executive and all other statutory bodies in this regard;
- (xiii) comply with all requirements of the Financial Regulations in respect of the sourcing of suppliers for works and related service contracts which are funded more than fifty percent (50%) by the Executive;
- (xiv) comply with the provisions of Part 3 of the Disability Act 2005;
- (xv) comply with the provisions of Department of Finance Circular No. 3/2011 (Control of Secured Borrowings by General Government) and General Government Secured Borrowings Order 2011 (S.I. No. 40 of 2011);
- (xvi) comply, if applicable, with the provisions of S.I. No. 359 of 2008: European Communities (Vehicle Drivers Certificate of Professional Competence) (No. 2) Regulations 2008;
- (xvii) immediately or as soon as practicable notify the Executive in writing of the occurrence of any significant matters which may affect the delivery, provision or level of the Services. In the case of a serious incident which is categorised as a Serious Reportable Event, the Chief Executive Officer or equivalent should immediately notify the Executive, the State Claims Agency and HIQA or the Mental Health Commission.
- (xviii) inform the Executive of any changes to its officers, e.g. Treasurer, Chairperson, Directors or Secretary and inform the Executive of any change of Auditors;
- (xix) inform the Executive in advance of any Reorganisation or Restructuring of, or affecting, the Provider and promptly answer, in writing, any queries from the Executive in relation to the effect, if any, such Reorganisation or Restructuring may have on the Services, the costs of the Services, the Funding and/or the governance of the Provider;
- (xx) upon request, make available to the Executive copies of any policy, procedure or protocol which the Provider implements, and shall promptly notify the Executive of any material changes to those documents;

- (xxi) comply with the provisions of the Health Acts and any legislation regarding eligibility and any further relevant legislation passed after the date of this Arrangement;
- (xxii) have in place an ethics committee or other appropriate process;
- (xxiii) act (and ensure that persons providing Services on its behalf act) in accordance with its fiduciary duties where a fiduciary relationship exists between the Provider and a Service User and in accordance with the Codes of Practice and any relevant guidance issued by the Department of Health, the Department of Children and Youth Affairs, the Child and Family Agency and/ or the Executive from time to time;
- (xxiv) keep itself fully apprised and compliant with all of its responsibilities under the Fire Services Act 1981 (in particular Section 18) and the Safety Health and Welfare at Work Act 2005;
- (xxv) procure and maintain insurance in accordance with Clause 15 and Schedule 7 (Insurance) or have appropriate State Indemnity in place;;
- (xxvi) comply with the Health Acts and regulations or directions made thereunder concerning charges to be made and any directions of the Executive in this respect, as appropriate;
- (xxvii) comply with relevant legislation applicable to charitable organisations; and
- (xxviii) in the event of any member of the Provider Personnel having behaved illegally, wrongfully, inappropriately or in breach of the relevant policies and procedures of the Provider whether by act or omission, in respect of a Service User or the Provider becoming aware of any allegation or complaint that any such person has behaved in such a manner in respect of a Service User, take all necessary actions in respect of such persons to ensure safety and protection of the Service User and Service Users generally and report the matter to the Executive and all relevant authorities.
- (xxix) Comply with the provisions of the Official Languages Act 2003 and regulations (S.I. No. 391 of 2008) of that Act.
- (xxx) Comply in full with the provisions of the Department of Public Expenditure and Reform Circular 13/2014 Management of and Accountability for Grants from Exchequer Funds, such as the “Statement of Principles for Grantees”.
- (xxxi) Support and cooperate with the role of the HSE’s independent confidential recipient.

4. Funding

- 4.1** Subject to the terms and conditions of this Arrangement and the Provider having at all times a current valid tax clearance certificate (a copy of which must be furnished to the Executive upon request), the funds to be paid by the Executive to the Provider inclusive of all duties, taxes, expenses and other costs associated with or incurred in

the provision of the Services shall not exceed the amount specified in Schedule 6 (Funding), which amount shall be payable to an account nominated by the Provider as set out in Schedule 6 (Funding).

- 4.2 If the Executive and the Provider agree in advance that any additional services are to be provided by the Provider under the terms and subject to the conditions of this Arrangement, the amount and timing of any payment(s) due in respect of and the specification(s) for such additional service(s) (the “**Additional Services**”) shall be agreed in writing between the Provider and the Executive prior to the commencement of provision of those services as described in Schedule 3 (Service Delivery Specification). Once funding has been agreed in respect of any Additional Services, that funding shall be treated as part of the Funding for the purposes of this Arrangement, and the Additional Services shall be treated as part of the Services for the purposes of this Arrangement. The Additional Services shall be agreed through the change control process in Schedule 10 (Change Control).
- 4.3 The Funding is payable for the provision of the Services only. Any other services provided by the Provider that have not been authorised in advance in writing by the Executive shall be outside the scope of this Arrangement (“**Unapproved Services**”) and the costs of the Unapproved Services and all responsibilities, obligations and liabilities relating to or arising in connection with the Unapproved Services shall be the sole responsibility of the Provider.
- 4.4 Without prejudice to the right of the Executive to instruct the Provider to collect, on behalf of the Executive, charges pursuant to the Health Acts (and remit the proceeds thereof to the Executive), the Provider shall not be permitted to charge fees to Service Users unless provided for elsewhere by law without the prior written consent of the Executive and the rates of any such fees shall be determined by the Executive and the Provider.
- 4.5 The Executive may require the Provider to remit any fees collected by the Provider (in accordance with Clause 4.4) to the Executive, and for the avoidance of doubt, the Executive shall be entitled to invoke the provisions of Clause 6 (Set-off) in respect of any sums owing to it.
- 4.6 The Provider will immediately notify the Executive and will ensure that all necessary notifications and actions are undertaken in the event that fraud or misappropriation is suspected or if the Provider becomes aware of circumstances suggesting fraud or misappropriation within the Provider, in respect of the Services or arising out of this Arrangement. This shall include the notification by the Provider of the matter to An Garda Síochána and the provision by the Provider to the Executive of copies of all statements made. The Provider shall cooperate with any directions of the Executive in this regard.

5. **Capital Funding**

- 5.1 The funds to be paid by the Executive to the Provider solely for the purpose of capital expenditure shall be managed under a separate process, that is, the Executive’s Capital Programme, and do not form part of this Arrangement.
- 5.2 The Provider shall not proceed with any capital expenditure or project involving capital expenditure that will or may require funding (of a revenue nature or otherwise) to be provided at any time by the Executive without the express prior written consent of the Executive pursuant to this Arrangement.

6. Set-off

The Provider expressly agrees that the Executive, having given not less than 14 days' written notice to the Provider, shall be entitled to withhold and set off monies owing to the Provider in accordance with this Arrangement in the event and to the extent that the Provider owes any monies, damages, costs or expenses to the Executive as a result of or in connection with the Provider's performance or failure to perform its obligations under this Arrangement.

7. Service User Centred Care

- 7.1** The organisation, design and delivery of the Services shall be Person Centred with primary focus on the health and wellbeing of Service Users and their families.
- 7.2** The Provider will provide the Services to Service Users without discrimination on account of gender, civil status, family status, age, race, religion, disability, sexual orientation or membership of the traveller community.
- 7.3** All Service Users shall be treated by the Provider equitably. The co-existence of public and private practice within the public system shall not undermine the principle of equitable access.
- 7.4** The Provider shall be required to demonstrate a high level of consultation with Service Users, their advocates and families in the development of new services, strategic planning and evaluation of existing services. The Provider shall provide verifiable evidence throughout the Duration of this Arrangement that such consultation and resulting actions have been undertaken.
- 7.5** The Executive and the Provider are committed to protecting Service Users, whose safety is of paramount importance. The Provider shall ensure that Service Users are aware of the right to be free from abuse (mental, physical, emotional, sexual and financial). The Provider shall also establish and maintain a formal protection from abuse policy and complaints procedure that is accessible to all Service Users, their advocates and carers.
- 7.6** The Provider will establish and maintain appropriate systems, controls and procedures in respect of the private property of Service Users which is in accordance with best practice and all applicable law.
- 7.7** The Provider will ensure that it keeps full and complete records in respect of Service Users and, where a Service User is unable to manage his/her affairs due to mental or other incapacity, in respect of persons authorised to act on behalf of the Service User.

8. Procurement and Value for Money Initiatives

- 8.1** The Provider will undertake the procurement of works, supplies and services in relation to this Arrangement (whether alone or in collaboration with one or more other entities) in compliance with the fundamental principles of procurement, namely, transparency, equality of treatment, non-discrimination and proportionality, and shall generally adopt best practices in terms of procurement including, where applicable, in accordance with Public Procurement Law. The Provider shall obtain the prior consent of the Executive to undertake such procurement if the procurement is to be part of a joint arrangement.
- 8.2** The Provider hereby indemnifies and holds harmless the Executive against any costs, expenses or damages arising out of any claim, demand or proceedings made against

the Provider and/or the Executive in respect of any award of supplies, services or works made pursuant to or in connection with this Arrangement. The Provider shall reimburse the Executive within three (3) months of the receipt of an invoice by the Provider for all costs, expenses or damages incurred by the Executive in preparing and defending any claim, demand or proceedings made in respect of this Clause 8. The Provider shall co-operate, liaise and keep the Executive informed of any claim demand or proceedings made in respect of this Clause 8.

- 8.3** The Executive hereby indemnifies and holds harmless the Provider against any costs, expenses or damages arising out of any claim, demand or proceedings made against the Provider in respect of the process of award of any supplies, services or works contracts awarded by the Executive and availed of by the Provider pursuant to or in connection with this Arrangement.
- 8.4** The Executive is statutorily required to be accountable for expenditure on health and personal social services and the Provider acknowledges that value for money in service delivery must be ensured.
- 8.5** The Provider will use its best endeavours to drive, deliver and report value for money in its use of the Funding and in the delivery of Services in a manner that maximises effectiveness and outcomes in the use of public funds and will co-operate and collaborate with the Executive in the achievement of value for money.
- 8.6** In collaborating with the Executive in achieving value for money the Provider will comply with applicable procurement initiatives of the Executive (as determined by the Executive). To the extent applicable or appropriate, the Executive will be entitled to avail of the Provider's procurement initiatives having regard to this Arrangement.
- 8.7** The Executive may direct the Provider to procure, on behalf of the Executive, such additional services or supplies as may be notified by the Executive in advance in writing to the Provider and that such additional services or supplies may be for the benefit of the Executive or any member of the HSE Group. In this regard the Provider undertakes to do all such things as may be necessary to give effect to procuring such supplies/service for the benefit of the Executive or a member of the HSE Group.
- 8.8** Without prejudice to Clause 4, the Executive may, following consideration of the likely impact on the Services, offset savings associated with value for money initiatives against the Funding and only the reduced sum shall be payable as Funding by the Executive.

9. ICT

In recognition of the Executive's obligations under relevant circulars issued by the Department of Finance and/or the Department of Public Expenditure and Reform, the Provider shall obtain prior sanction from the Executive for its annual expenditure on ICT and for all its ICT related projects. The Provider shall obtain formal written approval from the Executive's ICT Programme Office in advance of procurement competitions being initiated for all ICT equipment, software and related services. The Provider shall not enter into procurement commitments in respect of any ICT equipment, systems or related I.T. consultancy services unless and until the proposed expenditure has been approved by the Executive's ICT Programme Office.

10. Information Requirements

10.1 Requests for Information

The Provider acknowledges that it is obliged to comply with a written request from the Executive for any information that the Executive considers material to the provision of the Services. The Executive shall specify in any written request under this Clause 10.1 the information required and the reason for the request. All such requests will have due regard to Data Protection as outlined in Clause 29.

10.2 Schedule 5 (Information requirements)

The Provider will comply with the obligations set out in Schedule 5 (Information Requirements).

10.3 Integrated Management Report

- (a) The Provider will comply with the obligations set out in Schedule 6 (Funding) including IMR, where applicable.
- (b) In addition to its obligations under Clause 10.3(a), in the event that issues are anticipated or arise, which result in the Provider exceeding the approved Funding for the Financial Year, the Provider shall at the earliest possible time notify the Executive in writing of such issues. This written notice must include the Provider's proposals as to how it will manage the issues to ensure that the Services are provided within the Funding by the end of the Financial Year.

10.4 Audit and Information

The Provider shall:

- (i) develop an internal audit function which shall comply with the following principles:
 - (A) the internal audit function should have a formal charter which has been approved by the Board of the Provider;
 - (B) the internal audit function should be conducted within professional guidelines for internal auditing and financial and management accounting;
 - (C) the head of the internal audit function should report directly to the Audit Committee of the Board of the Provider;
 - (D) the internal audit function should evaluate and improve in a systematic and disciplined manner, the effectiveness of risk management, control and governance processes in the Provider;
 - (E) the internal audit function should have the necessary skills, including skills to deal with non-financial aspects;
 - (F) the internal audit function should liaise with the external auditors of the Provider frequently;

- (G) in planning, executing and reporting its work, the internal audit function should ensure that proper account is taken of value-for-money;
- (ii) notify the Executive immediately of any matter of concern identified by the internal audit function and inform the Executive of how the Provider plans to deal with the matter;
 - (iii) evaluate the effectiveness, efficiency and value for money of the provision of its Services on a regular basis;
 - (iv) keep detailed records in respect of its performance of its obligations under this Arrangement and at the Executive's request shall make such records available for inspection or shall provide copies to the Executive;
 - (v) maintain annual audited accounts for each financial year and provide copies of such accounts within four (4) months of their adoption to the Executive and, on request, to the C&AG;
 - (vi) provide the Executive with a copy of the management letter received from the Provider's external auditors;
 - (vii) notify the Executive immediately of any matter of concern notified to the Provider by the Provider's external auditor;
 - (viii) ensure that the annual accounts are audited not later than nine months after the end of the relevant financial year by a person who, is qualified to be appointed as an auditor pursuant to Section 187 of the Companies Act 1963;
 - (ix) publish the annual audited accounts for each financial year on the website of the Provider (or in such other manner as agreed with the Executive);
 - (x) ensure that the published annual audited accounts comply in all respects with the disclosure requirements in respect of the Funding set out in the Department of Public Expenditure and Reform Circular 13/2014 Management of and Accountability for Grants from Exchequer Funds (including any interpretations or clarifications of such requirements issued by the Department of Finance, Department of Public Expenditure and Reform, Department of Health and/or the Executive); and as set out in that circular that the annual audited accounts include the information outlined below in respect of Funding and expenditure related thereto (as distinct from other funding or monies received by the Provider during the Financial Year) and from all other State bodies (for the purposes of this clause, a "Grant"):

a) Name of Grantor

The name of the grantor, specifying the exact title to be used in the report (e.g. Department of Environment, Community & Local Government, Health Service Executive etc.). Where the grant making

agency is not a Government Department e.g. Pobal, the sponsoring Government Department must also be recorded.

(b) Name of Grant

The actual name of the grant programme e.g. Rural Water Development Programme.

(c) Purpose of Grant

The purpose for which the funds are applied under the following headings:

- Pay and general administration
- Service provision / charitable activity
- specified others, including such expenditure as advertising, consultancy

(d) Accounting for Grants:

- (i) The amount and term of the total grant awarded;
- (ii) The amount of the grant taken to income in the current financial statements;
- (iii) Where (ii) above differs from the cash received in the relevant financial period, a table showing:
 - (a) The grant taken to income in the period
 - (b) The cash received in the period, and
 - (c) Any grant amounts deferred or due at the period end.

- (xi) ensure that the published annual audited accounts separately identify:
 - (A) fundraising, and the proceeds thereof, received by the Provider; and
 - (B) monies generated from commercial or other activities of the Provider, and specifying such activities.
- (xii) submit an annual report and additional financial information to the Executive in accordance with Schedules 4 and 5;
- (xiii) furnish an annual certificate from the Provider's auditors confirming that the accounts have been prepared and audited in accordance with GAAP and relevant legal and regulatory requirements;
- (xiv) submit an annual compliance statement to the Executive prior to 31 May of each year (or such other date as the Executive may notify to the Provider) setting out its compliance with the Standards for Governance in respect of the preceding calendar year, in accordance with Clause 16.7; and
- (xv) include a certification in the annual report confirming the Provider's compliance with the Standards for Governance.

10.5 Employment Monitoring Return

The Provider will comply with the obligations in respect of the EMR and those requirements set out in Schedule 9 (Staffing).

10.6 Other Information Obligations

- (a) The Executive acknowledges the value of information sharing and exchange amongst different providers. The Provider agrees to provide relevant information relating to Services to other providers (subject to the DPA).
- (b) The Provider will collaborate with the Executive in its monitoring and audit relationships and in performing the Executive's obligations to third parties (including HIQA, the C&AG, etc).
- (c) The Provider will provide information to appropriate and authorised sources (for example, , the State Claims Agency National Parasuicide Register, Disability Database, HIPE data, The Provider will also provide the Executive with a copy of the information supplied to such sources.
- (d) Subject to Clause 10.1 the Provider will comply with all requests by the Executive and by any committees of the Board of the Executive to supply information and such requests may include without limitation information required by reason of, or relating to or arising out of:
 - i. Parliamentary Questions;
 - ii. Freedom of Information Requests;
 - iii. Responses to complaints from Service Users and/or advocates; or
 - iv. the compilation of statistical data in relation to the Services or Service Users.
- (e) The provisions of this Clause 10 shall continue to apply for the appropriate retention periods specified by law or in such policies as may be specified by the Executive to the Provider notwithstanding the termination of this Arrangement for any reason and notwithstanding the completion of the performance of the Provider's obligations hereunder.
- (f) The retention periods referred to in Clause 10.6(e) shall include such extended periods for vulnerable persons as are required for compliance with the DPA.

10.7 Failure to Provide Information

The Provider acknowledges that:

- (a) in order to achieve accurate forecasting, activity monitoring and prompt and accurate funding and governance of health and personal social services, there needs to be timely, regular exchange of detailed and accurate information; and
- (b) it is obliged to properly account for the expenditure of Funding provided by the Executive.

Accordingly, if any information required pursuant to statute or the provisions of this Arrangement is withheld by the Provider without the prior written consent of the Executive, the Executive may (in its sole and absolute discretion and without prejudice to its other rights pursuant to this Arrangement or otherwise), having given

not less than 14 days' written notice to the Provider, withhold payment of any part of the Funding until such time as the required information is supplied.

11. Monitoring, Review and Evaluation

- 11.1** The Executive shall monitor the standard of performance of Services in accordance with the standards envisaged by Clause 3.2 (Duties of the Provider), Schedule 4 (Performance Monitoring (Key Performance Indicators), the Standards for Governance and any other corporate governance requirements specified by the Executive and by generally accepted best practice and by reference to the Performance Monitoring Framework.
- 11.2** The Provider shall maintain systems, procedures and controls which reflect the best practices of accountability in expending public funds, and will fully co-operate with the Executive in any reviews of such practices required by the Executive.
- 11.3** The Executive will provide guidance regarding requirements for establishing a Performance Monitoring Framework. The framework will assist both parties in providing a comprehensive set of performance measurements.

12. Access Rights

- 12.1** The Executive shall be entitled to inspect and review the performance and provision of the Services by the Provider and may arrange for an independent party to inspect and review the same throughout the Duration of this Arrangement.
- 12.2** Any person duly authorised by the Executive ("**Authorised Person**") may visit the Provider's premises on reasonable written notice to carry out an audit and/or inspection of the provision of the Services and/or may request the provision of documentation or copy documentation by the Provider to the Executive. Such audits, inspections and requests for documentation shall include, inter alia, the inspection, monitoring, review and assessment of the Provider's premises, facilities, Provider Personnel, records, equipment, procedures and records (including without limitation, Provider Personnel records and information and records on the Service Users). The Provider shall give all such assistance and provide all such facilities as the Authorised Person may reasonably require for such audit or inspection.
- 12.3** In the event of any identified or suspected governance or performance issue affecting the Provider, the Services, the costs of the Services or the Funding, the Executive may in its absolute discretion appoint an individual for such period as the Executive may determine to assist and provide guidance to the Board of the Provider to facilitate the prompt resolution of any such governance or performance issue in a manner satisfactory to the Executive. The Provider shall provide any individual appointed pursuant to this Clause 12.3 with such access and assistance as he/she may specify in performing his/her functions under this Clause 12.3.

13. Review Process

- 13.1** The Provider shall cooperate in a monitoring and review process (the "**Review Process**") to support and monitor the implementation, review and evaluation of this Arrangement.
- 13.2** Review meetings shall take place between the Executive and the Provider (which will be represented by the "Main contact person" specified in Part B of Schedule 1

(Contact Details), or another appropriate person) according to the review frequency detailed within Schedule 4 (Performance Monitoring).

13.3 The provisions of the Schedules to this Arrangement, and the performance of the Services and implementation of this Arrangement shall be reviewed at each Review Meeting. In particular, the following shall be considered (without limitation):

- (a) Financial reports and issues arising.
- (b) Human resources and staffing issues.
- (c) Activity data – summary of Services provided.
- (d) The objectives and actions taken by the Provider to deliver the Services as specified in this Arrangement.
- (e) Review of agreed performance indicators and outcomes as set out in Schedule 3 (Service Delivery Specification).
- (f) Whether the needs of Service Users are being met.
- (g) Compliance with Services specifications (including Codes of Practice, Schedule 2 (Quality & Safety), etc.)
- (h) Evaluation of information provided pursuant to Clauses 10 and 11.
- (i) Any matters notified in writing to the Executive pursuant to Clause 3.2(c)(xvii) (matters which may affect the delivery, provision or level of the Services).
- (j) Any matters notified in writing to the Executive pursuant to Clause 10.3(b) (any issues that are anticipated to result in the Provider exceeding the Funding for the Financial Year).
- (k) Any matters notified in writing to the Executive pursuant to Clause 16.5 (issues of concern in relation to governance).
- (l) Any reports received by the Executive pursuant to Clause 23.6 (areas of concern, or serious untoward incidents) of this Arrangement.
- (m) The value of any supplies, services or works contracts awarded by the Executive and availed of by the Provider pursuant to or in connection with this Arrangement.
- (n) Other issues appropriate to the efficient, effective and safe operation of the Services.
- (o) Compliance by the Provider with the Standards for Governance.

13.4 The Provider shall comply with all requirements of the Executive in reviewing the performance and provision of the Services and such requirements may be set out in Schedule 4 (Performance Monitoring) and revised or amended in writing by the Executive from time to time.

13.5 With the exception of requirements specified by the Executive in Schedule 4 (Performance Monitoring), any amendment to the Schedules to this Arrangement

shall be agreed in writing between the Executive and the Provider and shall be evidenced by completion of a CCN as included within Schedule 10 (Change Control).

14. Performance Issues

14.1 First Performance Notice

- (a) Without prejudice to any other rights the Executive may have under this Arrangement, if, as a result of information received, or inspection undertaken or following a Review Meeting or otherwise, the Executive is of the opinion that there may be a potential Non-Compliance the Executive may give notice in writing to the Provider (with a copy of that notice provided to the Board of the Provider) that it is minded to issue a First Performance Notice (the “**First Notification Letter**”) specifying:
- (i) the principal reasons why the Executive has a reasonable concern that the Provider is in potential Non-Compliance;
 - (ii) the respects in which the Executive considers the Provider is in potential Non-Compliance;
 - (iii) the decision making process which the Executive will follow in determining whether to issue a First Performance Notice pursuant to this Clause 14.1, which decision making process is set out in more detail in Clauses 14.1(b) to 14.1(d) below;
 - (iv) such steps as the Executive may deem necessary for the Provider to take to address the potential Non-Compliance to the satisfaction of the Executive and the time frame for such compliance in the event that a First Performance Notice is issued; and
 - (v) any steps which the Executive may take or may require the Provider to take, whether under Clause 14.3 or otherwise, in the event that a First Performance Notice does issue.
- (b) The Provider will have 14 days (or such other shorter or longer period as the Executive may specify) from the date of the First Notification Letter to make written representations to the Executive in respect thereof and/or to address the matters specified in the First Notification Letter.
- (c) The Executive shall consider the representations received from the Provider and may (in its absolute discretion) meet with the Provider to discuss the matter.
- (d) Following expiry of the period provided for in Clause 14.1(b) and having considered the Provider’s representations (if any), the Executive shall make a determination as follows:
- (i) if the Executive determines that the Provider is not in Non-Compliance it shall so inform the Provider in writing; or
 - (ii) if the Executive determines that there has been a Non-Compliance but this has been addressed to the Executive’s satisfaction then the Executive reserves the right to issue a First Performance Notice in the terms set out in Clause 14.1(e) below; or

- (iii) if the Executive determines that the Provider is in Non-Compliance and that Non-Compliance has not been addressed to the Executive's satisfaction, it may issue a First Performance Notice, in the terms set out in Clause 14.1(e) below.
- (e) The First Performance Notice shall specify:
 - (i) the determination of the Executive;
 - (ii) the reasons for the Executive's determination;
 - (iii) the steps the Executive requires the Provider to take to address the Non-Compliance to the satisfaction of the Executive and the period within which they should be taken; and
 - (iv) the steps which the Executive is to take or requires the Provider to take whether under Clause 14.3 or otherwise and the period or other relevant details in respect of same, as appropriate.

14.2 Second Performance Notice

- (a) Without prejudice to any other rights the Executive may have under this Arrangement, if, as a result of information received, or inspection undertaken or following a Review Meeting or otherwise the Executive is of the opinion that:
 - (i) the Provider may not have complied with the First Performance Notice within the period specified in the notice; or
 - (ii) there may have been a further or continuing instance(s) of Non-Compliance by the Provider;

the Executive may give notice in writing to the Board of the Provider (the "**Second Notification Letter**") that it is minded to issue a Second Performance Notice (whether or not arising from issues raised in the First Performance Notice) specifying:

- (iii) the principal reasons why the Executive has a reasonable concern in accordance with Clause 14.2(a)(i) or 14.2(a)(ii);
- (iv) the respects in which the Executive considers the Provider may not have complied with Clause 14.2(a)(i) or 14.2(a)(ii);
- (v) the decision making process which the Executive will follow in determining whether to issue a Second Performance Notice pursuant to this Clause 14.2, which decision making process is set out in more detail in Clauses 14.2(b) to 14.2(d) below;
- (vi) such steps as the Executive may deem necessary for the Provider to take to address the potential Non-Compliance or alleged failure to comply with the First Performance Notice to the satisfaction of the Executive and the time frame for such compliance in the event that a Second Performance Notice does issue; and

- (vii) any steps which the Executive may take or may require the Provider to take, whether under Clause 14.3 or otherwise, in the event that a Second Performance Notice does issue.
- (b) The Provider will have 14 days (or such other shorter or longer period as the Executive may specify) from the date of Second Notification Letter to make written representations to the Executive in respect thereof and/or to address the matters specified in the Second Notification Letter.
- (c) The Executive shall consider the representations received from the Provider and may (in its absolute discretion) meet with the Provider to discuss the matter.
- (d) Following expiry of the period provided for in Clause 14.2(b) and having considered the Provider's representations (if any), the Executive shall make a determination as follows:
 - (i) if the Executive determines that the Provider is not in non-compliance with the First Performance Notice or is not in Non-Compliance it shall so inform the Provider in writing; or
 - (ii) if the Executive determines that the Provider has been in non-compliance with the First Performance Notice or in Non-Compliance but this has been addressed to the Executive's satisfaction then the Executive reserves the right to issue a Second Performance Notice in the terms set out in Clause 14.2(e) below; or
 - (iii) if the Executive determines that the Provider has been in non-compliance with the First Performance Notice or has been in Non-Compliance and this has not been addressed to the Executive's satisfaction, it may issue the Second Performance Notice in the terms set out in Clause 14.2(e) below.
- (e) The Second Performance Notice shall specify:
 - (i) the determination of the Executive;
 - (ii) the reasons for the Executive's determination;
 - (iii) the steps the Executive requires the Provider to take (which may include, without limitation, the Provider preparing and implementing a plan of action) to address the failure to comply with the First Performance Notice or the Non-Compliance to the satisfaction of the Executive and the period within which they should be taken; and
 - (iv) the steps which the Executive is to take or requires the Provider to take whether under Clause 14.3 or otherwise and the period or other relevant details in respect of same, as appropriate.

14.3 Possible Actions where Provider has not addressed a Non-Compliance

Where a Provider has failed to address a Non-Compliance to the satisfaction of the Executive, whether as identified in a First Performance Notice or Second Performance Notice, the Executive may do one or more of the following:

- (a) where the Executive reasonably believes that the provision of training may assist the Provider in addressing the Non-Compliance or maintaining compliance, the Executive may require the Provider to ensure that appropriate training is provided to the Board of the Provider and/or Provider Personnel, at the expense of the Provider, as the Executive deems is required to address the Non-Compliance;
- (b) withhold a proportionate percentage of the Funding allocated to the Provider in respect of the Non-Compliance until such time as the Provider becomes compliant with this Arrangement to the satisfaction of the Executive;
- (c) where, in the opinion of the Executive, the Provider has failed to observe restrictions imposed on the payment of remuneration to Provider Personnel, the Executive may:
 - (i) require any amount up to the amount paid to Provider Personnel which is in excess of the relevant public sector consolidated pay scales to be paid to the Executive (the “**Excess Amount**”); or
 - (ii) reduce the Funding provided to the Provider by an amount up to the Excess Amount;
- (d) preclude any consideration of any request from the Provider for the provision and funding of Additional Services until such time as the Provider addresses the Non-Compliance to the satisfaction of the Executive;
- (e) preclude any consideration of any request from the Provider for the provision of any capital funding until such time as the Provider addresses the Non-Compliance to the satisfaction of the Executive;
- (f) state that the Executive itself will provide or procure the provision of one or more of the Services at the expense of the Provider (provided that such expense shall not exceed the amount of Funding made available to the Provider under this Arrangement in respect of the relevant Services) until the Provider has shown to the reasonable satisfaction of the Executive that the relevant Services will in future be provided by the Provider in accordance with the terms of this Arrangement; or
- (g) determine this Arrangement in respect of such part of the Services to which the Non-Compliance relates and thereafter withhold the proportionate amount of the Funding relating to those Services.

For the avoidance of doubt, the actions listed above are non-exhaustive and shall not limit in any way whatsoever the possible actions which the Executive may request a Provider to take to address a Non-Compliance.

14.4 Notices

- (a) Without prejudice to Clause 37.3, any notices served under this Clause 14 shall be authorised by an employee of the Executive of a grade not less than National Director or senior manager of the Executive at a grade not less than area manager or equivalent.
- (b) Any notices served under Clauses 14.1 and 14.2 may be served notwithstanding the exercise by the Executive of its rights pursuant to Clause 14.5.
- (c) Any notices served under this Clauses 14 shall not constitute a waiver of any term or condition of this Arrangement and shall be without prejudice to any of the Executive's other rights remedies or powers under this Arrangement, or as provided by law, whether in respect of any Non-Compliance or otherwise.

14.5 Further Rights of the Executive in cases of Non-Compliance

- (a) Without prejudice to Clauses 14.1, 14.2 and 14.3 where, either:
 - (i) the Executive is of the opinion that the Provider has failed to comply with a First Performance Notice or a Second Performance Notice; and a National Director of the Executive is of the opinion that a serious risk arises to any of the Services, the Service Users, the costs of the Services or the Funding provided pursuant to this Arrangement; or
 - (ii) the Executive is of the opinion that the Provider is in Non-Compliance and is of the opinion that there is a serious and imminent risk to the life, health, safety or welfare of Service Users or a serious and imminent risk to the Funding provided pursuant to this Arrangement ("**Exceptional Circumstances**"),

the Executive may exercise its rights pursuant to this Clause 14.5 in order to address, in whole or in part, the Non-Compliance.

- (b) Unless Exceptional Circumstances exist, the Executive shall, before exercising its rights pursuant to this Clause 14.5:
 - (i) issue a written notice to the Provider informing the Provider of its proposed determination in accordance with Clause 14.5(a)(i), the reasons for its proposed determination and the proposed exercise by the Executive of its rights pursuant to this Clause 14.5 and the anticipated duration of such;
 - (A) the written notice will inform the Provider of the decision making process which the Executive will follow in determining whether to exercise its rights pursuant to this Clause 14.5;
 - (B) the written notice will afford the Provider 14 days (or such other shorter or longer period as the Executive may specify) to make written submissions to the Executive on its proposed determination in accordance with Clause 14.5(a)(i) and on the proposed exercise by the Executive of its rights pursuant to this Clause 14.5;

- (ii) consider any submissions made by the Provider and may (in its absolute discretion) meet with the Provider to discuss the matter; and
 - (iii) having considered the Provider's representations (if any), if the Executive is satisfied that the circumstances described in Clause 14.5(a)(i) exist, the Executive shall exercise its rights pursuant to this Clause 14.5 and issue a further written notice advising the Provider of such exercise.
- (c) In Exceptional Circumstances, the Executive shall:
- (i) consider the feasibility, having regard to all the circumstances, of complying with the procedures described in Clause 14.5(b) and in its absolute discretion dispense with such procedures, or some of them, and/or may take such steps as it deems appropriate in the particular circumstances but without any obligation whatsoever to do so;
 - (ii) notify the Provider in writing as soon as reasonably practicable of the exercise of its rights pursuant to this Clause 14.5 and the anticipated duration of such; and
 - (iii) afford the Provider an opportunity to make submissions to the Executive on the exercise by the Executive of its rights pursuant to this Clause 14.5 and having considered any submissions made, the Executive will consider the risks arising and the ongoing necessity or desirability for the exercise by the Executive of its rights pursuant to this Clause 14.5 and may cease to exercise such rights if the Executive is satisfied that Service Users and/or the Funding are no longer at risk.
- (d) The Executive has the following rights pursuant to this Clause 14.5:
- (i) the right to require the Provider to take promptly such actions as the Executive may, at its discretion, require in order to address, in whole or in part, the Non-Compliance;
 - (ii) the right to take such direct and binding executive action on behalf of the Provider as the Executive may deem necessary or expedient to rectify the Non-Compliance of the Provider and to ensure the delivery of the Services in accordance with this Arrangement;
 - (iii) the right to engage a third party to assist the Executive with the rectification of the Non-Compliance;
 - (iv) the right to issue instructions to the Provider, including the Board of the Provider, to ensure the prompt rectification of the Non-Compliance; and
 - (v) the right to take any such steps or require any such steps to be taken as the Executive may at its discretion consider necessary or expedient to rectify the Non-Compliance.
- (e) In order to comply with Clause 14.5(d)(iv), the Provider shall procure that the Provider Personnel and any agents of the Provider take such steps as are required to ensure compliance with any instructions issued by the Executive to the Provider;

- (f) For the avoidance of doubt, nothing in this Clause 14.5 shall operate to transfer any rights or entitlements to share capital, stock or property, whether tangible or intangible, from the Provider to the Executive and any actions taken pursuant to this Clause 14.5 shall be taken by the Provider or by the Executive on behalf of the Provider.
- (g) The Provider shall take all steps required to ensure that the rights of the Executive pursuant to this Clause 14.5 are given full legal and practical effect.
- (h) The Executive shall endeavour to meet with the Board of the Provider as soon as practicable following the exercise by the Executive of its rights pursuant to this Clause 14.5 to discuss further actions or arrangements (including arrangements to ensure the continued provision of Services to Service Users) which the Executive may consider necessary in the circumstances and the Board of the Provider shall agree with the Executive a plan of action and a timetable in respect of any such actions or arrangements, which may include meetings to monitor and discuss all operational aspects of the Services.
- (i) Without prejudice to Clause 14.5(l), the Provider hereby:
 - (i) agrees that the Executive shall be accorded every reasonable facility and co-operation by the Board of the Provider and by the Provider Personnel for the performance of the Executive's rights pursuant to this Clause 14.5;
 - (ii) agrees that the Executive for the purposes of this Clause 14.5 shall have all such powers as the Executive deems necessary or expedient for the purpose of exercising its rights under this Clause 14.5; and
 - (iii) agrees that upon the exercise by the Executive of its rights pursuant to this Clause 14.5, any chief executive officer/ manager director or other person(s) exercising similar executive managerial functions in respect of the Provider may be required by the Executive to report directly to the Executive for the duration of the exercise by the Executive of the rights pursuant to this Clause 14.5.
- (j) Without prejudice to Clause 14.5(l), the Executive shall liaise and consult with the Board of the Provider, as it deems appropriate. For the avoidance of doubt, the Executive shall not have power to exercise generally the functions of the Board of the Provider but may instruct the Provider to do such things and take such actions as the Executive may deem necessary or expedient for the exercise of its rights under this Clause 14.5.
- (k) The Executive shall not incur any liability (either to the Provider or to any other person) by reason of the exercise of its rights pursuant to this Clause 14.5. For the avoidance of doubt, exercise by the Executive of its rights pursuant to this Clause 14.5 shall not discharge the Provider or the Executive from any existing or future liability that the Provider or the Executive has or may have to third parties arising out of or in connection with the provision of the Services (including, for the purpose of this Clause 14.5, the provision of any services prior to the commencement of this Arrangement).
- (l) Without prejudice to the Executive's rights under this Clause 14.5, the Provider hereby irrevocably appoints, with effect from the exercise by the

Executive of its rights pursuant to this Clause 14.5, the Executive to be the attorney of the Provider (with full power of substitution and delegation), in the Provider's name or otherwise and on its behalf and as its act and deed to generally carry on, manage and ensure the delivery of the Services to Service Users; to manage the Funding and to exercise all rights, powers of entitlements of the Provider in furtherance of those purposes and to do all other acts and things which the Executive may consider desirable or necessary to realise or carry such purposes into effect or incidental or conducive to any of the rights, powers or discretions conferred on the Executive for the duration of the exercise of the Executive's rights pursuant to this Clause 14.5 as shall be determined by the Executive under this Clause 14.5. The Executive's powers under paragraphs (a) to (m) of this Clause 14.5 shall be additional to any powers the Executive may have as an attorney pursuant to this Clause 14.5 or by law.

- (m) The Executive may cease to exercise its rights pursuant to this Clause 14.5 at any time and shall issue a written notice to the Provider to confirm the cessation of such.
- (n) The exercise or non-exercise by the Executive of its rights pursuant to this Clause 14.5 shall have no effect on any other right of the Executive pursuant to this Arrangement.
- (o) The Funding provided to the Provider pursuant to this Arrangement may be suspended at the discretion of the Executive in whole, in part or in respect of any Service or part thereof managed by the Executive pursuant to this Clause 14.5 until the Provider resumes full delivery of such Services.
- (p) The reasonable costs of the Executive in exercising its rights under this Clause 14.5 shall, at the option of the Executive, be deducted from the Funding or, at the option of the Executive, recoverable by the Executive as a debt due by the Provider to the Executive.
- (q) All references to the "Executive" in this Clause 14.5 shall, for the avoidance of doubt, also refer to a nominee of the Executive.

15. Insurance

15.1 This Clause 15 shall be without prejudice to the operation of State indemnity by the State Claims Agency. Indemnity is provided under the following covers: -

- (a) Clinical Indemnity Scheme cover for professional medical services. This cover satisfies 4(a) Professional Indemnity of Schedule 7 (Insurance).
- (b) Personal injury and third party property damage cover. A Confirmation Statement from the State Claims Agency should be provided as proof of indemnity under this scheme. This cover satisfies the Employers Liability, Public Liability and Motor cover requirements of Schedule 7 (Insurance).
- (c) An endorsement in respect of Clause 15.3 is not required in respect of State Indemnity (including the Clinical Indemnity Scheme)

15.2 Throughout the Duration of this Arrangement the Provider shall maintain the insurance which will include an indemnity in favour of the Executive on the public liability, employer's liability and motor insurance policies as set out in Schedule 7 (Insurance) on the terms specified and with insurers regulated by, or authorised to

operate on a freedom of services basis by, the Central Bank of Ireland or other appropriate regulatory authority.

- 15.3** An endorsement in the Provider's public liability, employer's liability and motor insurance policies in favour of the Executive and in a form reasonably acceptable to the Executive in relation to the relevant aspects of this Clause 15 shall be evidenced to the Executive by a certificate from the relevant insurer(s).
- 15.4** For the avoidance of doubt, the Provider shall maintain the minimum levels of insurance as outlined in Schedule 7 (Insurance).
- 15.5** At the request of the Executive the Provider shall increase the agreed insurance limits or obtain additional coverage and the parties agree to discuss whether any alteration or adjustment to the amount of Funding is warranted thereby. Where the Executive agrees to alter or adjust the amount of Funding, any such alteration or adjustment shall be set out in Schedule 10 (Change Control).
- 15.6** The Provider shall, if requested by the Executive, provide the Executive with copies of its certificates of insurance or certified copies of all policies showing that all insurances required by the Provider under this Arrangement are in force for the periods specified. The Provider shall notify the Executive immediately in the event that any of such insurances cease to be available.
- 15.7** If the Provider fails to provide the insurance cover specified in this Arrangement, (for reasons other than those caused or attributed to unforeseen and materially adverse circumstances beyond the Provider's control which are then prevailing in the insurance market), the Executive may do so for the whole or part of the period for which such cover is required, without being under any obligation so to do, and may deduct any costs and/or expenses it incurs in obtaining such cover from any sums due to the Provider under this Arrangement, or otherwise recover such sums from the Provider.
- 15.8** The insurance policies required to be obtained by the Provider pursuant to this Clause 15 shall not limit the obligations, liabilities or responsibilities of the Provider under the terms of this Arrangement or otherwise. Any amounts not insured or recovered from the insurers shall be borne by the Provider in accordance with the obligations, liabilities and responsibilities set out under this Arrangement, except where and to the extent that, the Executive admits, or is adjudged to be, contributory or vicariously liable. If the Provider fails to effect and keep in force any of the insurance policies required under this Clause 15 any monies which should have been recoverable under the insurance shall be paid by the Provider to the Executive.
- 15.9** The Provider shall not permit any Provider Personnel to perform any work in connection with the Services unless the Provider Personnel is and remains insured in accordance with the insurance requirements of this Arrangement or that the Provider's insurances covers the activities of such Provider Personnel. The Provider shall indemnify the Executive for any loss suffered by the Executive for the failure of any Provider Personnel to be so insured.
- 15.10** The provisions of this Clause 15 shall survive termination and expiry of this Arrangement. In the event of termination or expiry, the Provider shall at the expense of the Provider, unless otherwise agreed with the Executive, continue to maintain the insurances required under this Clause 15 (including an indemnity in favour of the Executive and any alternative provider of the Services) on a run-off basis in respect of Services provided up to termination or expiry (and subsequent to termination or

expiry where Clause 35.4 applies), to adequately cover any existing and future claims. These insurance policies must contain terms and conditions which allow claims to be made in respect of matters arising during the term of this Arrangement (and subsequent to termination or expiry where Clause 35.4 applies) after the termination or expiry of this Arrangement.

16. Governance Arrangements

- 16.1** The Provider shall co-operate fully with the Executive by implementing policies and procedures consistent with the Framework for the Corporate and Financial Governance of the Executive (published by the Executive pursuant to Section 35 of the Health Act 2004) in areas which include internal audits, risk management, public procurement, financial reporting, quality of service and other matters which may be reasonably deemed appropriate by the Executive and to meet the standards of behaviour as set out in the Code of Standards of Behaviour within the Framework for the Corporate and Financial Governance of the Executive.
- 16.2** Without prejudice to Clause 16.1, the Provider shall ensure that its internal audit function complies with the principles set out in Clause 10.4(i).
- 16.3** Without prejudice to the generality of Clause 16.1, the Provider shall ensure compliance with the Standards for Governance and shall ensure its governance arrangements comply at all times with, the following principles:

The Board of the Provider is responsible for:

- (a) leading, directing and setting the strategy for the Provider's activities;
- (b) compliance by the Provider with all statutory obligations of the Provider;
- (c) establishing an appropriate structure of board committees to include an Audit, Remuneration, Risk, Quality and Safety and, if appropriate, a nomination committee;
- (d) ensuring that an adequate system for identifying, monitoring and managing risk is in place;
- (e) establishing and monitoring the effectiveness of the Provider's internal controls;
- (f) clearly documenting procedures for the appointment and disqualification of members of the Board of the Provider (if not already set out in the Provider's constitutional documentation);
- (g) ensuring the financial statements present a balanced, true, transparent and complete assessment of the Provider's financial position;
- (h) annually reviewing the performance of the Board of the Provider to identify ways to improve its effectiveness; and
- (i) maintaining an appropriate code of conduct applicable to all directors and staff of the Provider setting out standards of integrity, conduct, business ethics and concern for the public interest.

- 16.4** The Provider shall ensure that it has effective internal codes of governance in place which comply with the principles in Clause 16.3, including an adequate system of internal controls to ensure compliance with laws and regulations and the Provider shall use (among other relevant publications) the *Code of Practice for the Governance of State Bodies* publication as a guide in drawing up such codes of governance.
- 16.5** Where an issue of serious concern in relation to governance is identified, it shall be notified in writing to the Executive promptly together with a proposal for dealing with the issue and a timetable within which the issue will be addressed.
- 16.6** The Provider will co-operate with reviews of governance arrangements.
- 16.7** The Provider will conduct an annual assessment of its corporate governance practices and submit an annual compliance statement to the Executive prior to 31 May of each year (or such other date as the Executive may notify to the Provider) setting out its compliance with the Standards for Governance in respect of the preceding calendar year. The annual compliance statement shall be approved by the Board of the Provider and signed by the Chairman and one director on behalf of the Board of the Provider.

17. Provider Personnel

- 17.1** The Provider will maintain Employment numbers and costs within the agreed and approved limits as set out in Schedule 9 (Staffing).
- 17.2** The Provider, if required, will comply with its obligations in respect of Employment Monitoring Reports set out in Schedule 9 (Staffing) and the provisions of relevant HSE HR Circulars (including without limitation *HSE HR Circular 01/2006*; *the Health Service Personnel Census 2007*; *HSE HR Circular 04/2007* (copies of which have been received by the Provider) and subsequent replacements or amendments thereto from time to time.
- 17.3** The Provider agrees that it shall employ, contract, engage or accept, as part of the provision of the Services, only such persons who:
- (a) are registered, and maintain a current valid registration, with the appropriate statutory registration body;
 - (b) possess the appropriate qualifications, experience and skills to perform the duties required of them; and
 - (c) are covered by appropriate State indemnity / insurance for the provision of the Services and are members of a medical defence organisation or equivalent where appropriate.
- 17.4** In relation to the recruitment, promotion and retention of persons with professional qualifications obtained abroad, the Provider shall observe Directive 2005/36/EC; relevant Statutory Instruments on the recognition of professional qualifications and administrative arrangements in respect of such qualifications outside the scope of the Directive and shall not engage or promote any individual unless and until the Provider is satisfied that person's qualifications are recognised by the relevant competent authority for the purposes of, or in connection with, the provision of Services under this Arrangement.

- 17.5** The Provider will adhere to Government policy in relation to pay, including adherence to the consolidated salary scales and the Department of Health Circular 11/2013 on Health Sector Pay Policy (as may be updated, amended or replaced from time to time) and is not authorised to pay salaries in excess of the consolidated scales for approved grades.
- 17.6** The Provider shall ensure that every member of the Provider Personnel involved with the provision of the Services:
- (a) receives appropriate orientation and induction and proper and sufficient training and instruction in the execution of their duties; and
 - (b) receives full and detailed appraisal and support in terms of performance and on-going education and training in accordance with the standards of their relevant professional body if any.
- 17.7** The Provider will adhere to best practice standards in relation to the recruitment and selection of Provider Personnel and will keep appropriate records of all applications, selection processes references and contracts of employment.
- 17.8** Where the Provider is engaged in activity with access to children and vulnerable people, the Provider will agree with the Executive the categories of persons which are to be subject to the vetting process by An Garda Síochána, and/or subject to equivalent criminal background checks in respect of persons who have resided outside of Ireland. The Provider as the employer must be satisfied with and is responsible for the suitability of all persons employed by it.
- 17.9**
- (a) The Provider shall promptly take all necessary steps to fully investigate any allegation by any person of illegal, wrongful or inappropriate behaviour towards a Service User, whether by act or omission, by any member of Provider Personnel or any sub-contractor.
 - (b) In the event of any member of Provider Personnel having behaved illegally, wrongfully or inappropriately, whether by act or omission, or any allegation or complaint being made to the Provider that any such person has behaved in such a manner towards a Service User, the Provider shall take all necessary actions (including disciplinary actions where appropriate) in respect of such persons to ensure safety and protection of the Service User and Service Users generally and shall report the matter to the Executive and all relevant authorities including the State Claims Agency and/or their insurer
 - (c) The Provider will comply with all legal requirements and national guidelines issued by any Government Department or the Executive in respect of child protection and protection of vulnerable adults and shall comply with all reporting procedures in respect of suspected or actual abuse and shall notify the Executive of any reports and report to the State Claims Agency and/or their insurer.
- 17.10** The Provider shall record and regularly monitor the performance of its Provider Personnel to ensure they comply with:
- (a) the terms and conditions of this Arrangement;
 - (b) the professional standards current in the Health & Personal Social Services Sectors; and

(c) the standards of performance expected of them;

and shall take remedial action promptly where there is any non-compliance.

- 17.11** The Provider shall be responsible for making all statutory deductions in respect of its remuneration of its Provider Personnel and remitting such deductions in a timely manner to the relevant authorities.
- 17.12** The Provider assumes full responsibility for the actions of its Provider Personnel while performing the Services and shall be fully responsible for their acts or omissions, supervision, co-ordination and integration, daily directions and controls, payment and all matters relating to their employment, engagement and work.
- 17.13** This Arrangement is a contract for services between the Executive and the Provider. Any Provider Personnel involved in the provision of the Services shall in all respects be the responsibility of the Provider and not of the Executive. The Executive and the Provider hereby agree that for the Duration of this Arrangement it remains their intent that all Provider Personnel shall not be, nor deemed to be, employees of the Executive for any purpose or in any circumstance and the Provider shall hold the Executive harmless in respect of all such persons.
- 17.14** The Provider shall fully observe and comply with the provisions of all applicable employment/labour law both statutory and common law and regulations as are applicable to its Provider Personnel or to the Services including, and without limitation, any Employment Regulation Orders made pursuant to Section 43 of the Industrial Relations Act 1946 or employment agreements registered pursuant to Section 27 of the Industrial Relations Act 1946.
- 17.15** Recruitment campaigns for all fixed term non consultant medical staff who are not registered on the Trainee Specialist Division of the Medical Register, which are undertaken by the Provider (whether alone or in collaboration with one or more other entities), must be carried out by the HSE National Recruitment Service in conjunction with the Public Appointments Service where the cost of employing such personnel is to be funded in whole or in part from Funding provided by the Executive.
- 17.16** The Provider will indemnify the Executive in respect of all losses, damages, claims, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered as a result of any breach of the provisions of this Clause 17, including, without limitation any claim made or threatened, whether by legal proceedings or otherwise, against the Executive by any third party (including the Revenue Commissioners) on the grounds that any member of the Provider Personnel under or for the purposes of this Arrangement or for the purpose of providing or assisting in the provision of the Services is or was or is deemed to be or have been an employee of the Executive.
- 17.17** The Provider will co-operate with programmes/projects in the area of professional education, training and research as may be agreed with the Executive from time to time.
- 17.18** The Provider will consult with the Executive in the appointment and related remuneration package of the Chief Executive Officer and Senior Management Team or equivalent.

18. Transparency Requirements

- 18.1** The Provider shall publish an annual report (including its financial statements) on the Provider's website (or in such other manner as agreed with the Executive) which shall include a statement of whether or not any member of Provider Personnel is in receipt of aggregate remuneration which is equal to, or exceeds, the amount of salary payable at the first point of Grade VIII of the Department of Health's consolidated salary scale (corresponding to approximately €64,812, or such other amounts as the Executive may specify from time to time) and setting out, the number of Staff in receipt of remuneration packages for the reporting period that fall within each band of €10,000 from €64,814 (€74,814) upwards.
- 18.2** The Provider shall provide details to the Executive on an anonymised basis for each individual member of the Provider Personnel who is in receipt of aggregate remuneration which is equal to, or exceeds, the amount of salary payable at the first point of Grade VIII of the Department of Health's consolidated salary scale, in accordance with the requirements set out in Schedule 9 (Staffing).

19. Third Party Contracting

- 19.1** The Provider must obtain the prior written approval of the Executive if it wishes to engage an agent, subcontractor or third party to provide any of the Services or part thereof.
- 19.2** The Provider must ensure that any such agent, subcontractor or third party is subject to the same obligations to which the Provider is subject under this Arrangement.
- 19.3** The Provider shall be fully responsible for the acts and omissions of any such third party and will indemnify the Executive in respect of all losses, damages, claims, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by the Executive as a result of any acts and omissions of any such agent, subcontractor or third party.

20. Reorganisation or Restructuring

- 20.1** Where the Provider is contemplating or proposing to undertake or participate in any Reorganisation or Restructuring, the Provider shall:
- (a) inform the Executive, providing such information in relation thereto as the Executive may require; and
 - (b) request the Executive's consent to the Reorganisation or Restructuring, which consent shall not be unreasonably withheld and shall be granted provided the Executive is satisfied that the Reorganisation or Restructuring will not adversely affect (in the opinion of the Executive) the Services, the costs of the Services, the Funding and/or the governance of the Provider.

- 20.2** The consent required pursuant to Clause 20.1 shall be sought at least 6 months' (or such shorter or longer period as may be agreed) prior to the commencement of the Reorganisation or Restructuring.
- 20.3** Where the Executive is satisfied that the Reorganisation or Restructuring will not adversely affect (in the opinion of the Executive) the Services, the costs of the Services, the Funding and/or the governance of the Provider consents to the Reorganisation or Restructuring, the Executive shall consent to the Reorganisation or Restructuring and the Executive shall communicate this in writing to the Provider.
- 20.4** Where the Executive is minded not to consent to the Reorganisation or Restructuring as it is not satisfied that the Reorganisation or Restructuring will not or may not adversely affect the Services, the costs of the Services, the Funding and/or the governance of the Provider:
- (a) the Executive shall so inform the Provider in writing specifying the reasons for its proposed determination, the decision making process that the Executive will follow (as set out in Clause 20.4(b), 20.5 and 20.6) in determining whether to consent or not and outlining that if the Executive determines that it will not consent to the Reorganisation or Restructuring of the Provider and the Provider proceeds to undertake or participate in the Reorganisation or Restructuring that the Executive reserves the right to terminate this Arrangement in accordance with Clause 34.4; and
 - (b) specify in writing what steps the Executive requires the Provider to take (which may include without limitation the provision of indemnities, guarantees or assurances to the Executive in respect of the Services, the Funding or the governance of the Provider) or conditions or requirements to be observed in connection with the Reorganisation or Restructuring in order for the Executive's consent to be granted.
- 20.5** The Provider will have 14 days (or such other shorter or longer period as the Executive may specify) to make written representations to the Executive in respect of the matters referred to in Clause 20.4. The Executive shall consider the representations received from the Provider and within 14 days of receipt of same may (in its absolute discretion) meet with the Provider to discuss the matter.
- 20.6** Following expiry of the period provided for in Clause 20.5 and allowing for a further 14 day period from the date of a meeting between the parties should a meeting take place, having considered the Provider's representations (if any), the Executive shall make a determination and advise the Provider in writing of its determination.
- 20.7** Where the Provider:
- (a) fails to inform or seek the consent of the Executive to a Reorganisation or Restructuring in accordance with Clause 20.1; or
 - (b) undertakes or participates in the Reorganisation or Restructuring in the absence of the Executive's consent or despite the Executive's refusal to provide its consent in accordance with Clause 20.6;

then the Executive reserves the right to terminate this Arrangement in accordance with Clause 34.4.

21. Complaints (see also Schedule 8 (Complaints))

- 21.1** The Provider will maintain a complaints policy and procedure in compliance with Part 9 of the Health Act 2004; regulations made thereunder (including without limitation the Health Act 2004 (Complaints) Regulations 2006 (S.I. 652 of 2006)) and the Health Service Executive policy and procedures on complaints entitled “Your Service, Your Say” and any amendments or revisions thereto.
- 21.2** If, at the commencement of this Arrangement, the Provider does not have a complaints policy and procedure in place in accordance with Clause 21.1, the Provider undertakes to establish such a policy and procedure immediately.
- 21.3** The Provider shall submit a copy of its complaints policy and procedure to the Executive for approval. The Executive may direct the Provider to amend its complaints policy and procedure in such manner as the Executive sees fit, or alternatively to adopt the Executive’s complaints policy and procedure and the Provider shall so amend or adopt the complaints policy and procedure to meet the Executive’s requirements within the timescale as may be specified by the Executive.
- 21.4** The provider must use the NIMS as the primary ICT system to report and manage complaints in accordance with the Executives National Incident Management Policy
- 21.5** The Provider agrees to co-operate fully in any review of a recommendation made by complaints officer following investigation of a complaint against the Provider.
- 21.6** Where the Provider has established a complaints policy and procedure by agreement with the Executive, the Provider shall provide the Executive with a general report in each year on complaints received by the Provider in accordance with Section 55 of the Health Act 2004 at a time and in a manner as the Executive may specify, indicating-
- (a) the total number of complaints received,
 - (b) the nature of the complaints,
 - (c) the number of complaints resolved by informal means, and
 - (d) the outcome of any investigation into the complaints.

22. Access, Referrals, Admissions and Discharge Procedures

The Provider shall maintain policies and protocols in operation for the access, referral, admission and discharge procedures as outlined in Schedule 3 (Service Delivery Specification).

23. Risk Management

- 23.1** The Provider shall have in place a written risk management policy and demonstrable risk management process to ensure optimum management of all aspects of health care risks compatible with best practice. This will include having in place policies and procedures for the prevention and management of all incidents including serious incidents compatible with the Executive’s policy.
- 23.2** Agencies covered under State Indemnity are obliged to co-operate with the State Claims Agency to allow the agency to comply with Section 8 of the National Treasury Management Agency (Amendment) Act 2000

- 23.3 The Provider will work to enhance Service User safety through systems to identify and learn from all Service User safety and other reportable incidents, and will make improvements in practice based on information derived from the analysis of incidents and local and national experience.
- 23.4 The Provider will work to enhance the safety of staff, members of the public and other third parties through systems to identify and learn from their safety and other reportable incidents, and will make improvements in practice based on information derived from the analysis of incidents and local and national experience.
- 23.5 The Provider will provide such information as is required for the Executive's Risk Register.
- 23.6 Should the Provider identify any, incident including serious incidents arising in connection with the Services or any related matter, it will notify the Executive in writing, giving reasonable details of the issue and setting out the steps that will be taken to eliminate the risks identified. (including timely reports to the NIMS system where this is in operation)
- 23.7 The Provider must ensure that any requirements of the Provider's insurers in relation to risk management are complied with, in particular in relation to timing notifications.
- 23.8 The Provider must ensure that any requirements of the State Claims Agency in relation to risk management are complied with in particular notification of incidents to the NIMS.
- 23.9 The Provider shall maintain a register of risks facing the Provider and the Provider shall ensure that the top ten most serious risks facing the Provider at any given time are identified as such in the register.
- 23.10 The Provider agrees to cooperate fully in granting the Executive access to the risk register referred to in Clause when the Executive, at its own discretion, so requests.

24. Quality and Standards

- 24.1 The Provider shall develop and deliver the Services to a high quality and standard and in line with national health strategy, including the implementation of "Healthy Ireland - A Framework for Improved Health and Wellbeing 2013-2025".
- 24.2 The Provider shall comply with legislation relating to quality and standards and such other appropriate requirements as may be stipulated by the Minister, the Executive and/or recognised standard setting bodies, including HIQA and the Mental Health Commission and such standards as HIQA's National Standards on Safer Better Healthcare, or the Quality Framework for Mental Health Services in Ireland.
- 24.3 The Provider shall have in place appropriate mechanisms to assess quality and standards of the delivery of Services in line with best practice, as agreed with the Executive, or as may be stipulated by recognised standard setting bodies, including HIQA and such standards as HIQA's National Standards on Safer Better Healthcare. The Provider shall place a particular emphasis on quality indicators as they relate to improved health and wellbeing outcomes for Service Users and Provider Personnel.
- 24.4 The Provider will conduct Service User experience surveys or use qualitative methods of obtaining Service User input and have systems in place to provide routine monitoring and evaluation of Services.

24.5 The Provider shall comply with its obligations set out in Schedule 2 (Quality and Safety).

24.6 The Provider shall establish a Quality and Safety Board Committee which shall comply with the requirements set out in Schedule 2 (Quality and Safety).

25. Clinical Governance and Audit

25.1 The Provider will have in place governance arrangements with defined management processes, organisational roles, responsibilities and reporting relationships, which support the provision of safe and high quality services. The Provider will be accountable for the quality of service provision and the effective use of resources. (Specific measures, such as clinical audit, clinical effectiveness, outcome data etc. may be included, if appropriate, within Schedule 2 (Quality and Safety)).

25.2 The Provider shall develop and implement appropriate clinical governance arrangements for all its Services. These arrangements will be reviewed regularly by the Provider to ensure compliance with best practice.

25.3 The Provider shall make arrangements for effective monitoring of clinical care and clinical record keeping.

25.4 The Provider shall ensure that all Provider Personnel are made aware of and have access to processes or systems which enable them to raise, in confidence and without prejudice to their position in the organisation, concerns over any aspect of service delivery, treatment or management that they consider to have a detrimental effect on Service User care or the delivery of Services.

25.5 The Provider shall comply with all reasonable requests of the Executive to participate in or contribute to the Provider's clinical audit plans and arrangements.

25.6 The Provider will carry out and act on any recommendation of appropriate clinical audits.

26. Information and Confidentiality

26.1 The Executive shall provide to the Provider such documentation and other information in the possession of the Executive as may be reasonably required to enable the Provider to fulfil its obligations pursuant to this Arrangement but any such documents or information shall remain the property of the Executive. The Provider may retain any such information for the Duration of this Arrangement (unless the Executive requires return of it at an earlier date) at the end of which it shall be returned, together with any copies thereof, to the Executive.

26.2 Each party will ensure that any information acquired in or in connection with the performance of its obligations under this Arrangement concerning the other or the other's business, affairs, staff or procedures or relating to the provisions of this Arrangement and any negotiations or disputes between the parties to this Arrangement will be treated as confidential and will not be disclosed to any person, other than a person expressly authorised by either party.

26.3 Upon the termination of this Arrangement the Provider will ensure that it holds, manages and transfers all confidential information it has received or prepared in connection with its obligations under this Arrangement in whatever format it is held in accordance with all legal and regulatory requirements.

- 26.4** Either party may disclose information which would otherwise be confidential notwithstanding anything contained in Clause 26.2:
- (a) if and to the extent required by law or for the purpose of any judicial inquiry or proceedings;
 - (b) if and to the extent required by any regulatory or governmental authority in Ireland to which that party is subject;
 - (c) if and to the extent necessary or desirable for the conduct of any arbitration pursuant to Clause 33;
 - (d) to its professional advisers, auditors, bankers and insurers on a strictly confidential basis;
 - (e) if and to the extent the other party has given prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed; or
 - (f) if necessary for the Executive to fulfil its statutory object and functions pursuant to Section 7 of the Health Act 2004.
- 26.5** Any information to be disclosed pursuant to Clause 26.4 (a) to (f) shall be disclosed only after notice to the other party.
- 26.6** The provisions of this Clause 26 shall continue to apply notwithstanding the termination of this Arrangement for any reason.
- 26.7** The Provider will comply with Part 9A of the Health Act 2004 (as amended by Health Act 2007) and with any procedures of the Executive established pursuant to Section 55H of that Act.

27. Announcements and Communications

- 27.1** The Provider will acknowledge the support of the Executive in all public announcements and advertising, where appropriate.
- 27.2** The parties each reserves to itself the right to and control of the use of its names, symbols, trademarks, or service marks presently existing or later established, and neither party will use the other party's name(s), symbols, trademarks, or other service marks in any advertising or promotional material without the prior written consent of that party.

28. Freedom of Information

- 28.1** The Provider hereby acknowledges that the Freedom of Information Acts 1997 and 2003 (the "FOI Acts") applies to the Executive.
- 28.2** In the event that any information or materials held or prepared by the Provider are the subject of a request for information under the FOI Acts the Provider will procure that any such materials are supplied promptly to the Executive for consideration and, if appropriate, disclosure.
- 28.3** The FOI Acts offer certain procedural protection for some categories of information and the Provider hereby agrees to clearly identify any information or records which it considers to fall within such categories at the time of provision to the Executive,

stating the relevant category and the reason why it is believed that the document or information falls within that category.

28.4 Notwithstanding Clause 28.3, the Provider hereby acknowledges that the categorisation of the information by the Provider shall not be final or binding on the Executive and that disclosure may be permitted by law notwithstanding such categorisation.

28.5 Unless stated otherwise by the Provider when the relevant document or information is provided to the Executive, it will be assumed that such document or information is eligible for disclosure under the FOI Acts.

28.6 The Executive shall have no liability for any disclosure made by it in accordance with the requirements of the FOI Acts and this Clause 28.

29. Data Protection

29.1 Both the Executive and the Provider shall have regard to their statutory obligations under the DPA. In this regard, in so far as the Provider obtains and processes personal data relating to Service Users or any other persons in the course of the provision of the Services, it shall comply with its obligations as a "data controller" under the DPA and with all of the rules and policies governing the obtaining, retention, use, disclosure, security and deletion of information as may be set out in the Codes of Practice from time to time. Where the Executive provides personal data to the Provider, the Provider represents and undertakes to the Executive that it shall use, process and disclose such data only for the purposes permitted under this Arrangement.

29.2 The Executive will not request information in breach of the DPA and in the event of any dispute in this regard, the Executive will consider referral of the matter to the Data Protection Commissioner for determination.

29.3 The Provider shall ensure that it has obtained all consents, authorisations and permissions which are required by law to enable the Provider to access and disclose any personal data which is sought by the Executive other than where such disclosure is required pursuant to an enactment, rule of law or by order of a court.

29.4 Without prejudice to Clause 21 (Complaints) of this Arrangement, the Provider shall inform the Executive if it receives any written communication from the Office of the Data Protection Commissioner in connection with any Service User or the Services and, in responding to such communications, the Provider shall have regard to any views or representations provided by the Executive in relation thereto.

29.5 The Provider will promptly inform the Executive of any actual or suspected breach of security which would give rise to the actual or potential loss, theft, unauthorised release or disclosure of information or any part thereof (the relevant person in the Executive to be promptly informed is the "main contact person" named in Schedule 1 of this Arrangement). In such an event, the Provider will immediately supply the Executive with all relevant facts surrounding the actual or suspected breach. In the event that the Provider enters into any communication with the Office of the Data Protection Commissioner (including by way of example, the notification of a breach of the DPA), the Provider will inform the Executive as soon as possible.

29.6 The Provider hereby undertakes to comply with its obligations under this Clause 29 and to indemnify the Executive against any loss, compensation, damages, expenses

and costs which become payable or are incurred by the Executive in respect of or as a result of a breach by the Provider of this Clause 29.

30. Control of Strategic Claims

30.1 In the event of any Strategic Claim, or any matter which may give rise to a Strategic Claim, the Provider shall:

- (a) as soon as reasonably practicable upon the Provider becoming aware of same give notice in writing to the Executive of the Strategic Claim and provide such particulars in respect thereof as the Executive may request (the relevant person in the Executive to be promptly informed is the "main contact person" named in Schedule 1 of this Arrangement);
- (b) promptly give such information and access to personnel, premises, chattels, documents and records held or controlled by the Provider to the Executive and/ or its professional advisers as the Executive and/or its professional advisers may request;
- (c) in circumstances which the Executive regard as exceptional and upon the request of the Executive, allow the Executive to take sole conduct, either in the name of the Provider or the Executive, of the Strategic Claim (or any part thereof) as the Executive may deem appropriate, and the Provider shall:
 - (i) follow such directions, take such action, institute such proceedings and give or cause to be given to the Executive all such information and assistance as the Executive may reasonably require (including in avoiding, disputing, resisting, settling, compromising, defending or appealing any claim, or demand or proceeding arising in relation to or in connection with the matter); and
 - (ii) instruct such solicitors or other professional advisers as the Executive may nominate to act on behalf of the Provider and/or the Executive, and to act in accordance with the Executive's sole instructions provided always that the Executive keeps the Provider reasonably informed as to the progress of the claim, action or proceedings;
- (d) at any time upon the request of the Executive, in instances where the Executive does not deem it appropriate to take sole conduct of the Strategic Claim (or any part thereof), keep the Executive well informed of the progress of the Strategic Claim, and act in accordance with all such directions and instructions as the Executive and its professional advisers may require;
- (e) make no admission of liability, agreement, settlement or compromise with any third party in relation to any Strategic Claim the subject of this Clause 30 without the prior written consent of the Executive; and
- (f) use all reasonable endeavours to minimise the amount of any liabilities or losses suffered or incurred by the Provider and any exposure of the Executive.

30.2 Without prejudice to the generality of the foregoing, the Executive shall in circumstances which it regards as exceptional:

- (a) be entitled (without obligation on its part) to determine the conduct, or course of action to be taken, in respect of any Strategic Claim (and any part thereof) the subject of this Clause 30, including, without limitation, pursuing any application(s) to the Court; and
- (b) be entitled (without obligation on its part) at any stage and at its sole discretion to settle any Strategic Claim (or any part thereof) the subject of this Clause 30, provided that the Executive shall, where practicable, notify the Provider in advance of such settlement.

31. Major Incidents

- 31.1** The Provider shall report, within twenty-four (24) hours of occurrence, any Major Incidents which may impinge on the delivery of Services specified by this Arrangement where such incidents have significant implications for the contractual and service relationship between the parties.
- 31.2** All major incidents should be reported to the State Claims Agency using the National Incident Management System.
- 31.3** During the period of the Major Incident, the extent to which it impacts upon the Provider's ability to provide services, including elective activities, under-performance in delivering such activities during a Major Incident will not constitute a matter for which the Executive may issue a Performance Notice.
- 31.4** Where a dispute relating to matters which constitute a Major Incident arises it shall be resolved through the dispute resolution procedures outlined in this Arrangement.
- 31.5** During the period of a Major Incident the Provider shall be paid for performance of the Services and under-performance as a result of the Major Incident shall not be penalised.
- 31.6** Promptly following a Major Incident the parties shall discuss the circumstances that gave rise to the Major Incident, whether the action taken by the Provider to deal with the Major Incident ought to be continued and whether any adjustment or alteration in the Funding (as a consequence of the Major Incident) is appropriate. Where the Executive and the Provider do not agree that the actions taken by the Provider to deal with the Major Incident ought to be continued, then the parties shall discuss the appropriate actions to be taken in the circumstances in the best interests of the relevant Service Users and the Provider shall implement the actions recommended/agreed with the Executive. Where the Executive agrees to alter or adjust the amount of Funding as a consequence of the Major Incident, any such alteration or adjustment shall be set out in Schedule 10 (Change Control).

32. Force Majeure

- 32.1** "Force Majeure" means, in relation to either party, a circumstance beyond the control of that party (the "Claiming party") and lock-outs, strikes and other industrial disputes (in each case, whether or not relating to the Claiming party's workforce and whether or not beyond the reasonable control of the Claiming party). For the avoidance of doubt, Force Majeure does not include Major Incidents which shall be dealt with in accordance with Clause 31 of this Arrangement.
- 32.2** The Claiming party will not be in breach of this Arrangement or otherwise liable to the other party (the "Non-claiming party") for any delay in performance or any non-

performance of any obligations under this Arrangement (and the time for performance will be extended accordingly) if and to the extent that the delay or non-performance is owing to Force Majeure. This Clause 32 only applies if:

- (a) the Claiming party could not have avoided the effect of the Force Majeure by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all relevant factors, it ought reasonably to have taken but did not take; and
- (b) the Claiming party has used reasonable endeavours to mitigate the effect of the Force Majeure and to carry out its obligations under this Arrangement in any other way that is reasonably practicable.

32.3 The Claiming party will promptly notify the Non-claiming party of the nature and extent of the circumstances giving rise to Force Majeure. The parties shall discuss the appropriate actions to be taken in the circumstances in the best interests of the relevant Service Users and the Provider shall implement the actions recommended by the Executive.

32.4 If the Force Majeure in question prevails for a continuous period in excess of one (1) month after the date on which the Force Majeure begins, the Non-claiming party is then entitled to give notice to the Claiming party to terminate this Arrangement. The notice to terminate must specify the termination date, which must be not less than ten (10) clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Arrangement will terminate on the termination date set out in the notice.

32.5 Neither party shall have any liability to the other in respect of termination of this Arrangement due to Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist.

33. Dispute Resolution

33.1 The parties to this Arrangement shall endeavour to avoid disputes and deal with issues as they arise. It is expected that any disputes in relation to this Arrangement shall be resolved through direct discussion between representative(s) managing this Arrangement on behalf of the Executive and representative(s) of the Provider. Such discussions shall take place at the Review Meetings.

33.2 In the event of any dispute between the Provider and the Executive arising out of or in connection with this Arrangement (which shall be evidenced by one party serving on the other a **Dispute Notice**, setting out in reasonable detail the matter(s) in dispute and in the case of a Dispute Notice served by the Executive, shall be authorised by an employee of the Executive of a grade not less than National Director or senior manager of the Executive at a grade not less than area manager or equivalent, the parties hereby agree subject to Clause 33.4 to resolve any dispute in accordance with the dispute resolution process set out below:

(a) **Stage 1**

In the event of a dispute arising out of or in connection with this Arrangement, a designated representative of the Executive and one representative from the Provider will meet within seven (7) days of the date of the Dispute Notice to endeavour to resolve the issue within a further fourteen (14) day period from the date of the said meeting. In the event that

the issue is not resolved, and confirmed as having been fully and finally resolved by written binding agreement between the parties, within the said fourteen (14) day period (or such other period as is agreed in writing between the parties) then the parties shall immediately progress to Stage 2, as set out below in Clause 33.2(b).

(b) **Stage 2**

A meeting shall take place between the designated representative(s) of the Executive (not being the representative involved in Stage 1) and a senior representative of the Provider, to discuss resolution of the issue. In the event that the issue is not resolved, and confirmed as having been fully and finally resolved by written binding agreement between the parties, within twenty (20) Business Days from the Commencement of Stage 2 (or such other period as is agreed in writing between the parties) then the parties shall immediately progress to Stage 3, as set out below in Clause 33.2(c).

(c) **Stage 3**

If the dispute remains unresolved as between the parties after the completion of Stage 2 then the Provider may request the Executive to refer the dispute for full and final resolution to arbitration. If the Executive agrees to refer the matter, the arbitrator shall be nominated by agreement in writing between the parties. In the event that agreement on the appointment of an arbitrator cannot be reached between the parties within fourteen (14) days of the commencement of Stage 3 (or such other period as is agreed in writing between the parties), then the parties hereby agree that the arbitrator shall be appointed by the President of the Law Society of Ireland for the time being.

- (i) The arbitration shall be governed by Irish law and by the provisions of the Arbitration Act 2010, and any re-enactment, adaptation, amendment or extension of same for the time-being in force;
- (ii) The award of the arbitrator shall be final and binding on both parties;
- (iii) The arbitrator shall have power to determine all disputes arising out of or in connection with this Arrangement between the parties;
- (iv) The seat of arbitration shall be Dublin, Ireland and the language of the arbitration shall be English.

33.3 Arbitration of any dispute arising out of or in connection with this Arrangement shall not prevent or delay in any way performance of its obligations under this Arrangement by the Provider in accordance with the terms of this Arrangement, unless otherwise agreed between the parties, and should a dispute occur, the Provider must ensure that Services to Service Users will not be affected.

33.4 The Executive may refuse to proceed with the dispute resolution process set out at Clause 33.2 in any case where the Executive deems the matter to be frivolous, vexatious, without substance, an abuse of process or adequately dealt with and the Executive shall notify the Provider in writing accordingly.

33.5 The provisions of this Clause 33 shall be without prejudice to the Executive's right, in exceptional circumstances, to withdraw from and terminate the dispute resolution process (including any arbitration) at any stage.

- 33.6** A decision to refuse to proceed with the dispute resolution process pursuant to Clause 33.4 or to withdraw from and terminate the dispute resolution process (including any arbitration) pursuant to Clause 33.5 shall be authorised by an employee of the Executive of a grade not less than National Director or senior manager of the Executive at a grade not less than area manager or equivalent.
- 33.7** The provisions of this Clause 33 shall be without prejudice to any other rights of the parties pursuant to this Arrangement.
- 33.8** The provisions of this Clause 33 shall be without prejudice to the Executive's right to terminate this Arrangement pursuant to Clause 34.

34. Termination or Expiry

- 34.1** Subject to the provisions of Clause 34.7, in the event of a serious breach of the performance of this Arrangement by the Provider (which shall be determined by an employee of the Executive of a grade not less than National Director [or senior manager of the Executive at a grade not less than area manager or equivalent]), the Executive reserves the right to terminate this Arrangement by giving the Provider three months' written notice (or such other written notice period as may be agreed).
- 34.2** In the event of a serious breach of the performance of this Arrangement by the Executive (which shall be determined by the Chief Executive Officer or equivalent of the Provider, acting reasonably), the Provider reserves the right to terminate this Arrangement giving three months' written notice (or such other written notice period as may be agreed).
- 34.3** Subject always to Clause 35, either party may terminate this Arrangement by giving 12 months' written notice (or such lesser written notice period as may be agreed) to the other party.
- 34.4** The Executive may terminate this Arrangement upon provision of six months' written notice where:
- (a) in respect of the Provider, a Reorganisation or Restructuring, dissolution or other analogous event (whether statutory or otherwise) occurs where the circumstances described in Clause 20.7 exist, or,
 - (b) in respect of the Executive, any significant organisational, governance or policy change affecting the Executive occurs, which the Executive is of the opinion substantially alters the nature, manner or amount of the Services and/or the Funding or the ability of the Executive or the Provider to perform its obligations under this Arrangement.
- 34.5** In the event that the Executive wishes to conduct a public procurement in respect of services which include all or part of the Services which are the subject of this Arrangement, the Executive may terminate this Arrangement (in whole or in part) upon provision of six months' written notice and reserves the right to award future services (whether or not such services are similar to the all or some of the Services) in accordance with any public procurement process which may take place.
- 34.6** For the purposes of Clause 34.1, a "serious breach" shall include but not be limited to
- (a) the failure of the Provider to use the Funding in the most beneficial, efficient and effective manner to provide the Services;

- (b) the failure of the Provider to comply with a First Performance Notice or a Second Performance Notice served under Clause 14 of this Arrangement;
- (c) the failure of the Provider to comply with the information requirements in Clause 10.4(xiv);
- (d) without prejudice to Clause 34.6(c) the repeated failure of the Provider to comply with the other information requirements pursuant to Clause 10;
- (e) the failure of the Provider to comply with Clauses 17.8 and/or 17.9 of this Arrangement;

and for the purposes of Clause 34.2, a “serious breach” shall include but not be limited to

- (f) the repeated failure of the Executive, without demonstrable grounds and following written requests by the Provider to the Executive, to provide the Funding pursuant to this Arrangement.

34.7 If, in accordance with Clause 34.1, the Executive is of the opinion that there may be a serious breach of the performance of this Arrangement by the Provider and as a result the Executive is minded to terminate this Arrangement by giving the Provider three months’ notice (or such other written notice period as may be agreed) then the Executive shall give notice in writing to the Board of the Provider specifying:

- (a) the principal reasons why the Executive is of the opinion that there may be a serious breach of the performance of this Arrangement by the Provider;
- (b) the respects in which the Executive considers the Provider is in serious breach of the performance of this Arrangement;
- (c) the decision making process which the Executive will follow in determining whether there is a serious breach which may result in termination of this Arrangement, which decision making process is set out in more detail in Clauses 34.7(d) to 34.7(f) below.
- (d) The Provider will have 14 days (or such other shorter or longer period as the Executive may specify) from the date of the notification letter to make written representations to the Executive in respect thereof and/or to address the matters specified in the notification letter.
- (e) The Executive shall consider the representations received from the Provider and may (in its absolute discretion) meet with the Provider to discuss the matter.
- (f) Following expiry of the period provided for in Clause 34.7(d) and having considered the Provider’s representations (if any), the Executive shall make a determination on whether there is a serious breach of the performance of this Arrangement by the Provider and as a result the Executive is to terminate this Arrangement by giving the Provider three months’ notice (or such other written notice period as may be agreed).
- (g) In relation to a determination made pursuant to Clause 34.7 (f) to terminate this Arrangement, the Provider may invoke Clause 33.2 (c) to access third party arbitration, consent to which shall not be unreasonably withheld. If the

provider exercises the right to invoke arbitration this must be done within 14 days of receipt of the notice of termination and judgement by the arbitrator shall be made within the terms of the termination notice.

34.8 Without prejudice to Clause 2.4, and subject always to Clause 35, the Provider shall give the Executive 12 months' written notice prior to the expiry of this Arrangement in the event that the Provider does not wish to provide Services or receive Funding from the Executive for the Financial Year following expiry of this Arrangement.

34.9 Without prejudice to Clause 2.4, and subject always to Clause 35, the Executive shall give the Provider 12 months' written notice prior to the expiry of this Arrangement in the event that the Executive does not wish to secure the provision of the Services from the Provider for the Financial Year following expiry of this Arrangement.

34.10 Termination due to Insolvency, etc of Provider

Without prejudice to the rights of the Executive to terminate this Arrangement pursuant to Clause 32 and this Clause 34 and subject always to Clause 35, if

- (a) the Provider enters into any composition, assignment or arrangement with its creditors generally or if a resolution is passed, a petition is presented (save, in the case of petition, where such petition is being contested in good faith by the Provider, as the case may be, and is discharged within 90 days of the date of its presentation or where such petition is in the opinion of the Provider vexatious or frivolous in nature and is discharged within 90 days of the date of its presentation) or if an order is made for the winding up, administration or liquidation of the Provider, (save for an amalgamation or reconstruction, the terms of which shall first have been approved in writing by the Executive, acting reasonably) or if, an administrator, an administrative receiver, a receiver, a liquidator, a manager, a trustee-in-bankruptcy or other similar officer is appointed over the whole or the whole or substantially the whole of the assets or undertaking of the Provider;
- (b) any execution, order or other process in respect of an amount which (in the opinion of the Executive) would or could have a material impact on the Provider and/ or the provision of the Services and which is not discharged within 90 days is levied on the chattels of or the possessions of the Provider;
- (c) the Provider, stops or threatens to stop payment of its debts generally or ceases to carry on substantially all of its business or admits its inability to pay its debts generally or is for the purposes of section 214 of the Companies Act, 1963 (or any statutory modification thereof or under any other analogous law under any other relevant jurisdiction) deemed to be unable to pay its debts;
- (d) any cross-default of the Provider in excess of an amount which (in the opinion of the Executive) would or could have a material impact on the Provider and/ or the provision of the Services under any other facilities provided by any third party to the Provider and such default has not been cured within any applicable grace period,
- (e) any similar events to the above occurring under any other relevant jurisdiction in which the Provider is incorporated, resident or carries on business), or
- (f) the Provider (or a key member of the Provider's Personnel) dies or becomes incapacitated and as a consequence the continued provision of the Services by

the Provider is delayed, or rendered incapable or substantially more difficult of being performed provided that either party must give notice to the other party at the earliest available opportunity if it forms the opinion that the continued provision of the Services will be delayed, rendered incapable or substantially more difficult of performance as a consequence of death or incapacity,

then this Arrangement shall terminate immediately, without prejudice to the Executive's rights and remedies.

34.11 The Executive may, by notice in writing to the Provider, withdraw any notice of termination issued pursuant to this Arrangement and the Executive may, at its discretion, replace such notice of termination with a new notice of termination served in accordance with this Arrangement, which shall supersede all previous notices of termination.

35. Effect of Termination or Expiry

35.1 If the Executive or the Provider exercises its rights to terminate this Arrangement, the Executive will within a period of forty-five (45) days' pay to the Provider reasonable and agreed costs accrued to the date of termination (or in the event such costs cannot be agreed, such reasonable costs which the Executive believes have fairly accrued to the date of termination), but if this Arrangement is terminated by the Executive on the grounds that the Services provided are unsatisfactory, the Executive shall pay to the Provider only the proportion of the Funding which is in respect of the Services provided prior to termination which meet a standard, which is in all respects to the reasonable satisfaction of the Executive.

35.2 Neither party shall be liable to the other party for any loss of profit, contracts, goodwill, business opportunity or anticipated saving arising out of or in connection with the termination of this Arrangement for any reason or any consequential loss or damage that may arise out of termination of this Arrangement.

35.3 Termination of this Arrangement for any reason shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other party prior to termination.

35.4 Upon termination or expiry of this Arrangement the Executive and the Provider will endeavour to make interim arrangements in respect of those Service Users who are receiving Services on the effective date of termination or expiry that will minimise disruption or distress to such Service Users. Pending the finalisation of any such arrangements in respect of such Service Users, the Provider will continue to care for, and accommodate, any Service User who is receiving Services on the effective date of termination or expiry until such time as any new arrangements are effective or until the Service User can be discharged or transferred to another facility, whichever is earlier. The terms and conditions of this Arrangement (including funding obligations) will continue to bind each party and remain in effect for Services provided to each such Service User until discharge or transfer or until any new arrangements become effective, whichever is earlier. Both Parties will endeavour to complete such transition arrangements within a 6 month period.

35.5 In the interests of safeguarding the well-being, welfare and the continuity of Services to Service Users, upon termination or expiry of the whole or any part of this Arrangement, the Provider shall, if required by the Executive on a temporary basis, provide reasonable access to the Executive to any premises used in the provision of

the Services until such time as the transfer of Service Users to any new premises, or discharge of Service Users, can reasonably occur.

35.6 Upon termination or expiry of the whole or any part of this Arrangement:

- (a) the Provider shall co-operate fully with the Executive in providing any data, confidential information and documentation in relation to the Services and/or Service Users as may reasonably be required by the Executive or any replacement provider of services;
- (b) the Provider shall co-operate fully with and provide all reasonable assistance to any replacement provider of services so as to ensure an efficient and expedient transition to the replacement provider without delay or disruption to the provision of the Services; and
- (c) the Provider shall immediately return, at its own cost, to the Executive or destroy at the Executive's request, any property in its possession or under its control that belongs to, or has been predominantly funded by, the Executive.

35.7 Without prejudice to the provisions of this Arrangement in respect of liability, the Provider agrees to use reasonable endeavours to mitigate its losses in the event of termination of this Arrangement for any reason.

36. Representations and Warranties of the Provider

The Provider represents and warrants to the Executive that:

- 36.1** it has all necessary power and authority to execute, deliver and perform its obligations under this Arrangement;
- 36.2** the execution, delivery and performance by it of this Arrangement has been authorised by all necessary action on its part; and
- 36.3** each of the obligations of the Provider under this Arrangement constitutes a legally binding obligation.

37. General

37.1 Prior Obligations of the Executive

Nothing in this Arrangement shall prevent or restrict the Executive from performing or omitting any act or thing which it is required to perform or omit pursuant to a statutory right or obligation or an order or written direction (whether general or specific) of the Minister.

37.2 Existing Rights

Without prejudice to the statutory rights, obligations and powers of the Executive and any orders or written directions of the Minister, nothing in this Arrangement, with the exception of the rights and/ or obligations specified in this Arrangement, shall add to, alter or reduce, or be construed as adding to, altering or reducing, the existing rights of the parties prior to entering into this Arrangement.

37.3 Notices

- (a) Subject to Clause 37.3(b), any notice or other communication under this Arrangement shall only be effective if it is in writing.
- (b) Communication by electronic mail or other electronic methods of writing shall be effective under this Arrangement in respect of day-to-day operational communications only.
- (c) Communication by electronic mail or other electronic methods of writing shall not be effective under this Arrangement in respect of any notices issued pursuant to this Arrangement including those issued under Clause 14 (Performance Notice) and Clause 33 (Dispute Resolution).
- (d) No notice or other communication given or made under this Arrangement may be withdrawn or revoked.
- (e) Any notice or other communication given or made under this Arrangement shall be addressed as provided in Clause 37.3(g) and, if so addressed, shall, in the absence of earlier receipt, be deemed to have been duly given or made as follows:
 - (i) if sent by personal delivery, on delivery at the address of the relevant party;
 - (ii) if sent by pre-paid post, two (2) clear Business Days after the date of posting;
 - (iii) if sent by facsimile, when the sender receives a completed transmission sheet or otherwise receives a mechanical confirmation of transmission.
- (f) Any notice or other communication given or made, or deemed to have been given or made, outside Office Working Hours will be deemed not to have been given or made until the start of the next period of Office Working Hours.
- (g) The relevant notice details are:

Title of recipient:	Address:	Facsimile number:
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<i>[Insert name of HSE Responsible Contact – there may be several contacts depending on areas covered]</i>	<i>[Insert Address of HSE Responsible Contact]</i>	<i>xxx</i>
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<i>[Insert name of Provider Responsible Contact – there may be several contacts depending on</i>	<i>[Insert address of the Registered office of the Provider & Responsible Contact (if different)]</i>	<i>xxx</i>
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Title of recipient: **Address:** **Facsimile
number:**

areas covered]

- (h) A party may notify the other parties of a change to its notice details. That notification shall only be effective on:
 - (i) any effective date specified in the notification; or
 - (ii) if no effective date is specified or the effective date specified is less than five (5) clear Business Days after the date when notice is received, the date falling five (5) clear Business Days after the notification has been received.
- (i) The provisions of this Clause 37.3 shall not apply in relation to the legal service of documents.

37.4 Remedies and Waivers

- (a) No delay or omission by any party to this Arrangement in exercising any right, power or remedy provided by law or under this Arrangement shall:
 - (i) affect that right, power or remedy; or
 - (ii) operate as a waiver of it
- (b) The exercise or partial exercise of any right, power or remedy provided by law or under this Arrangement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- (c) The rights, powers and remedies provided in this Arrangement are cumulative and not exclusive of any rights, powers and remedies provided by law.

37.5 Severability

If at any time any provision of this Arrangement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that shall not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Arrangement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Arrangement.

37.6 Alterations Do Not Affect Standard Terms

- (a) This Arrangement reflects the standard terms and conditions which the Executive has determined will apply to the provision of Funding under the

Health Acts from ●¹. By accepting Funding from the Executive on or after such date, the Provider has accepted, without amendment, all of the provisions contained in this Arrangement.

- (b) Any alteration, mark-up or strike-through of any of the provisions of this Arrangement by the Provider shall be ineffective and shall not prevent the applicability of the terms and conditions determined by the Executive or affect the enforceability of same against the Provider by the Executive in any way.

37.7 No Partnership and No Agency

- (a) Nothing in this Arrangement and no action taken by the parties pursuant to this Arrangement shall constitute, or be deemed to constitute, a partnership, association, joint venture or other co-operative entity between any of the parties.
- (b) Subject to Clause 14.5, nothing in this Arrangement and no action taken by the parties pursuant to this Arrangement shall constitute, or be deemed to constitute, any party as the agent of any other party for any purpose. Neither party has, pursuant to this Arrangement, any authority or power to bind or to contract in the name of the other party to this Arrangement.

37.8 Further Assurance

Either party shall, from time to time on request, do or procure the doing of all acts and/or the execution of all documents in a form satisfactory to the other party which the other party may reasonably consider necessary for giving full effect to this Arrangement and securing to the other party the full benefit of the rights, powers and remedies conferred upon it in or by this Arrangement.

37.9 Entire Agreement

- (a) For the purposes of this Clause 37.9, “**Pre-contractual Statement**” means a draft agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to this Arrangement made or given by a party to this Arrangement or any other person at any time prior to the date of this Arrangement.
- (b) This Arrangement constitutes the whole and only agreement between the parties relating to the provision of the Services.
- (c) Except to the extent repeated in this Arrangement, this Arrangement supersedes and extinguishes any Pre-contractual Statement.
- (d) Each party acknowledges that in entering into this Arrangement it is not relying upon any Pre-contractual Statement which is not set out in this Arrangement.
- (e) No party shall have any right of action against any other party to this Arrangement arising out of or in connection with any Pre-contractual Statement (except in the case of fraud) except to the extent repeated in this Arrangement.

¹ Date to be inserted.

37.10 Variation

- (a) The Schedules to this Arrangement may be varied in writing (excluding electronic methods of writing) signed by each of the parties. Any request for a change to the Schedules shall be accompanied by a completed Contract Change Note (CCN), as included within Schedule 10 (Change Control). Until such time as a Contract Change Note (CCN) has been signed by both parties, the Service Provider shall, unless otherwise expressly agreed in writing, continue to supply the Services in accordance with the Schedules to this Arrangement.
- (b) The Executive reserves the right to amend this Arrangement by notice in writing to the Provider should there be a change in legislation or an order of the Minister necessitating such amendment and subject to paragraph (c) below the Provider shall be bound by such amendment for the Duration of this Arrangement.
- (c) The parties agree to discuss in good faith and on a strictly without prejudice basis any adjustment to the Funding or Services required or desirable to take account of any change in law, direction, requirement for authorisation (in each case not at the date hereof required or in force) that causes a demonstrated material increase or decrease in costs [of 5 % or greater] to the Provider providing the Services in accordance with this Arrangement. The parties shall as far as practicable co-operate to seek to mitigate the effects of such a change.

37.11 Costs and Expenses

Each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution, implementation and interpretation of this Arrangement.

37.12 Counterparts

- (a) This Arrangement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- (b) Each counterpart shall constitute an original of this Arrangement, but all the counterparts shall together constitute but one and the same instrument.

37.13 Governing Law and Jurisdiction

- (a) This Arrangement shall be governed by and construed in accordance with the laws of Ireland.
- (b) The parties to this Arrangement irrevocably agree that the courts of Ireland are to have exclusive jurisdiction to settle any dispute arising out of or in connection with this Arrangement and, for such purposes, irrevocably submits to the exclusive jurisdiction of such courts. Any proceeding, suit or action arising out of or in connection with this Arrangement (the "Proceedings") shall therefore be brought in the courts of Ireland.
- (c) The parties to this Arrangement irrevocably waive any objection to Proceedings in the courts referred to in Clause 37.13(b) on the grounds of venue or on the grounds of forum non conveniens.

DRAFT 14th April 2015

IN WITNESS WHEREOF this Arrangement is executed by the parties as follows:-

Signed by
for and on behalf of **[PROVIDER]**:

Name:

Print Name:

Date
.....

Title:

Signed by
for and on behalf of the
HEALTH SERVICE EXECUTIVE:

Name:

Print Name:

Date
.....

Title:

DRAFT 14th April 2015