



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

**Explanatory Guide to**  
**Service Arrangement Documents**  
**Section 38 & Section 39 Health Act, 2004**  
**(Incorporating Section 10, Child Care Act, 1991)**  
**And**  
**Commercial (for Profit)**

**Please note that this document provides an explanatory guide to the Service Arrangements but is not a legal interpretation of the documents**

## **Introduction**

The HSE framework for the Governance of Non-statutory Agencies provides for a set of standard documents to be used to formalise service arrangements with non-statutory agencies, providing personal health and social services. All agencies in receipt of annual funding in excess of €250,000 from HSE are required to sign a Service Arrangement.

There are three versions of the Service Arrangement document for use in the following circumstances:

- **Section 38 Service Arrangement Document**

This document should be used in respect of the 25 non-acute and 16 acute non-statutory agencies that are encompassed by the HSE Employment Control Framework. These are commonly referred to as the former direct-funded agencies/Section 26 agencies/Schedule 2 agencies.

- **Section 39 Service Arrangement Document**

This document should be used in respect of all other non-statutory voluntary and community (Not for Profit) agencies providing personal health and social services that receive funding over €250,000 per annum from HSE.

- **Agencies Funded Under Section 10, Child Care Act, 1991**

A number of agencies receive funding under Section 10 of the Child Care Act, 1991 in respect of child care or family support services. These funding arrangements should utilise the Section 39 Service Arrangement Documentation where annual funding from HSE is in excess of €250,000.

- **Commercial for Profit Service Arrangement Document**

This document should be used for arrangements with commercial for profit agencies / companies being funded to provide personal health and social services regardless of the funding threshold.

- **Differences Between Section 38 / Section 39 / Commercial for Profit Service Arrangements**

While the three documents have been synchronised where possible, there are some differences which relate to the different incorporated status of the entities, legal requirements and some additional differences relating to particular funding governance required under the Health Acts.

For the purposes of this guide the explanations of the various clauses and schedules can be taken as being applicable to all three service arrangement documents unless a material difference is otherwise indicated.

## **Arrangement Structure**

The Service Arrangement consists of two parts:

### **Part 1 Arrangement**

This consists of 34 Standard Clauses common to all Service Arrangements. (32 in the For Profit SA) They form the main body of the Arrangement and set out the legal framework under which both parties agree to work. This part of the Arrangement cannot be altered.

### **Part 2 Schedules**

This consists of a set of 10 Schedules to the Arrangement. These Schedules specify detailed information on services delivered locally under each Care Group with a particular organisation / service provider. The format of this part of the Arrangement cannot be altered however the specific detail that is set out in the Schedules is determined at local level between both parties.

Separate sets of Schedules exist for Arrangements in relation to the provision of Acute Hospital Services and the provision of Non Acute Community Care Services.

Schedules exist for each of the care groups in the Non Acute sector which have been pre-populated with relevant common information.

A Guide to completing the Schedules has been prepared and is available on the HSE Intranet.

## Explanatory Guide to Part 1 Arrangement

### Index of Areas covered by Schedules (Page 1)

Each separate set of service arrangement schedules should be listed, together with the funding level.

### Service Arrangement (Page 2)

Names of the two parties to the Service Arrangement, the date the arrangement commences and some general background to the Arrangement are set out on page 2.

### Clause 1 - Definitions and Interpretations

Clauses 1.1 – 1.3	Provide definitions and interpretations of a number of key words and terms used throughout the document and states that all headings and titles are used for convenience only. Some differences in terms and definitions apply to each of the three different Service arrangements.
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### Clause 2 - Appointment and Principles - Principles of Arrangement in S. 39 Commercial for Profit

Clause 2.1	Confirms the appointment of the Agency [S 39/Commercial for Profit, confirms agreement of HSE to provide funding] subject to the terms and conditions of the Arrangement.
Clause 2.2	Sets out a range of principles that both parties to the Arrangement will endeavour to work to. Sub-clauses (a) – (j) specify a number of principles to be aspired to including: quality, standards, responding to need, collaboration, compliance with Codes of Practice, protection of State's Interest, community involvement, accountability, person-centred services, cost effectiveness, business ethics etc.

### Clause 3 - Roles and Responsibilities

Clause 3.1	Sets out details of the duties, roles and responsibilities of the HSE covering issues such as: the allocation of funding, respecting autonomy and identity of the Agency, supporting and providing information etc.
Clause 3.2	Sets out details of the duties, roles and responsibilities of the Agency under the headings: General; Provision of Services and Other Obligations covering issues such as: service delivery, knowledge and experience, access to services, diligence, compliance with health policy, relevant permissions/licences, respect for HSE's statutory role, compliance with all relevant legislation, charges etc.  Clause applicable to S38 not in S39 or Commercial Arrangement <ul style="list-style-type: none"><li>• Clause c) (x) relates to Finance circular 3/2011 S.I. 40/2011 Control of Secured Borrowings</li><li>• Clause c) (xx) Client charges is worded differently in</li></ul>

	<p>S38 to account for specific elements of the legislation and regulation which apply only to S38 agencies.</p> <p>Clause in both S38/S39 not Commercial Arrangement</p> <ul style="list-style-type: none"> <li>• Clauses c) (iv &amp; v) concerning employment of person who availed of public sector reduction schemes and payments of non public sector norms are not in the Commercial /For Profit Document.</li> </ul>
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#### **Clause 4 - Funding**

Clauses 4.1	State that funds paid will not exceed a specified amount and are payable to an account nominated by the Agency.
4.2 Commercial only	Refers to the Executive's right to include Key performance measures within the services schedules which set out targets the non achievement of which may result in reductions to funding.
Clause 4.2 4.3 Commercial	States that funding and timing of payment for additional services will be agreed prior to commencement of these services.
Clause 4.3 4.4 commercial	States that funding payable is for the provision of agreed specified services only. Other services are the sole responsibility of the Agency and outside the scope of the Arrangement.
Clause 4.4 4.5 commercial	State that unless, provided for elsewhere by law, fees shall not be charged to service users without prior written consent from the HSE with rates to be agreed between both parties. [S 39 wording is slightly different and relates to the Provider and HSE agreeing fees in advance].
Clause 4.5 4.6 commercial	States that HSE <b>may</b> request that any fees collected be remitted to HSE and that HSE is entitled to invoke the set-off clause for sums owing to it.
Clause 4.6 4.7 commercial	States that the Agency must immediately notify the HSE if fraud or misappropriation is suspected and must cooperate with the HSE on any directions in this regard.

#### **Clause 5 - Capital Funding S38 / S39 only**

Clause 5.1	States that Capital funding does not fall within the terms of the Arrangement and is managed separately.
Clause 5.2	States that the Agency will not proceed with any Capital developments which may require revenue or other funding from the HSE without prior written consent of HSE.

#### **Clause 6 - Set-Off (Clause 5 in Commercial for Profit SA)**

Clause 6	States that the HSE is entitled to withhold and set-off monies owing to the Agency in cases where it owes monies, costs, damages or expenses to the HSE arising from its performance or failure to perform its obligations under the Arrangement, having given 14 days written notice.
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## Clause 7 – Procurement and Value for Money Initiatives

– (Clauses 6 in commercial SA)

Clause 7.1	States that any Procurement activity of the Agency should comply with Public Procurement Law. [S 39 wording is slightly different and refers to activities which are to be funded in whole or in part by HSE].
Clause 7.2	Provides for the Agency to give an indemnity (protection against future loss) to the HSE against any claims arising from goods or services provided to the Agency under the Arrangement. The Agency must keep HSE advised on such claims and will reimburse any costs within 3 months.
Clause 7.3	Provides for HSE to indemnify the Agency against any claims arising out of the Agency securing goods or services under a HSE contract (counter indemnity to 7.2).
Clause 7.4	States that the HSE is statutorily accountable for health service expenditure and the Agency acknowledges that Value For Money (VFM) must be ensured.
<b>Last four Clauses apply to S38/S39 NOT in Commercial for Profit SA</b>	
Clause 7.5	States that the Agency will use its best endeavours to drive, deliver and report VFM and will co-operate with the HSE in achieving VFM.
Clause 7.6	Allows for the Provider and Executive to avail of applicable procurement initiatives in either organisation.
Clause 7.7	Allows the Provider to initiate procurement on behalf of a HSE group which may include the HSE and other Service Providers.
Clause 7.8	States that the HSE may offset VFM savings and pay to the Agency a reduced funding amount.

## Clause 8 – ICT Not in Commercial for Profit

Clause 8	States that the Agency must, in line with Department of Finance Circular 16/97 (superseded by Circular 2/09), obtain prior written approval from the HSE's ICT Programme Office for ICT related expenditure. [S 39 wording is slightly different and refers to activities which are to be funded in whole or in part by HSE].
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## Clause 9 – Information Requirements (Clause 7 in Commercial for Profit)

Clause 9.1	The Agency acknowledges that it is obliged to comply [S 39/Commercial states that Agency will comply] with the HSE with regard to requests for information relevant to services delivered within the scope of an Arrangement, subject to written request and third party consent.
Clause 9.2	States that the Agency will comply with the obligations of Schedule 5 (Information Requirements).
Clause 9.3	Sub-clause (a) states that the Agency will comply with the obligations of Schedule 6 (Funding) including the IMR where applicable [S 39 / Commercial has no reference to IMR].

	Sub-clause (b) states that the Agency is also required to provide written notification to the HSE of circumstances that may lead to them exceeding their approved funding [S 39 /Commercial refers to difficulties in delivering services]. This must include proposals on how the issue will be managed to ensure that services will be delivered within funding by the end of the financial year.
Clause 9.4 S38/S39	Sub-clauses (i) to (vi) provide for the Agency to establish an internal audit capacity and deals with other matters relating to audited accounts and annual reports as well as dates for submission of these to HSE.
Commercial for Profit	No requirement to internal audit capacity, differences relate to the incorporated status of entity.
Clause 9.5	States that the Agency must comply with obligations with regard to return of Employment Monitoring data (Schedule 9).
Clause 9.6	The sub-clauses within Clause 9.6 provide detail on the various other circumstances when the Agency may be required to submit information to the HSE including PQs, FoI, Complaints etc.
Clause 9.7	States the importance of the Agency providing information and that HSE may withhold payment of funding in circumstances where information required by statute or under the Arrangement is withheld by the Agency, subject to 14 days written notice.

**Clause 10 – Monitoring, Review and Evaluation**  
(*Clause 8 Commercial for Profit*)

Clause 10.1	State that the HSE will undertake monitoring of performance standards.
Clause 10.2 S38/S39 N/A Commercial	The Provider is requested to maintain systems, procedures and controls to reflect best practice of accountability for expending public funds and co-operate with the HSE in any reviews carried out regarding such practices.
Clause 10.3 8.2 Commercial	The HSE, will provide guidance in establishing a Performance Monitoring Framework including performance measurements.
<b>Commercial for Profit SA only</b>	
8.3 Clause	Service Provider must report on Key Performance targets monthly, where targets are not reaching expected outcomes , HSE informs and Provider must make submission on proposals fro improvements.
8.4 Clause	KPI under performance linkage to funding reductions.

**Clause 11 – Access Rights (Clause 9 Commercial for Profit)**

Clauses 11.1 – 11.2	State that the HSE or an independent party on its behalf is entitled to carry out inspection and review of the performance and services. This may involve visiting the Agency’s premises (with written notice) and inspection of facilities, procedures, staff etc. The Provider must provide assistance during such inspections.
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**Clause 12 – Review Process (Clause 10 Commercial for Profit)**

Clauses 12.1 – 12.4	State that the Agency shall take part in a monitoring and review process relating to the Arrangement. This shall occur through information being submitted to HSE and attendance at review meetings, the frequency being agreed in Schedule 4. At each review meeting consideration will be given to various issues listed in 12.3 paragraphs (a) to (n) including financial and service data.
Clause 12.5	States that amendment to Schedule terms and specifications must be agreed in writing between both parties and documented in Schedule 10 (Change Control).

**Clause 13 – Performance Issues (Clause 11 Commercial for Profit)**

Clause 13.1 S38/S39	Sets out the process for issuing a First Performance Notice where HSE believes that the service is not being provided in accordance with the Arrangement. Such notice does not preclude the HSE from using any other right or remedy it may have.
Commercial	Not called first performance notice as in commercial arrangement there is no formal second notice. This clause also includes the Service Provider board agreeing a plan of action within an agreed time with the Executive.
Clause 13.2 S38/39	Sets out the process for issuing a Second Performance Notice where HSE believes that the Agency has not adequately taken the required remedial steps within the required period. It may require the Agency to agree a plan of action and timetable to address the non-compliance
N/A Commercial	
Clause 13.3	Sets out actions that the HSE can take in the event that the Agency fails to engage with the HSE or fails to carry out a plan of action to remedy identified poor performance. This could include the HSE providing the service itself or withholding funds in relation to the element of the service that is not compliant.
11.2 commercial	In addition to the above the Executive may terminate the Arrangement in its entirety.
Clause 13.4	States the fact that by serving a notice under Clauses 13.1 or 13.2 the HSE is not precluded from using any other rights that it has under the Arrangement. It also sets out that notices serviced under 13.3 will be authorised by the

	regional director of operations RDO.
Clause 11.3 commercial	Authorisation not restricted to RDO.

**Clause 14 – Insurance (Clause 12 Commercial for Profit)**

Clause 14.1	Sets out the requirement of the Agency to have insurance cover in line with Schedule 7 and that HSE must be indemnified (held harmless) on the Agency’s public liability, employers liability and motor insurance policies.
Clause 14.2	Sets out the requirement for an endorsement on these policies in favour of HSE to be provided
Clause 14.3	Provides for the insurance clauses not to affect the operation of the Clinical Indemnity Scheme.
Clause 14.4	Provides for the Agency to maintain the minimum level of cover set out in Schedule 7.
Clause 14.5 S38/S39	Provides for Agency to increase its insurance limits or obtain additional coverage when requested to do so by HSE. This also allows for the increase any funding this may require.
Commercial	No reference to any increase in funding.
Clause 14.6	Provides for Agency to provide copies of insurance documents if requested by HSE and to inform HSE immediately if insurance cover ceases.
Clause 14.7 S38/S39 only N/A to commercial	Sets out provisions whereby HSE can arrange insurance cover that Agency fails to arrange and can deduct or recover the cost of cover from the Agency.
Clause 14.8 Clause 11.7 commercial	States that having the necessary insurance cover in place does not limit the obligations and responsibilities etc. of the Agency under the Arrangement. Any financial losses arising will not be the responsibility of the HSE unless it admits or is found to have contributed to the loss. If the Agency fails to have the necessary cover in place then any monies that would have been recovered must be paid by the Agency to the HSE.
Clause 14.9 or 11.8 commercial	Provides that all subcontractors/provider personnel will also be insured to the same extent as required of Service Provider under the arrangement.

**Clause 15 – Governance Arrangements (Clause 13 Commercial for Profit)**

Clause 15.1	State that the Agency shall co-operate with the HSE in implementing various policies and procedures and Codes of Practice referenced in the <i>Framework for the Corporate and Financial Governance of the HSE</i> .
Clause 15.2	States that the Agency should have adequate internal governance codes and controls to ensure compliance with legislation. The <i>Code of Practice for the Governance of State Bodies</i> is referenced as a guideline for Agencies in drawing up their Codes of Governance

Clause 15.3	State the duty of the Agency to notify the HSE where an issue of governance concern has arisen. This involves co-operation on HSE reviews and written communication to include proposals for dealing with the issue and timeframes involved.
Clause 15.4 S38/S39 N/A commercial	The Service Provider must co-operate with HSE reviews of Governance.

**Clause 16 – Provider Personnel (Clause 14 Commercial for Profit)**

Clause 16.1 S38  S39/Commercial	States that the Agency will maintain employee numbers within the Approved Ceiling set out in Schedule 9.  States that the arrangement is a contract for services between the HSE and the Agency. All provider personnel are not employees of the HSE and the Agency holds the HSE harmless in respect of these persons.
Clause 16.2 S38 only	States that the Agency will, if required, comply with the requirements of Schedule 9 in relation to EMR and HR Circulars.
Clause 16.3 s38 16.2 S39 14.2 commercial	States that the Agency will only employ/engage persons who are (a) registered with the appropriate body, (b) have the appropriate qualifications and skills (c) are covered by appropriate indemnity insurance.
Clause 16.4 S38 16.3 S39 14.3 commercial	Requires the Service Provider to adhere to EU directives and legislation in relation to the recruitment promotion and retention of persons with professional qualification obtained abroad. This includes professions outside the current scope of the directive so all professionals with foreign qualifications have their qualification recognised by the relevant competent authority.
Clause 16.5 S38 only	S 38 - Obliges the Agency, if appropriate, to adhere to the consolidated salary scales.
Clause 16.6 s38 16.4 S39 14.4 commercial	States that the agency must ensure that all provider personnel receive (a) appropriate orientation and induction and proper and sufficient training and instruction (b) full and detailed appraisal and support with appropriate on-going education and training.
Clause 16.7 S38 16.5 S39 14.5 commercial	States that the Agency will adhere to best practice in relation to recruitment and retention of Provider Personnel and keep appropriate records.
Clause 16.8 s38 16.6 S39 14.6 commercial	States that where the activity of the Agency involves access to children and vulnerable adults, it will agree with the HSE the categories of persons which should be vetted by An Garda Síochána. Includes equivalent vetting processes for those who have resided abroad.t
Clause 16.9 S38 16.7 S39 14.7 commercial	(a) Obliges the Agency to promptly take all necessary steps to fully investigate any allegations of illegal, wrongful or inappropriate behaviour by act or omission by any member of provider personnel or sub-contractor relating to a service user.

	<p>(b) Obliges the Agency to take all necessary actions to ensure the safety and protection of the service user in the event any provider personnel having behaved illegally, wrongfully or inappropriately or where a complaint or allegation is made of such behaviour. The Agency is also obliged to report the matter to all relevant authorities.</p> <p>(c) Obliges the Agency to comply will all legal requirements, policies, guidelines issued by Government or HSE relating to child protection and protection of vulnerable adults and to comply will all relevant reporting procedures regarding suspected or actual abuse and must notify HSE of any reports.</p>
<p>Clause 16.10s38 16.8 S39 14.8 commercial</p>	<p>States that the Agency will record and regularly monitor the performance of provider personnel to ensure compliance with the terms and conditions of the arrangement, current professional standards and expected standards of performance and will take prompt action to address non-compliance.</p>
<p>Clause 16.11s38 16.9 S39 14.9</p>	<p>States that the Agency is responsible for making and all statutory deductions from provider personnel and remitting them to the relevant authorities.</p>
<p>Clause 16.12s38 16.10 S39 14.10commercial</p>	<p>States that the Agency assumes full responsibility for the actions of its provider personnel and is fully responsible their acts or omissions, supervision, control and all matters relating to their employment.</p>
<p>Clause 16.13 S38 only</p>	<p>States that the arrangement is a contract for services between the HSE and the Agency. All provider personnel are not employees of the HSE and the Agency holds the HSE harmless in respect of these persons. <i>(this is the same as Clause 16.1 in S39 Service Arrangement)</i></p>
<p>Clause 16.14s38 16.11 S39 14.11 S39</p>	<p>States that the Agency must comply with all applicable employment/labour legislation including Industrial Relation Agreements.</p>
<p>Clause 16.15 S38 only</p>	<p>States that the Service Provider must ensure recruitment campaigns for fixed term non consultant medical staff who are not registered on the trainee specialist division of the medical register are conducted by the HSE National Recruitment service and the Public appointment service where the funding comes under the arrangement.</p>
<p>Clause 16.16s38 16.12 S39 14.12commercial</p>	<p>Sets out the requirement that the Agency shall indemnify the HSE in respect of all losses incurred or suffered as a result of a breach of the provisions of Clause 16.</p>
<p>Clause 14.13 Commercial only</p>	<p>Sets out the requirement that the Agency shall indemnify the HSE in respect of any losses incurred or suffered arising out of or in connection to any application of the European Community Protection of Employees on Transfer of undertaking Regulations 2003, to include the HSE dismissal of any employee so transferred.</p>
<p>Clause 16.17s38</p>	<p>States that the Agency will co-operate with education,</p>

16.13 S39 14.14commercial	training and research projects as agreed between both parties.
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**Clause 17 – Third Party Contracting** (Clause 15 Commercial for Profit)

Clause 17.1	States that a Agency must obtain prior written permission from the HSE if it wishes to engage a third party to carry out some or part of the services pertaining to an Arrangement.
Clauses 17.2 – 17.3	State that third parties contracted by a Provider (Clause 17.1 refers) are subject to the same obligations to which the Provider is subject and that the Provider is fully responsible for and must indemnify the HSE for a third party’s acts, omissions etc.

**Clause 18 – Service User Centred Care** (Clause 16 Commercial for Profit)

Clauses 18.1 – 18.2	State that the Agency must deliver services equitably and without discrimination.
Clause 18.3	States that all aspects of services delivered must be centred on the service user and their families including consultation with regard to new service developments, planning and evaluations. Evidence of such consultation shall be provided to HSE on request.
Clause 18.4	States that the protection and safety of service users is paramount. The Agency must ensure that service users are aware of their rights in this regard and policies relating to protection and complaints must be in place and accessible to all.
Clause 18.5	Obliges the Provider to ensure best practice with regard to management of service users private property.

**Clause 19 – Complaints** (Clause 17 Commercial for Profit)

Clauses 19.1 – 19.5	<p>Oblige the Agency to maintain a complaints policy and procedure in compliance with Part 9 of the Health Act, 2004 and related regulations and the HSE Complaints Policy ‘Your Service Your Say’. These include:</p> <ul style="list-style-type: none"> <li>▪ Establishing and maintaining a complaints policy (i.e. the agency’s own policy or adoption of the HSE’s policy)</li> <li>▪ Submission of complaints policy to HSE for approval.</li> <li>▪ Co-operation in reviews following investigations.</li> <li>▪ Submitting a report annually on complaints received in accordance with Section 55 of the Health Act, 2004.</li> </ul> <p>[S 39 commercial- Clause 19.1 requires the Agency to maintain a complaints policy and procedures that reflect (and where appropriate) comply with Part 9 of the Health Act, 2004.</p>
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	- Clause 19.5 does not refer to Section 55].
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**Clause 20 – Access, Referrals, Admissions and Discharge Procedures**  
*(Clause 19- Commercial for Profit)*

Clause 20	States that an Agency must maintain policies and protocols in relation to access, referrals, admissions and discharges as per Schedule 3.
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**Clause 21 – Risk Management** *(Clause 19 Commercial for Profit)*

Clauses 21.1 – 21.5	Set out the Agency’s obligations with regard to Risk Management. They include: <ul style="list-style-type: none"> <li>▪ Maintaining a written risk management policy and process to manage all incidents (including prevention procedures) in line with HSE policy;</li> <li>▪ Continually enhancing service user safety through incident identification and analysis of incidents;</li> <li>▪ Learning from experience and improving practices;</li> <li>▪ Notifying the HSE of areas of concern;</li> <li>▪ Complying with requirements of Agency’s Insurers</li> </ul>
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**Clause 22 – Quality and Standards** *(Clause 20 Commercial for Profit)*

Clauses 22.1 – 22.3	Set out the Agency’s obligations with regard to Quality and Standards. They include: <ul style="list-style-type: none"> <li>▪ Having systems in place to assess quality and standards;</li> <li>▪ Conducting satisfaction surveys or other processes to obtain service user input;</li> <li>▪ Having monitoring and evaluation systems in place;</li> <li>▪ Complying with legislation and requirements of other standard setting bodies (e.g. HIQA) and obligations set out in Schedule 2</li> </ul>
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**Clause 23 – Clinical Governance and Audit**  
*(Clause 21 Commercial for Profit)*

Clauses 23.1 – 23.6	Set out the Agency’s obligations with regard to Clinical Governance and Audit processes which include: <ul style="list-style-type: none"> <li>▪ Having defined management processes and structures and clinical governance arrangements in place;</li> <li>▪ Having systems of review and monitoring of clinical care in place and also processes which allow staff raise issues of concern in any aspect of service delivery;</li> <li>▪ Complying with HSE requests to participate in or contribute to audit plans etc.</li> <li>▪ Carrying out and acting on recommendations of appropriate clinical audits.</li> </ul>
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## Clause 24 – Information and Confidentiality

### *(Clause 22 Commercial for Profit)*

Clauses 24.1 – 24.3	Set out obligations for both the Agency and the HSE with regard to information requests and confidentiality. They include: <ul style="list-style-type: none"><li>▪ Provision of necessary information to the Agency by the HSE for the purposes of fulfilling their obligations for the duration of an Arrangement.</li><li>▪ Treating as confidential information which relates to the other party and on termination of an Arrangement the Agency shall hold, manage and transfer all confidential information it possesses relating to the Arrangement.</li></ul>
Clauses 24.4 – 24.6	Outline the circumstances where confidential information may be disclosed including requirements: <ul style="list-style-type: none"><li>▪ By law, judicial inquiry, regulatory or governmental authority, within the jurisdiction of Ireland;</li><li>▪ For the conduct of arbitration (Clause 30 refers – Dispute Resolution);</li><li>▪ By the HSE to meet its obligations, pursuant to section 7 HA 2004;</li><li>▪ That written consent from the other party has been obtained;</li><li>▪ By professional advisers, auditors, bankers and insurers.(on confidential basis)</li></ul> Disclosure can only occur after notice to the other party and continues on termination of an Arrangement.
Clause 24.7	Requires the Agency to comply with the Part 9A of the Health Act, 2004 which relates to Protected Disclosures of Information and with any procedures HSE may establish.

## Clause 25 – Announcements and Communications

### *(Clause 23 Commercial for Profit)*

Clauses 25.1 – 25.2	Provide for the Agency to acknowledge the support of HSE in public announcements and each party must get permission to use any symbols, trademarks etc. belonging to the other party.
Commercial	Provides that the prior consent of the Executive is sought before any announcement/advertising acknowledging the Executive are made.

## Clause 26 – Freedom of Information *(Clause 24 Commercial for Profit)*

Clauses 26.1 – 26.6	Set out provisions relating to Freedom of Information Acts and the obligations of the Agency to comply with the provisions of the Acts and to furnish the HSE with requested information which may be disclosed by HSE. No liability attaches to HSE arising from disclosing FoI data received from the Agency.
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## Clause 27 – Data Protection

### *(Clause 25 Commercial for Profit)*

Clauses 27.1 – 27.4	<p>Set out provisions and obligations relating to the Data Protection Acts and the requirement of the Agency to ensure all consents authorisations and permissions required by law have been obtained to enable it to provide information to the Executive.</p> <p>Obliges the Provider to inform the Executive of any breaches and other communication from the Data Protection Commissioner.</p> <p>Obligation to indemnify the HSE against any loss arising from the Agency’s failure to comply with the Acts.</p>
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**Clause 28 – Control of Strategic Claims**

Clauses 28.1 – 28.2	<p>This clause covers the Providers responsibilities to inform the Executive, provide information, cooperate in a joint arrangement and/or in exceptional circumstances allow the Executive to take sole conduct of strategic claims, actions demands or proceedings against the Provider where</p> <ul style="list-style-type: none"> <li>• Has relevance to interpretation of relevant legislation</li> <li>• Have National/HSE policy/ guidelines implications</li> <li>• Have material impact on the funding or services</li> <li>• Other strategic importance</li> </ul>
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**Clause 29 – Major Incidents** *(Clause 26 Commercial for Profit)*

Clause 29.1	Requires the Agency to report, within 24 hours, any Major Incident to the HSE which may affect the delivery of Services under the Arrangement.
Clause 29.2	States that during the period of the Major Incident, the HSE will not issue performance notices
Clause 29.3	States that where a dispute relating to a Major Incident arises it should be resolved through the dispute resolution process.
Clause 29.4	Provides for the Agency to be paid during the period of the major Incident.
Clause 29.5	Provides for the Agency to discuss with the HSE the continued arrangements due to the major incident and any changes necessary to the service arrangement.

**Clause 30 – Force Majeure** *(Clause 27 Commercial for Profit)*

Clause 30.1	Defines <i>Force Majeure</i> as circumstances beyond the control of Agency and/or HSE which are not the same as Major Incidents.
Clause 30.2	States that non-performance due to Force Majeure will not

	be a breach of the Arrangement by either party.
Clause 30.3	Sets out the requirement for the relevant party to notify the other about the circumstances giving rise to the Force Majeure.
Clause 30.4	Sets out the entitlement of and the provisions for the other party to give notice of termination of the Arrangement where Force Majeure continues for over one month.
Clause 30.5	States that neither party has any liability to the other arising from the termination due to Force Majeure except for the rights and liabilities that existed before the Arrangement was terminated.

**Clause 31 – Dispute Resolution** *(Clause 29 Commercial for Profit)*

Clauses 31.1	Sets out the commitment of both parties to avoid disputes and the expectation that disputes will be resolved through direct discussion.
Clause 31.2	<p>Sets out the provisions relating to disputes that arise and the serving of a Dispute Notice (authorised by the relevant Regional Director of operations, with the HSE) by either party.</p> <p>The three-stage dispute resolution Process is set out:  <b>Stage 1:</b> Representatives of both parties will meet within 7 days of the date of the Dispute Notice and try to resolve the issue within 14 days other agreed period. If the issue is not resolved it moves on to the next stage.  <b>Stage 2:</b> A meeting will be held between both parties to discuss resolving the dispute. If the matter is not resolved within 20 business days or other agreed period it moves on immediately to the next stage.  <b>Stage 3:</b> If the dispute is not resolved the Agency may request HSE to refer the dispute to arbitration.</p>
Commercial	States that the parties agree to bear their own costs in relation to dispute resolution/arbitration
Clause 31.3	Provides for the Agency to continue to provide services during the arbitration process.
Clauses 31.4 -31.5	Provide for HSE to refuse to proceed with dispute resolution where it feels that the matter is not appropriate and allows for HSE in exceptional circumstances to withdraw from the process at any stage.
Clause 31.6 S38/S39 only	Regional Director of Operations must authorise, clause 31.4/31.5.
Clauses 31.7 – 31.8 29.6/29.7 commercial	State that the provisions of the dispute resolution process operate without affecting other rights of both parties under the Arrangement and without affecting the HSE’s right to terminate the Arrangement.

**Clause 32 – Termination** *(Clause 30 Commercial for Profit)*

Clause 30.1	Allows either party to terminate the arrangement with 4
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Commercial for Profit only	months written notice
Clause 32.1 S38/S39	Sets out the authority of the HSE by Authorisation of the Regional Director of Operations to terminate the Arrangement with 3 months written notice if it believes that there is a serious breach of performance under the Arrangement.
32.2 <i>commercial</i>	The commercial contract does not specify the RDO and gives 30 days written notice for serious breach.
Clause 32.2 S38/S39 only	Sets out the authority of the Provider by Authorisation of the CEO or equivalent to terminate the Arrangement with 3 months written notice if it believes that there is a serious breach of performance under the Arrangement.
Clause 32.3	Sets out the requirement of HSE to pay the Agency all reasonable costs accrued at the date of termination.
Clause 32.4	Provides that the HSE is not liable for any financial loss suffered by the Agency arising from termination
Clause 32.5	Provides that terminating the Arrangement does not affect the rights of either party relating to negligence/omission etc of the other party prior to termination.
Clause 32.6	Provides that the terms of the Arrangement continue to bind each party in order for each party to carry out their obligations under the Arrangement or exercise their rights.
Clause 32.7	Sets out the process of making interim arrangements for service users to minimise disruption to them in the case of termination.
Clause 32.8	Gives definition of serious breach.
Clause 30.9	Allows for termination for other circumstances arising to the Provider. <ul style="list-style-type: none"> <li>• Insolvency proceeding in state or outside state</li> <li>• Death/incapacitation of the Provider where sole trader or key member of Provider personnel</li> </ul>

### **Clause 33 – Representation and Warranties of the Provider.**

#### *(Clause 31 Commercial for Profit)*

Clauses 33.1 – 33.2	Provide confirmation to the HSE that the Agency has all the necessary authorisations and powers to enter into the Arrangement and to perform its obligations under the Arrangement.
Clause 33.3	States that each obligation on the Agency under the Arrangement is a legally binding obligation.

### **Clause 34 – General**

#### *(Clause 32 Commercial for Profit)*

Clause 34	Sets out a number of general issues not dealt with elsewhere in the Arrangement document.
Clause 34.1	<ul style="list-style-type: none"> <li>▪ <b><i>Prior Obligations of the Executive:</i></b> states that the Arrangement will not prevent or restrict HSE from carrying out its statutory obligations or instructions from the Minister for Health and Children.</li> </ul>

Clause 34.2	<ul style="list-style-type: none"> <li>▪ <b>Existing Rights:</b> states that the Arrangement will not alter or give additional rights or obligations to either party over and above those contained in the Arrangement.</li> </ul>
Clause 34.3	<ul style="list-style-type: none"> <li>▪ <b>Notices:</b> sets out provisions in relation to notices under the Arrangement including the necessity for them to be in writing and that e-mail is not permitted for notices relating to performance or dispute resolution. Also sets out details of persons on both parties to be issued with notices under the Arrangement.</li> </ul>
Clause 34.4	<ul style="list-style-type: none"> <li>▪ <b>Remedies and Waivers:</b> provides that failure or delay by either party in exercising rights, powers, remedies (rights) under the Arrangement will not affect these rights, that partial use of rights will not stop further use of the rights and that any right under the Arrangement can be used in addition to other rights in the Arrangement and provided in law.</li> </ul>
Clause 34.5	<ul style="list-style-type: none"> <li>▪ <b>Severability:</b> Provides that if any part of the Arrangement become illegal or unenforceable this will not affect other provisions of the Arrangement.</li> </ul>
Clause 34.6	<ul style="list-style-type: none"> <li>▪ <b>No Partnership and No Agency:</b> Provides that the Arrangement does not form a legal partnership between both parties and that under the Arrangement neither party can enter into other agreements on behalf of the other.</li> </ul>
Clauses 34.7	<ul style="list-style-type: none"> <li>▪ <b>Further Assurances:</b> Provides for each party to assist the other with acts necessary for them to carry out their part of the Arrangement.</li> </ul>
Clause 34.8	<ul style="list-style-type: none"> <li>▪ <b>Entire Agreement:</b> Provides that the Arrangement is the only one between the parties for the provision of the services and supersedes all other arrangements. Also provides that neither party can rely on any statement made during the negotiation stage unless it is contained in the signed Arrangement.</li> </ul>
Clause 34.9	<ul style="list-style-type: none"> <li>▪ <b>Variation:</b> Sets out the process for changing the content of the Schedules which include a Contract Change Notice and gives HSE the right to amend the Arrangement in line with a change of legislation or direction of the Minister.</li> </ul>
S38/S39 only	<ul style="list-style-type: none"> <li>▪ Allows for the discussion of changes in funding required as a result.</li> </ul>
Clause 34.10	<ul style="list-style-type: none"> <li>▪ <b>Costs and Expenses:</b> Provides that each party will pay its own costs etc. in relation to the Arrangement</li> </ul>
Clause 34.11	<ul style="list-style-type: none"> <li>▪ <b>Counterparts:</b> Allows for copies of the Arrangement to exist but are only effective when signed by both parties.</li> </ul>
Clause 34.12	<ul style="list-style-type: none"> <li>▪ <b>Governing Law:</b> Provides for this to be laws of Ireland.</li> </ul>

## **Signatures**

This section must be signed and dated by the appropriate person from HSE and from the Agency and formalises the contents of the Service Arrangement and the Schedules.