

## AGREEMENT

THIS AGREEMENT is made on the XX day of January 2021

**BETWEEN:**

Health Service Executive (hereinafter HSE)

**AND**

Irish Medical Organisation (hereinafter IMO)

**AND**

The persons named in the First Schedule to this Agreement (hereinafter the Employees)

(collectively the “Parties” and each a “Party”)

**WHEREAS** the Employees have, since various dates, been engaged to provide services as Program Directors (PD) and/or as Assistant Program Directors (APD) in GP training services

And

**WHEREAS** certain disputes have arisen between the Employees and the HSE particularly in relation to their employment status

And

**WHEREAS** certain of the Employees have initiated proceedings in the Workplace Relations Commission (WRC) and/or the Social Welfare Appeals Office and/or in the High Court in which proceedings they were represented by Michael Hegarty, Solicitor of Reddy Charlton Solicitors (hereinafter Mr. Hegarty or Reddy Charlton as appropriate)

And

**WHEREAS** the Parties agreed to enter into an alternative dispute resolution process which provided for the appointment of Marguerite Bolger SC to determine and rule

upon the employment status of the Employees and to act as a Mediator to seek resolution of all outstanding and related matters

And

**WHEREAS** Ms. Bolger issued a determination in relation to the employment status of the Employees on or about the 27<sup>th</sup> day of July 2020.

And

**WHEREAS** HSE wishes to cease its direct involvement in general practice training schemes (GP training)

And

**WHEREAS** HSE will enter into an agreement with the Irish College of General Practitioners (hereinafter ICGP) that with effect from 25<sup>th</sup> January 2021 ICGP will manage, control and deliver GP training pursuant to a Service Level Agreement (SLA) agreed between HSE and ICGP

And

**WHEREAS** following the conclusion of the alternative dispute resolution process the Parties have agreed as follows: -

1. The delivery of, management, control and responsibility for GP training will from 25<sup>th</sup> January 2021 transfer to ICGP. However, for administrative purposes Employees will continue to be paid by HSE until a date to be determined by HSE in the week commencing 1<sup>st</sup> of March 2021 on which date their employment will formally transfer to the ICGP (the **Formal Transfer Date**). During that period the Employees will continue to be paid their salary and accrue pension benefits from HSE. The Parties agree and acknowledge that the Transfer of Undertakings Regulations (TUPE) will apply to the transfer of the Employees. Save as provided immediately heretofore and unless otherwise agreed the Employees will not have any entitlement to any pension benefit in accordance with the TUPE regulations and HSE confirms that as and from the Formal Transfer Date no entitlement shall arise to any of the Employees in respect of continued membership of HSE pension scheme in relation to this particular employment. The only pension benefits which the Employees shall enjoy thereafter, pursuant to this particular employment with HSE shall be the benefits already accrued to them and they shall retain the benefits in accordance with the rules of the

relevant HSE pension and/or superannuation scheme as the case may be. For the avoidance of doubt the Parties acknowledge that locum expense contributions are not pensionable.

2. The Parties agree that as and from 18<sup>th</sup> January 2021 each Employee who maintains or works in a practice shall be entitled to claim, by way of vouched receipted expense, locum expense contributions in respect of each two full sessions worked by that Employee. The Employees named in the Third Schedule of this Agreement shall be paid a sum equivalent to the locum expense contributions for each two full completed sessions worked by them which payment will be subject to income tax and other statutory deductions but shall not otherwise be treated for any purpose whatsoever as part of the said Employee's remuneration. The payments of sums equivalent to locum expense contributions shall only be paid to the Employees listed in the Third Schedule of this Agreement and the existence of those payments shall not be relied on as a precedent for similar claims by any other parties, including any persons recruited by HSE and/or ICGP for the purposes of delivering GP training services or otherwise whatsoever. For the avoidance of doubt no Employee shall be entitled to claim a vouched locum expense contribution and receive a sum equivalent as described in this clause, at the same time.
3. The Employees named in the Second Schedule of this Agreement, being Employees who are currently remunerated for 46 weeks only shall as and from 4 January 2021 be remunerated for 52 weeks per annum.

The Employees named in the Second Schedule of this Agreement will, before the week of 12<sup>th</sup> February 2021, separate and exclusive of any other payments that may be due to them under the Agreement be paid a taxable sum, the equivalent of 6 weeks of their normal remuneration.

4. The Employees agree and accept that on the transfer of their employment to ICGP they will cooperate with the implementation of the ICGP's delivery model and organisational structure which model and organisational structure will be implemented in a timeframe determined by ICGP, which timeframe envisages the full implementation no later than 30<sup>th</sup> June 2021.

The Parties agree that in accordance with TUPE there will not be any unilateral material change to the Employees' existing terms and conditions of employment following transfer to the ICGP.

5. Any of the Employees named in the First Schedule hereto who resign or whose employment otherwise terminates on or before the Formal Transfer Date shall not be entitled to any benefit under this Agreement.

6. For the avoidance of doubt HSE agrees and acknowledges that each of the persons named in the First Schedule hereto are Employees of the HSE in respect of their roles as PD and/or APD and have enjoyed the relevant status retrospectively to the date on which they first commenced delivery of such service or services. Any dispute in relation to the commencement date of an Employee's employment shall be determined by HSE in accordance with its normal practices in such matters. For the avoidance of doubt HSE does not recognise or concede employment status in respect of the provisions by any of the Employees of other services to HSE whether as General Practitioners holding a general medical services list or the provision of any other services whatsoever.
7. HSE will provide to each respective Employee on or before 29<sup>th</sup> January 2021 a statement setting forth the date of their commencement of this particular employment with HSE, the dates of any break in their service, the number of sessions that individual Employee was expected to work per week in the period 1<sup>st</sup> January 2020 to 31<sup>st</sup> September 2020 together with a summary of the Employee's accrued pension benefits.
8. Such Employees as wish to terminate their employment with ICGP and avail of the benefits set out in this Agreement may give notification to ICGP and HSE not later than two weeks from the date on which they receive the statement described in Clause 7, that it is their intention to terminate their employment with ICGP. ICGP shall accept any such resignations provided that no such employment will terminate earlier than 1<sup>st</sup> July 2021 or after 31<sup>st</sup> December 2021. Every attempt will be made to accommodate Employees with their preferred termination date. However, the date of departure of any Employee shall be determined at the discretion of ICGP based on its needs in the provision of GP training services. In the event of any selection between Employees being necessary the ICGP shall have regard to the total length of service of the individual Employees within the respective scheme or schemes as of the Formal Transfer Date.
9. In the event that the information set out in Clause 7 has not been furnished in accordance with the prescribed timeline then the Parties agree that this information will be furnished no later than the Formal Transfer Date. The Employees will have two weeks from the date that the information is provided to advise the HSE and ICGP of their intention to terminate their employment.
10. Within 30 days of the date of departure of any Employee exercising his or her right in accordance with the provisions of this Agreement, that Employee shall be paid a sum equal to €9,966.38 multiplied by the number of full and/or part sessions which the Employee was expected to work per week in the period 1<sup>st</sup> January 2020 to 31<sup>st</sup> September 2020, up to a maximum of five full sessions worth. In the event of any Employee asserting that they are losing out by reason

of some identifiable factor by applying the reference period of January to September 2020 then HSE will calculate the average number of sessions worked per week by the said individual over the three calendar years 2018, 2019 and 2020, which average number of sessions will be rounded up or down as appropriate to the nearest full or half session.

11. In the event of any Employee who had given notification in accordance with Clause 8 and who seeks to withdraw the said notification prior to the 1<sup>st</sup> July 2021 the decision as to whether or not the said notification should be withdrawn shall be a matter solely at the discretion of ICGP. For the avoidance of doubt, any notification of termination of employment given by any Employee on any date prior to 18th January 2021 or after the period for notification described in Clause 8 or Clause 9 shall not give any entitlement to the said Employee to a payment in accordance with Clause 10 or any termination payment.
12. In the event of any Employee exercising his or her right to give notification of termination of employment as set out in this Agreement and such Employee being paid a termination payment in accordance with Clause 10 such Employee shall not apply for any position involved in GP training with the ICGP and/or HSE in the period of five years immediately following their termination date and the individual Employees agree and acknowledge that any refusal to consider an application in respect of employment or re-employment in accordance with this Clause, whether by ICGP and/or HSE, shall not give rise to any claim by the Employee against ICGP and/or HSE pursuant to statute, in equity or at common law or otherwise howsoever arising.
13. HSE will ensure the payments set out in Clause 10 are paid by ICGP and that the said payments will be paid in the most tax efficient manner permitted by law provided that no additional cost is incurred by ICGP and/or HSE in facilitating such tax efficiency.
14. The HSE will make a payment in an agreed sum as a contribution to the legal costs incurred by certain of the Employees in respect of the matters, the subject matter of this Agreement, which payment is to be made within 21 days of the execution of this Agreement to Reddy Charlton Solicitors.
15. Each of the Employees acknowledge and agree that by entering into this Agreement same constitutes full and final settlement of all disputes howsoever arising which the Employees have or might have against HSE arising out of their employment as PDs or APDs and the proposed transfer of GP training to ICGP whether such claims arise pursuant to statute, in equity or at common law or

otherwise howsoever. In this regard each of the Employees acknowledge that s/he has had sufficient opportunity to obtain independent advice in relation to the meaning and effect of this Agreement and that they confirm that they enter into same freely and without coercion.

16. The Parties to this Agreement (and for the avoidance of doubt, the representatives of the Employees, including and in particular IMO and Reddy Charlton) agree and acknowledge that the terms of this Agreement are strictly confidential and will not disclose any material facts concerning of or part of this Agreement to any third party save as is required by law or for the purposes of giving effect to and/or enforcing this Agreement.
17. The Parties agree (and for the avoidance of doubt, the representatives of the Employees, including and in particular IMO and Reddy Charlton) that the existence of and the terms of this Agreement will not be used by them, or disclosed to any third party for use by that third party, as a precedent to be used in respect of any trade dispute or for any industrial relations purposes and in particular the Employees and their representatives agree that they will not refer to or rely on this Agreement or any part thereof or any clause or provision of this Agreement to support any claim or to seek to resolve any dispute relating to the employment or non-employment or the terms and or conditions of employment of persons of the HSE and/or in ICGP or in any third party organisation whatsoever.
18. For the avoidance of doubt HSE confirms and acknowledges that it accepts the determinations made by Marguerite Bolger SC in respect of the status of the individual Employees and further agrees and acknowledges that by reason of their status of Employees they are entitled to benefit from pension arrangements in accordance with the rules and regulations pertained to pension schemes for comparable workers within the HSE subject to individual Employees making the appropriate contributions to such schemes. The Employees agree to take whatever steps are necessary including but not limited to discharging any tax or pension related deductions which may be due and owing by them as a result of their status of employees and to provide as much assistance to HSE and/or ICGP as may be required by HSE and/or ICGP to give effect to their status of employees.
19. On execution of this Agreement the Parties agree that they will take immediate steps to withdraw and/or discontinue all proceedings initiated, including all appeals initiated by them in relation to the matters the subject of this Agreement and to that end the Parties will advise the Workplace Relations Commission and the Labour Court that no further hearings are required in

relation to any of those matters and for the avoidance of doubt Reddy Charlton will forthwith issue a Notice of Discontinuance of the High Court proceedings under Record No 2018/8085 and Record 2018/8086.

20. Any Employee, having transferred to ICGP, who receives a payment in accordance with Clause 10 above agrees that s/he will execute on receipt of the said payment a waiver in the terms of the draft attached at the Forth Schedule hereto.
21. The Employees agree and acknowledge that the alternative dispute resolution process which led to this Agreement constitutes sufficient consultation in respect of the purposed Transfer of Undertaking and they agree that they will neither individually nor collectively initiate any proceedings whatsoever alleging any breach of the said regulations.
22. The Parties agree that this Agreement will become binding on them (and for the avoidance of doubt in respect of the representatives of the Employees on the said representatives) on the execution of this Agreement which shall take place on or before the 18<sup>th</sup> January 2021 and the Employees agree and acknowledge that execution by IMO and Reddy Charlton will bind them individually and collectively and for the avoidance of doubt in the event that this Agreement is not executed on or before the 18<sup>th</sup> January 2021, same will, thereafter, have no effect and will lapse.

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Signed by a duly  
authorised representative  
for and on behalf of  
the **Irish Medical Organisation**

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Date

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Signed by a duly  
authorised representative  
for and on behalf of  
the **Reddy Charlton Solicitors**

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Date

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Signed by a duly  
authorised representative  
for and on behalf of  
the **HEALTH SERVICE EXECUTIVE**

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Date

## First schedule

1. Dr Agnes Kelly
2. Dr Aidan Daly
3. Dr Aisling Ní Shúilleabháin
4. Dr Alan Barry
5. Dr Ann Horgan
6. Dr Ann Jordan
7. Dr Anne Marie Burke
8. Dr Anne Marie Regan
9. Dr Anne Mulrooney
10. Dr Annette Jennings
11. Dr Austin O'Carroll
12. Dr Bertie Daly
13. Dr Blaithin Tuohy
14. Dr Cathy Banstead
15. Dr Cathy Cullen
16. Dr Dan Hinds
17. Dr Darach Brennan
18. Dr Darach O'Ciardha
19. Dr Daragh O'Neill
20. Dr Declan Brennan
21. Dr Eamonn O'Shea
22. Dr Emma Nelson
23. Mr. Enda Murphy
24. Dr Fiona O'Reilly
25. Dr Genevieve McGuire
26. Dr Jim McShane
27. Dr Joe Clarke
28. Dr John Casey
29. Dr John Farrell
30. Dr John Loughnane
31. Dr John McCormack
32. Dr John Sheehan
33. Dr John Sheeran
34. Dr Kevin Quinn
35. Dr Louise Malone
36. Dr Lucia Gannon
37. Dr Marie Scully
38. Dr Marion Dyer
39. Dr Martin Rouse
40. Dr Maureen Kelly
41. Dr Michael Griffin
42. Dr Neasa McDonagh
43. Dr Niall Maguire
44. Dr Niamh O'Carroll
45. Mr. Nicholas Fenlon

46. Dr Pat Durcan
47. Dr Paul Stewart
48. Dr Peadar O’Fionain
49. Dr Rawat Ming
50. Dr Raymond O’Connor
51. Dr Reamonn O’Donnachadha
52. Dr Roddy Quinn
53. Dr Sarah Maguire
54. Dr Scott Walkin
55. Dr Sheila Rochford
56. Dr Siobhan O’Kelly
57. Dr Stephanie Dowling
58. Dr Stephanie Ellis
59. Dr Tony Lee

### **Second Schedule**

1. Dr Peadar O’Fionnain
2. Dr Aidan Daly
3. Dr Ann Horgan
4. Dr Eamonn O’Shea
5. Dr Maureen Kelly
6. Dr John McCormack

Note: Details of this Schedule 2 are under review and may result in additional name(s) being added.

### **Third Schedule**

1. Fiona O’Reilly
2. Enda Murphy

#### Fourth Schedule

I \_\_\_\_\_ of [address] medical doctor (or other as appropriate) acknowledges the receipt of the sum of € \_\_\_\_\_ by way of a termination payment on the termination of my employment by Irish College of General Practitioners (ICGP). I further agree and acknowledge that the said payment is made to me pursuant to an agreement made on or about the **XX January 2021** by the Health Service Executive (HSE) and certain named individuals including me. I agree and acknowledge that the said payment is made in full and final settlement of all and every claim whatsoever that I have arising out of my employment and the termination thereof (including for the avoidance of doubt my former employment with HSE) pertaining to the provision of GP training services and I agree and acknowledge that I will not prosecute any claim howsoever arising whether pursuant to statute, in equity or at common law against ICGP and/or HSE arising out of my employment and the termination thereof including, for the avoidance of doubt pursuant to any statute, including each of the statutes listed in the First Schedule to the Workplace Relations Commission Act 2015.

I acknowledge that by reason of the acceptance by me of the sum referred to above I shall have no right or entitlement to apply or be considered for appointment to any position or post relating to GP training services with the ICGP and/or HSE for a period of 5 years from the date of the termination of this employment.

I further agree and acknowledge that I have had an opportunity to obtain independent legal advice in respect of the meaning and effect of this Agreement and I enter into the Agreement freely and without coercion of any kind.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_