

EXECUTION TEXT

**DATED 14th DAY OF OCTOBER 2010
AS AMENDED AND RESTATED ON ____ MAY 2021**

HEALTH SERVICE EXECUTIVE

and

ST. VINCENT'S HEALTHCARE GROUP

**AMENDED AND RESTATED GRANT AGREEMENT
in respect of the performance of works
at St. Vincent's Hospital, Elm Park, Dublin 4**

**PHILIP LEE
7-8 Wilton Terrace
Dublin 2**

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THIS AGREEMENT is made the 14th day of October 2010 and amended and restated on ____ May 2021

BETWEEN:

- (1) **HEALTH SERVICE EXECUTIVE** of Parkgate Street Business Park, Dublin 8 (the “**HSE**”, which term shall include its successors and assigns); and
- (2) **ST VINCENT’S HEALTHCARE GROUP** a designated activity company limited by shares having its registered office at Elm Park, Dublin 4, (the “**Grantee**”, which term shall include its successors and assigns);

(each a ‘Party’ and together, the ‘Parties’).

RECITALS:

- (A) The HSE is a body corporate established pursuant to the Health Act 2004 whose functions include the management and delivery of health and personal social services or the arrangement for the delivery of such services on its behalf. Pursuant to the Health Act 2004, the HSE may provide financial assistance to undertakings engaged in the provision of health and personal social services in the State. The Grantee is such an undertaking.
- (B) The Grantee is a private limited company established to provide medical, surgical, nursing services and accommodation for the benefit of the public at various healthcare facilities including the Hospital.
- (C) The Grantee entered into a Design and Build Contract with the Design and Build Contractor in respect of the Original Works at the Health Facility on or around 14th of October 2010, and in conjunction with which the HSE and the Grantee entered into the Original Grant Agreement setting out the terms and conditions applicable to the availability of Capital Assistance from the HSE to the Grantee in respect of those Original Works at the Health Facility.
- (D) The Original Works have been completed to the satisfaction of the HSE.
- (E) In anticipation of the proposal to relocate the National Maternity Hospital to the Campus, the Further Works are first required. At the request of HSE, the Grantee is willing to undertake the Further Works on the provision of further Capital Assistance from the HSE and in respect of which the Grantee has entered into certain Further Works Contracts with the Further Works Contractors.
- (F) The HSE has agreed to make available such further Capital Assistance and in order to record the terms upon which such further Capital Assistance is being made available the Original Grant Agreement is now amended and restated as set out in this Agreement.

NOW THE PARTIES AGREE as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (and the recitals above) the following words shall, unless express provision is made otherwise, have the following meanings.

“**Additional Facilities**” means the Relocated Pharmacy and the Car Park Extension and (if applicable) such other capital works as the parties may agree are to be funded by Committed Capital Amounts pursuant to one or more Letters of Commitment;

“Agency Agreement” means each of the following agreements, pursuant to which the Grantee is authorised to act as the HSE’s agent in respect of certain aspects of the Further Works:

- (a) an agreement dated 19 November 2019 executed between (1) the HSE, (2) the Grantee and (3) O’Connell Mahon Architects, a design team consultant appointed by the HSE;
- (b) an agreement dated 19 November 2019 executed between (1) the HSE, (2) the Grantee and (3) Rolbay Unlimited Company (trading as Linesight), a design team consultant appointed by the HSE;
- (c) two agreements, each dated 19 November 2019, executed between (1) the HSE, (2) the Grantee and (3) Ove Arup & Partners Ireland Limited, a design team consultant appointed by the HSE; and
- (d) any other agreement in similar form to those referred to at (a) to (c) above which is entered into between the HSE, the Grantee and a design team consultant appointed by the HSE in connection with the Further Works.

“Agreement” means this Agreement and all Schedules hereto;

“Ancillary Agreements” means the Option Agreement, the Deed of Covenant, the Side Agreement and the Side Letter;

“Application” means the application for the payment of Capital Amounts in accordance with the Form A Procedure;

“Audited Accounts” means all proper and usual accounts of the Grantee audited annually at their expense and by a recognised firm of independent auditors of such standing and repute as is reasonably satisfactory to the HSE;

“Bank Account” means each bank account nominated by the Grantee for the purposes of receipt of such Capital Amounts and including any account designated as a “Bank Account” under any Funder Direct Agreement;

“Business Day” means a day (other than a Saturday or Sunday or a day which is a bank or public holiday in the State) on which banks are open for business in the State;

“Campus” shall have the meaning given to such term in the Option Agreement;

“Capital Amount” means any sum of monies which the HSE may agree to make available to the Grantee, subject to and in accordance with the terms and conditions of this Agreement;

“Capital Assistance” means the total capital assistance which the HSE agrees to provide to the Grantee pursuant to this Agreement made up of one or more Capital Amounts;

“Car Park Extension” means the extension to the existing car park on the Campus as identified on the map attached at Schedule 4 to be built pursuant to the Further Works Contracts in place on the Restatement Date, and forming part of the Additional Facilities;

“Change in Circumstances” means if, after the Commencement Date:

- (e) the Minister for Health and/or the Minister for Finance and/or the Minister for Public Expenditure and Reform issues a direction preventing or restricting the payment of any Committed Capital Amount by the HSE to the Grantee

or the Grantee accepting or spending a Committed Capital Amount or any part thereof; and

- (f) the Minister for Health and/or the Minister for Finance and/or the Minister for Public Expenditure and Reform, reviews or amends capital spending thresholds which would mean that in paying a Committed Capital Amount to the Grantee, the HSE would be exceeding an amount specified by the Minister for Health and/or the Minister for Finance;

“Change in Control” means where any person has control of the Grantee who did not have control of the Grantee on the Commencement Date or where any person ceases to have control of the Grantee **PROVIDED ALWAYS** and subject as set out in Clause 37.3 of this Agreement;

“Claim” means any claim, demand, proceedings, liability, action, costs, charges and expenses (including legal expenses on an indemnity basis) made by any person who is not a party to this Agreement;

“Collateral Warranties” means the collateral warranty agreements in a form required under the relevant Works Contracts;

“Commencement Date” means 14 October 2010;

“Committed Capital Amount” means a Capital Amount which the HSE is unconditionally obliged to pay to the Grantee pursuant to this Agreement or a Letter of Commitment;

“Competition” means the tender competition to select a design and build contractor to perform the Original Works;

“Confidential Information” shall have the meaning given to it in Clause 32 (Confidentiality);

“Deed of Covenant” means the Deed of Covenant dated 14 October 2010 between (1) the Grantee and (2) the HSE in the form of the deed attached to this Agreement at Schedule 3 affecting that part of the Campus outlined in green on the map attached to the said deed for the benefit of the New Ward Block shown outlined in red on the said map;

“Defects” means any defect or deficiency in the design or construction of the Works or any part thereof which arises due to the failure of (i) the Design and Build Contractor to carry out the Original Works in accordance with the Design and Build Contract; or (ii) the Further Works Contractors or either of them to carry out the Further Works in accordance with the Further Works Contracts;

“Defects Period” means the “Defects Period” as defined in and for the purposes of the relevant Works Contract;

“Design and Build Contract” means the design and build contract in respect of the Original Works entered into between (1) the Grantee and (2) John Paul Construction Limited on or about the Commencement Date or any other design and build contract approved by the HSE and entered into between the Grantee and a Design and Build Contractor;

“Design and Build Contractor” means John Paul Construction Limited or such other contractor approved by the HSE under Clause 38 in respect of the Original Works;

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“Encumbrance” means any mortgage, charge, pledge, lien, hypothecation, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind whether unconditional or not and whether relating to existing or to future assets and another type of preferential arrangement (including without limitation, set off, title transfer and retention arrangements) having a similar effect;

“Existing Consultants” means Bruce Shaw Partnership, MCO Projects and Scott Tallon Walker appointed in respect of the Original Works;

“Expert” means the person to be nominated in default of agreement between the Parties, by the President (or next most senior officer available) of the Law Society of Ireland;

“Expiry Date” means, for the purposes of the Option Agreement, the Expiry Date (Additional Facilities);

“Expiry Date (Health Facility)” means in relation to the Health Facility the date that is fifty (50) years after the later of (i) the payment of the last Capital Amount to the Grantee in respect of the Health Facility pursuant to this Agreement; (ii) and the date of payment of any capital amount, other than the Capital Assistance, from the HSE to the Grantee in respect of the Health Facility in respect of which capital amount the Parties agree the terms of this Agreement shall be applicable;

“Expiry Date (Additional Facilities)” means in relation to any Additional Facilities the date that is fifty (50) years after the later of (i) the payment of the last Capital Amount to the Grantee in respect of the relevant Additional Facilities pursuant to this Agreement; (ii) the date of payment of any capital amount, other than the Capital Assistance, from the HSE to the Grantee in respect of the relevant Additional Facilities in respect of which capital amount the Parties agree the terms of this Agreement shall be applicable;

“Facility Agreement” means the facility agreement dated on or about the Commencement Date between (1) the Funder and (2) John Paul Construction Limited for the funding of the Design and Build Contract;

“Force Majeure Event” means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against in its contemplation of entering into this Agreement;
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

A Force Majeure Event may include, but is not limited to, the exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) the occurrence of war (whether declared or undeclared) which has the result that a Party is unable to perform any or all of its obligations under this Agreement;
- (ii) the occurrence of revolution, riot, insurrection, public demonstration or other civil commotion which has the result that a Party is unable to perform any or all of its obligations under this Agreement;

- (iii) the occurrence of acts of terrorism, sabotage, criminal damage or threat of such acts which has the result that a Party is unable to perform any or all of its obligations under this Agreement;
- (iv) the occurrence of a nuclear explosion, radioactive or chemical contamination or ionising radiation which has the result that a Party is unable to perform any or all of its obligations under this Agreement;
- (v) an act of God, any effect of the natural elements, including lightning, flood, wind, storm, unusually heavy or prolonged rain or accumulation of snow or ice which has the result that a Party is unable to perform any or all of its obligations under this Agreement; and
- (vi) the occurrence of strikes and labour disputes which has the result that a Party is unable to perform any or all of its obligations under this Agreement,

provided that a HSE Default shall not constitute a Force Majeure Event.

“Form A” means the HSE’s capital recoupment application form;

“Form A Procedure” means the application for capital recoupment submitted by the Grantee using the HSE’s standard Form A;

“Funder” means the provider of finance to John Paul Construction Limited in connection with the Design and Build Contract, being The Governor and Company or the Bank of Ireland at the Commencement Date;

“Funder Direct Agreement” means the document of that name entered into on or about the Commencement Date, between (1) the Grantee, (2) The Governor and Company of the Bank of Ireland, (3) John Paul Construction Limited and (4) the HSE in connection with the Original Works;

“Further Works” means demolition and enabling works and the construction of a new pharmacy building and the extension of an existing car park and (if applicable) such other works as the parties agree in writing shall be “Further Works” for the purpose of this Agreement;

“Further Works Contractors” means **John Paul Construction** and such other contractor appointed to carry out Further Works; and each of them a “Further Works Contractor”;

“Further Works Contracts” means the employer design works contracts to be entered into in respect of any Further Works; and each of them a “Further Works Contract”;

“Further Works Grant Amount” has the meaning given to it in Clause 4.1;

“Government” means the Government of Ireland;

“Grantee Default” means:

- (a) an Insolvency Event;
- (b) a material or persistent breach by the Grantee of its obligations under this Agreement;

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- (c) any breach by the Grantee of its obligations under any of
 - (i) Clause 6 (Grantee Undertakings);
 - (ii) Clause 7 (Protection of HSE Interests);
 - (iii) Clause 33 (Assignment and Novation);
 - (iv) Clause 37 (Change in Control);
 - (v) Clause 38 (Sub-Contracting);
- (d) breach by the Grantee of the warranties referred to in Clause 8 (Representations, Warranties and Undertakings) to the extent that such breach of warranties has a material adverse effect on the provision of the Health Services;
- (e) abandonment or repudiation by the Grantee of the whole of this Agreement or a material obligation on the part of the Grantee under this Agreement;
- (f) a breach by the Grantee of any of its obligations under this Agreement which materially and adversely affects the provision or performance of the Health Services;
- (g) any default by the Grantee under the Design and Build Contract not arising from the HSE Default;
- (h) any default by the Grantee under the Side Letter or the Deed of Covenant not arising from a HSE Default;
- (i) the occurrence of an Enforcement Event (as such term is defined in the Side Agreement); or
- (j) any default by the Grantee under the Further Works Contracts (or any of them) not arising from a HSE Default;

“Grantee Representative” means a person appointed by the Grantee to be its representative for the purposes of this Agreement;

“Health Facility” means, following its completion, the Ward Block as identified outlined in red on the map attached at Schedule 1 at which the HSE and the Grantee agree the Health Services will be provided;

“Health Services” means the provision for the benefit of the public, of medical, surgical, nursing services and accommodation at the Health Facility for the treatment of sick persons and for the relief, cure, rehabilitation and prevention of sickness and disability, both physical and mental;

“Hospital” means St. Vincent’s University Hospital, Elm Park, Dublin 4;

“HSE Default” means a failure by the HSE to make payment of any Capital Amount (or part thereof) or any other amount due and payable to the Grantee in accordance with the terms of this Agreement within 60 (sixty) Business Days of the due date and following a written demand by the Grantee, where that amount is not in dispute and/or does not arise from a breach by the Grantee of this Agreement;

“HSE Representative” means a person appointed by the HSE to be its representative for the purposes of this Agreement;

“Insolvency Event” means the occurrence of any of the following:

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- (k) the inability of the Grantee to pay its debts as they fall due within the meaning of section 570 of the Companies Act 2014, or the admission by the Grantee of its inability to pay its debts as they fall due;
- (l) the presentation of a petition (that is not dismissed or withdrawn on the hearing of the petition or any adjourned hearing of the petition) or the granting of an order by a court for the winding up of the Grantee or the passing of a resolution for the voluntary winding-up of the Grantee otherwise than in the context of a solvent reconstruction or amalgamation which has been previously approved in writing by the HSE;
- (m) the granting of an order by a court for the appointment of a liquidator, receiver, examiner or the like over the whole or any part of the assets and undertaking of the Grantee or the presentation of a petition (that is not dismissed or withdrawn on the hearing of the petition or any adjourned hearing of the petition) for such an order or the taking of possession or on behalf of any creditor of any property that is the subject of a mortgage, charge or other Encumbrance or security interest; or
- (n) the proposal, sanction or approval of any composition in satisfaction of the debts of the Grantee, or scheme of arrangement of its affairs, or compromise or arrangement between it and its creditors or members or any class of its creditors or members.
- (o) a request by the directors of the Grantee for the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, examiner or the like;
- (p) the occurrence of an event analogous to, or having a substantially similar effect to the events referred to in sub-paragraphs (a) to (e) by reference to the laws of any applicable jurisdiction other than the State;

“**Law**” means any law applicable in Ireland and will include without limitation, common law, statutes, statutory instruments, bylaws, rules, codes, regulations, decisions, proclamations, notices, directives, constitutions, instruments, orders, rules of court, delegated or junior legislation which (without further enactment) has legal effect within Ireland;

“**Letter of Commitment**” means any letter provided by the HSE to the Grantee confirming the commitment to provide Capital Assistance pursuant to this Agreement (whether for the Original Works, the Further Works or any other capital works that the HSE agrees to fund pursuant to this Agreement) and which shall, together with clause 4 of this Agreement, give rise, to an accrued binding contractual commitment on the part of the HSE to provide the Capital Assistance subject only to compliance by the Grantee with its obligations hereunder and thereunder;

“**Loss**” means all damages, losses, liabilities, costs, expenses, including legal and other professional charges and expenses and charges whether arising under statute, contract or at common law or in connection with judgements, proceedings, internal costs or demands but excluding loss of profit for work not executed, loss of income or indirect or consequential loss;

“**Market Value**” shall have the meaning given to such term in the Option Agreement;

“**Minister for Finance**” means the Minister for Finance, a member of the Government and his successors;

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“Minister for Health” means the Minister for Health, a member of the Government and his successors;

“National Maternity Hospital” or “NMH” means the National Maternity Hospital, Holles Street, Dublin 2;

“Necessary Consents” means permissions (including planning permissions) building regulation approvals, certificates (including fire certificates), licences, permits, authorisations and consents;

“Option” has the meaning given to it in the Option Agreement;

“Option Agreement” means the Option Agreement dated 14 October 2010 between (1) the Grantee and (2) the HSE granting the Option over the Health Facility in the form set out in Schedule 2 (Option Agreement);

“Original Grant Agreement” means the original version of this Agreement as entered into by the Parties on the Commencement Date;

“Original Works” means the design and construction of the Ward Block, as more particularly described in the Design and Build Contract;

“Planning Permission” means any detailed planning permission to be granted by a relevant planning authority for the design and construction of the Original Works or any of them;

“Reinstatement Works” means such works as shall be necessary to repair, reinstate and/or replace the Health Facility, the Additional Facilities or any part thereof and/or any part of the Further Works which is covered by the terms of a physical damage insurance policy;

“Relocated Pharmacy” means the newly constructed pharmacy building as identified and outlined in red on the map attached at Schedule 4 to be built pursuant to the Further Works Contracts in place on the Restatement Date, and forming part of the Additional Facilities;

“Replacement Asset” means a replacement of the Health Facility (or part thereof that is the subject of alienation, disposal or relocation) of a standard, scope and function equivalent to the Health Facility (or part thereof that is the subject of alienation, disposal or relocation), as the case may be;

“Replacement Asset Cost” means the cost of providing a replacement Health Facility (or part thereof that is the subject of alienation, disposal or relocation) of a standard, scope and function equivalent to the Health Facility (or part thereof that is the subject of alienation, disposal or relocation) including, without limitation, the cost of designing, constructing, fitting out and equipping the replacement Health Facility (or part thereof that is the subject of alienation, disposal or relocation) on a site (if appropriate) to be nominated by the HSE or the Grantee (which site shall be subject to the HSE’s approval) but excluding the cost of providing such site (the cost of which will be borne by the HSE);

“Restatement Date” means ____ May 2021;

“Side Agreement” means the agreement entered into between (1) The Governor and Company of the Bank of Ireland (in its capacity as facility agent under the Credit Agreements (as therein defined) and as security trustee for the Finance Parties (as defined in the Credit Agreements)), (2) the HSE (3) the Grantee and (4) Dubki Limited

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on 14 October 2010 in respect of, inter alia, the Option Agreement and the Deed of Covenant;

“**Side Letter**” means the letter of confirmation and agreement provided by the Grantee to the HSE on 14 October 2010 in respect of, inter alia, the existing security over the Property and the Covenant Lands (each as defined in the Option Agreement) ;

“**Site**” means the area of land upon which the Original Works were undertaken, shown outlined in red on the map attached at Schedule 1;

“**State**” means the Republic of Ireland;

“**Sub-Contract**” means the Design and Build Contract, each Further Works Contract and any other contract entered into or to be entered into by the Grantee in connection with the performance of the Works (other than the appointment of the Existing Consultants in respect of the Original Works);

“**Sub-Contractor**” means the Design and Build Contractor, each Further Works Contractor and any other third party engaged by the Grantee or the HSE in connection with the performance of the Works other than the Existing Consultants in respect of the Original Works);

“**Substantial Completion**” has the meaning given to such term in the Design and Build Contract;

“**Tax Clearance Certificate**“ means a clearance certificate issued by the Revenue Commissioners;

“**Termination Date**” means any date of early termination of this Agreement in accordance with Clause 16 (Termination for Grantee Default) or Clause 17 (Termination for HSE Default);

“**Ward Block**” means the ward block facility with a minimum capacity of one hundred (100) bed spaces to be designed and constructed pursuant to the Design and Build Contract and located within the Site;

“**Works**” means both the Original Works and the Further Works;

“**Works Contractor**” means the Design and Build Contractor, a Further Works Contractor or any other Sub-contractor as appropriate to the relevant Works;

“**Works Contract**” means the Design and Build Contract, a Further Works Contract or any other Sub-contract as appropriate to the relevant Works; and

“**2004 Act**” means the Health Act 2004.

1.2 In this Agreement:

- (a) the singular includes the plural and vice versa;
- (b) references to one gender include all other genders;
- (c) references to persons include bodies corporate, unincorporated associations and partnerships, in each case whether or not they have a separate legal personality;

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- (d) the table of contents and headings in this Agreement are inserted for convenience only and are to be ignored for the purposes of interpretation of this Agreement;
 - (e) the word “including” and its variations are to be construed without limitation;
 - (f) reference to any legislation, regulation, directive, order, instrument, code or any enactment shall include any modification, extension or re-enactment of it then in force;
 - (g) any references in this Agreement to a “Clause” is a reference to a clause in this Agreement, any reference to a “Schedule” is a reference to a schedule to this Agreement and any reference in a Schedule to a “paragraph” is a reference to a paragraph in that Schedule;
 - (h) any reference to another agreement or document, or any deed or other instrument is to be construed as a reference to that other agreement, or document, deed or other instrument as amended, varied, supplemented, substituted or novated from time to time; and
 - (i) any reference to a day, month or year is to be construed as a reference to a calendar day, month or year as the case may be.
- 1.3 In the event of any ambiguity or discrepancy between the main body of this Agreement and the Schedules or documentation referred to in this Agreement, then the provisions of the clauses of the main body of this Agreement will prevail.

2 PURPOSES OF THIS AGREEMENT

- 2.1 This Agreement sets out the terms and conditions detailing the basis upon which the HSE agrees to provide and the Grantee agrees to accept, Capital Assistance in respect of undertaking the Works including details in respect of:
- (a) the conditions which require to be satisfied prior to the provision of any Capital Amount;
 - (b) the consequences of non-compliance with those conditions; and
 - (c) related to (b) above, the security required by the HSE to protect its interests in providing Capital Assistance.
- 2.2 Any funds payable or to be paid by the HSE to the Grantee in respect of the operation of the Health Facility shall be managed under separate service arrangements and such arrangements do not form part of this Agreement. The Grantee shall not be considered to be in default of its obligations to provide the Health Services at the Health Facility under this Agreement where such failure is due solely and directly to a reduction in the amount of funds paid by the HSE to the Grantee pursuant to such service arrangements from time to time, provided that:
- (a) any such reduction in the performance or quality of the Health Services is directly proportionate to the reduction in funds paid by the HSE; and
 - (b) any reduction in the performance or quality of the Health Services is equivalent and proportionate to the reduction in the performance and quality of similar health services pursuant to similar service arrangements between the HSE and other hospitals in the Dublin area who have had an equivalent reduction in funds paid to it/them by the HSE.

3 CONDITIONS PRECEDENT TO PROVISION OF CAPITAL ASSISTANCE

3.1 Original Works

The Grantee confirms and acknowledges that it is a condition to the provision of any Capital Amounts by the HSE to the Grantee in respect of the Health Facility that the Grantee provides the following to the HSE (and receipt of which on or prior to the Commencement Date the HSE hereby acknowledges):

- (a) The Original Grant Agreement duly executed by an authorised representative of the Grantee;
- (b) Certificate of Incorporation and, if applicable, Certificate on Change of Name of the Grantee;
- (c) the Memorandum and Articles of Association of the Grantee;
- (d) resolution of the Board of Directors of the Grantee approving the transaction contemplated by this Agreement and authorising the execution by the Grantee of this Agreement and any contract or document contemplated by this Agreement;
- (e) certificate of the secretary of the Grantee setting out the names and specimen
- (f) signatures of the person(s) authorised to execute this Agreement;
- (g) the execution of the Option Agreement by both Parties;
- (h) the execution of the Deed of Covenant by both Parties;
- (i) the Side Letter duly executed by an authorised representative of the Grantee;
- (j) the execution of the Side Agreement by all parties thereto;
- (k) a certified copy of the Design and Build Contract duly executed by the parties thereto;
- (l) the execution of the relevant Funder Direct Agreement by all parties thereto;
- (m) a letter of confirmation from the Funder that the conditions precedent to the Facility Agreement have been fulfilled to its satisfaction;
- (n) compliance with the terms of Clause 4.4; and
- (o) evidence that the Grantee has put in place all necessary arrangements, including without limitation, appropriate resources and agreements with staff, required to commence performance of the Health Services at the Health Facility as soon as reasonably practicable following Substantial Completion.

3.2 Further Works

The Grantee confirms and acknowledges that it is a condition to the provision of the Further Works Grant Amount (or any part thereof) or any other grant funding in respect of Further Works by the HSE to the Grantee in respect of any of the Additional Facilities that the Grantee provides the following to the HSE:

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- (a) This Agreement and each Agency Agreement duly executed by an authorised representative of the Grantee;
- (b) Certificate of Incorporation and, if applicable, Certificate on Change of Name of the Grantee;
- (c) the Memorandum and Articles of Association of the Grantee;
- (d) resolution of the Board of Directors of the Grantee approving the transaction contemplated by this Agreement and authorising the execution by the Grantee of this Agreement and any contract of document contemplated by this Agreement;
- (e) certificate of the secretary of the Grantee setting out the names and specimen signatures of the person(s) authorised to execute this Agreement;
- (f) a certified copy of each Further Works Contract duly executed by the parties thereto;
- (g) a letter of confirmation from Bank of Ireland as mortgagee of lands including the lands comprising the Relocated Pharmacy and the Car Park Extension that it has consented to the Grantee entering into this Agreement; and
- (h) compliance with the terms of Clause 4.4.2 of this Agreement.

4 APPLICATION FOR CAPITAL AMOUNTS

4.1 The total amount of Capital Assistance agreed to be provided by the HSE to the Grantee pursuant to this Agreement as of the Restatement Date is sixty-three million nine hundred and sixty-three thousand seven hundred and sixty five euro and five cent (€63,963,765.05) being:

4.1.1 in respect of the Health Facility, twenty one million, one hundred and sixty three thousand, seven hundred and sixty five euro and five cent (€21,163,765.05) inclusive of VAT, receipt of which is hereby acknowledged by the Grantee; and

4.1.2 in respect of the Additional Facilities on the Restatement Date, but without prejudice to Clause 4.7 below, a further sum of €42,800,000 (the "**Further Works Grant Amount**") in respect of the Further Works,

or such other amount as may be agreed between the HSE and the Grantee in writing from time to time, whether in respect of any further Additional Facilities or otherwise. The amount of the Capital Assistance shall be increased by such further Committed Capital Amounts (if any) as the HSE may agree in writing to make available to the Grantee from time to time in respect of capital works approved by the HSE, and on such terms and conditions as shall be agreed in respect of any such Committed Capital Amounts.

4.2 The Capital Assistance may be payable in a number of drawdowns or Capital Amounts.

4.3 The Grantee shall submit a completed Form A to the HSE as soon as practicable and in any event within five (5) Business Days of receipt by the Grantee of an invoice from the relevant Works Contractor pursuant to the relevant Works Contract.

4.4 The right to receive the Capital Assistance accrues to the Grantee subject only to compliance by the Grantee with the obligations on its part under this Agreement. The Capital Assistance in respect of:

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- 4.4.1 the Health Facility shall, however, only become payable following the issue of the certificate of Substantial Completion in respect of the entire of the Original Works pursuant to the Design and Build Contract and provided that the Grantee has vouched all expenditure to the satisfaction of the HSE in accordance with the Form A Procedure (which the Parties each acknowledge at the Restatement Date, as having occurred); and
- 4.4.2 the Additional Facilities shall become payable in instalments following the issue of payment certificates pursuant to the relevant Further Works Contract and provided that the Grantee has vouched all expenditure to the satisfaction of the HSE in accordance with the Form A Procedure.
- 4.5 All payments by the HSE under this Agreement shall be made in euro (€), by electronic transfer of funds to such Bank Account or Bank Accounts designated by the Grantee in the relevant Form A, within ten (10) Business Days of the date of the receipt by the HSE of the Form A duly and correctly completed by the Grantee. The Grantee shall promptly acknowledge in writing receipt of any Capital Amounts so deposited in any Bank Account of the Grantee.
- 4.6 Except as may be otherwise agreed in writing between the Parties the HSE shall not be liable to the Grantee or any third party in respect of any costs, expenses and/or liabilities the Grantee may incur during the development of the Original Works in excess of the Capital Amounts agreed by the Parties. All such costs, expenses and/or liabilities shall be the sole responsibility of the Grantee to discharge.
- 4.7 The Grantee is carrying out the Further Works to facilitate the HSE. The HSE shall be liable to the Grantee in respect of any properly vouched additional costs, expenses and/or liabilities that the Grantee may incur in excess of the Capital Amounts in entering into this agreement and in carrying out the Further Works, save that the HSE shall not be liable in respect of any additional costs, expenses and/or liabilities:
- 4.7.1 which arise from:
- (a) a breach by the Grantee of this Agreement,
 - (b) a breach by the Grantee of any Agency Agreement;
 - (c) a breach by the Grantee of any Further Works Contract;
 - (e) the failure by the Grantee, in disregard of the interests of the Grantor, to take reasonable care which at the time of the relevant act or omission the Grantee knew or should have known (having regard to all relevant circumstances) would give rise to substantial additional costs, expenses or liabilities;
- in circumstances where the said act, breach or failure:
- (i) is not due to the default of the HSE; or
 - (ii) is not a direct consequence of the Grantee acting upon the written instruction of the HSE; or
- 4.7.2 which arise from the failure by the Grantee to act in accordance with the written instructions of the HSE or its agents validly given in accordance with this Agreement or any Agency Agreement.
- 4.8 Without limiting the generality of clause 4.7 (but subject to sub-clauses 4.7.1 and 4.7.2) there will be an increase in Capital Amounts paid or to be paid pursuant to this Agreement to take account of any increase in the contract sum pursuant to any Further Works Contract due to increases in the costs of materials, labour, equipment

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or transport costs or fluctuations in exchange rates or otherwise (any such increase to be determined in accordance with the terms of the relevant Further Works Contract where applicable), provided that such additional costs are properly vouched to the HSE (in accordance with the relevant Further Works Contract where applicable).

- 4.9 Interest shall be added to any payment not made within the time provided in this Agreement, from the date the payment was due under this Agreement, at the rate provided in the European Communities (Late Payment in Commercial Transactions) Regulations 2002.

5 NO OBLIGATION ON HSE TO PAY ADDITIONAL SUMS

- 5.1 Save in respect of the Capital Assistance referred to in Clause 4.1, 4.7 and 4.8, nothing in this Agreement shall constitute a commitment on the part of the HSE, the Minister for Health or the Minister for Finance to provide any other capital funding or ongoing financial assistance to the Grantee. This Agreement relates to the payment of Capital Assistance in respect of the Works only, save to the extent otherwise agreed in writing. The payment of any Capital Amount is strictly subject to compliance by the Grantee with the terms and conditions of this Agreement.
- 5.2 Notwithstanding the payment by the HSE to the Grantee of any Capital Amount, the HSE shall not be obliged to pay any further Capital Amounts or any other form of financial assistance (or any particular level of financial assistance) under this Agreement, unless it is satisfied that in respect of each Application for a Capital Amount the Grantee has complied and continues to comply fully with this Agreement and all duties and responsibilities of the Grantee which arise hereunder.

6 GRANTEE UNDERTAKINGS

- 6.1 In respect of any Capital Amount, the Grantee covenants:
- (a) not to use such Capital Amount (or any part of any Capital Amount):
 - (i) for any purpose other than for the performance of the Works and discharging all costs associated with the performance of the Works; and/or
 - (ii) to raise additional finance,without the prior written consent of the HSE;
 - (b) to comply with Clause 26 (Accounting Procedures) in respect of providing satisfactory evidence to the HSE in respect of the expenditure of Capital Amounts; and
 - (c) to provide to the HSE, upon request, evidence that it holds an up to date Tax Clearance Certificate.

The Grantee will notify the HSE in writing where practicable in advance of incurring any such costs and both parties shall seek to agree all such costs acting reasonably and in good faith.

- 6.2 The Grantee covenants:
- (a) To procure that the Works are undertaken in accordance with the terms of the Works Contracts applicable to each and all applicable Laws in connection therewith, and shall furnish HSE with such evidence of compliance as the HSE may require;

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- (b) Not to enter into or permit any material variation to the Works under the relevant Works Contracts without the prior written consent of the HSE;
- (c) Upon completion of the Original Works, to use the Health Facility solely for the purposes of the Health Services and to provide or ensure the provision of the Health Services at the Health Facility and the Covenant Lands;
- (d) Upon completion of the Further Works, to use the Additional Facilities for the purposes for which they are constructed;
- (e) Not to alienate, sell, assign, transfer, lease, part with the possession of or otherwise dispose of, relocate or remove (save for the purpose of normal repair, renewal, replacement or substitution thereof) or mortgage or charge the Health Facility or the Car Park Extension or any part thereof and/or any assets, procured for, or in connection with, the performance of the Works (and in respect of which title has passed to the Grantee under the Design and Build Contract or the Further Works Contracts, as applicable)) or provision of the Health Services at the Health Facility (including for the avoidance of doubt, the Health Facility and/or the Site) except with the prior written consent of the HSE, save that the consent of the HSE shall not be required for the sharing of possession with third parties on standard commercial terms that are not adverse to the interests of the HSE under this Agreement or the Option Agreement, for the purpose of providing the Health Services (or services ancillary to the Health Services provided always that such ancillary services have been approved in advance by the HSE, such approval not to be unreasonably withheld or delayed). The HSE has previously consented to the existing security over the Grantee's assets in favour of the Governor and Company of the Bank of Ireland, which include instruments entered into in 2009, 2010 and 2015 respectively as such facilities are amended or restated from time to time, and Ulster Bank in relation to the car park;
- (f) To comply with the obligations set out in Clause 10 (Insurance);
- (g) To procure that all Necessary Consents (including, for the avoidance of doubt any Planning Permission) required in connection with the undertaking of the Works and/or the provision of the Health Services, including in respect of the entry into, performance, validity and enforceability of this Agreement (and any obligations contemplated hereunder) will be obtained in a timely manner;
- (h) To the extent within its control, to ensure that all Necessary Consents remain in full force and effect and to comply, and ensure compliance with, the terms and requirements of each such Necessary Consent.
- (i) To perform its duties and obligations set out or arising from this Agreement using all due skill, care and diligence that would reasonably be expected of competent professionals experienced in undertaking projects of a similar nature, scope and complexity as that which is the subject of this Agreement; and

To provide and maintain at all times not less than two hundred and seventy-seven (277) car spaces on the Campus available for users of or visitors to the Health Facility.

7 PROTECTION OF HSE INTERESTS

- 7.1 The Parties agree that the following sets out rights and obligations in respect of the provision of Capital Assistance to the Grantee:

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- (a) The execution of the Option Agreement by both Parties;
 - (b) The execution of the Deed of Covenant by both Parties
 - (c) Evidence that the Collateral Warranties have been executed and delivered to the Grantee in accordance with the time for execution and delivery of such pursuant to the Design and Build Contract and the Further Works Contracts respectively; and
 - (d) Upon termination of this Agreement following the occurrence of a Grantee Default (save where Clause 16.7 applies), the Grantee hereby agrees that, it will assign, upon written request from the HSE, to the HSE or to the HSE's nominee (in either case at the HSE's election) the Design and Build Contract, the Further Works Contracts and/or the Collateral Warranties (and for the purposes thereof the Grantee hereby appoints the HSE as its lawful attorney with full powers to give effect to the provisions of this Clause 7.1(d)). The HSE agrees that upon such assignment of the Design and Build Contract it shall assume the obligations of the Grantee to pay such proportion of the Contract Sum (as such term is defined in the Design and Build Contract) pursuant to the Design and Build Contract as remains unpaid at the date of such assignment, up to a maximum aggregate liability of the amount of the Capital Assistance set out in Clause 4.1, provided that the HSE shall not be obliged to pay:
 - (i) any amount in excess of the initial Contract Sum identified in the Design and Build Contract at the Commencement Date unless any adjustments to such initial Contract Sum shall have been approved in advance by the HSE;
 - (ii) any amount due on, or which becomes due after, the date of the assignment in respect of claims made by the Design and Build Contractor concerning any breach by the Grantee of the Design and Build Contract, where such breach occurred before the date of the assignment unless, such amount has been included in any adjustment to the Contract Sum approved by the HSE pursuant to Clause 7.1(d)(i) or is otherwise agreed by the HSE to be assumed by the HSE.
- 7.2 Upon termination of this Agreement following the occurrence of a Grantee Default the HSE may at its option, elect to enforce any or all of its rights and remedies under this Clause 7 (Protection of HSE Interests).
- 7.3 In the event the Grantee seeks to alienate, sell, assign, transfer, lease, part with the possession of, or otherwise dispose of, relocate or remove any asset owned by it in connection with the Health Facility (with the prior written consent of the HSE, where required, pursuant to Clause 6.2(e)), it may (in the absolute discretion of the HSE) be a condition to the HSE's consent to such alienation, sale, assignment, transfer, lease, parting with the possession of, other disposal or relocation that the Grantee provide a Replacement Asset within the Campus. The Grantee may propose, or the HSE may require, the Grantee to (and following such request the Grantee shall) pay to the HSE the Replacement Asset Cost in lieu of providing a Replacement Asset within the Campus. Any such proposal by the Grantee shall be subject to the prior written approval of the HSE (in its absolute discretion).
- 7.4 In the event the Grantee seeks to alienate, sell, assign, transfer, lease, part with the possession of, or otherwise dispose of, relocate or remove any asset owned by it in connection with the Car Park Extension or the Relocated Pharmacy (with the prior written consent of the HSE, where required, pursuant to Clause 6.2(e)), it may (in the absolute discretion of the HSE) be a condition to the HSE's consent to such

alienation, sale, assignment, transfer, lease, parting with the possession of, other disposal or relocation that the Grantee provide an appropriate replacement facility within the Campus. Without limiting the generality of the foregoing, (i) any consent by the HSE to the disposal or relocation of the Car Park Extension, or any part thereof may be given subject to a condition that replacement car parking facilities are provided at a location acceptable to the HSE. and (ii) the Grantee shall not relocate the Relocated Pharmacy on terms where by it will or may cease to be used as the pharmacy for the Hospital without first providing an appropriate replacement facility on the Campus.

- 7.5 All rights held by the HSE under Clause 7.1 of this Agreement shall, to the extent that they have not already been released, be released on the Expiry Date (Additional Facilities) and the HSE hereby agrees to enter into such agreements as may be necessary and as the Grantee may reasonably require to confirm such releases as soon as reasonably practicable after such release.

8 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

8.1 Grantee Warranty

The Grantee represents and warrants to the HSE that, as at the Commencement Date and the Restatement Date respectively:

- (a) all necessary action has been taken (and not revoked) and any necessary third party consents, approvals, authorisations have been obtained and are valid and subsisting to authorise its execution, delivery and performance of this Agreement, and the Agreement when executed shall constitute a valid and legally binding agreement of the Grantee enforceable in accordance with the terms hereof;
- (b) it has an up to date Tax Clearance Certificate and produce same to the HSE upon request;
- (c) all written information furnished by or on its behalf in connection with the negotiation of this Agreement or delivered by or on its behalf to the HSE pursuant to this Agreement was true and accurate in all material respects when given and continues to be true and accurate in all material respects to the extent not subsequently expressly superseded by further written information furnished by on its behalf and there are no other facts or matters of which it is aware, after due and careful enquiry, the omission of which would have made or would make any such statement or information contained therein misleading, inaccurate or untrue in any material respect, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful enquiry;
- (d) it is not aware of any material facts or circumstances that have not been disclosed to the HSE and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with it;
- (e) it has full legal and beneficial ownership of the Site and has full rights and powers to grant the Option in respect of the Site provided for herein;
- (f) it has full responsibility in respect of any matters arising in relation to the Site and each site on which the Further Works are carried out, to include, without limitation, responsibility for protestors and trespassers, security, health and safety and compliance with all Laws in respect of the Site.

8.2 HSE Warranty

The HSE warrants that all necessary action has been taken (and not revoked) and any necessary third party consents, approvals, authorisations have been obtained and are valid and subsisting to authorise the execution, delivery and performance of the Agreement by the HSE, and the Agreement when executed shall constitute a valid and legally binding agreement of the HSE enforceable in accordance with the terms hereof.

9 ACCESS AND MONITORING

9.1 HSE Access

Subject to any health and safety requirements imposed by Law and, where relevant, to any reasonable requirements of (i) the Design and Build Contractor under the Design and Build Contract and (ii) each Further Works Contractor under the relevant Further Works Contract and any reasonable requirements of the Grantee relating to the Health Facility, the Grantee will procure that:

- (a) the HSE and any persons nominated by them will have access to the Site, each site on which the Further Works are carried out and/or the Health Facility and/or the Additional Facilities at all reasonable times on giving 48 hours-notice (or 12 hours-notice in the case of emergency);
- (b) the HSE will be entitled to enter upon any property used by the Grantee to perform any of the Works and in respect of any third party property, the Grantee shall use all reasonable endeavours to obtain such right of access;
- (c) the HSE has access to the Site and each site on which the Further Works are carried out for the purpose of conducting monitoring in accordance with Clause 9.2 (HSE Monitoring);
- (d) the HSE will be entitled to enter upon any property used by the Grantee as training or workshop facilities and places where work is being prepared or materials being obtained for the provision of the Works and in respect of any third party property, the Grantee shall use all reasonable endeavours to obtain such right of access; and
- (e) the HSE has access for the purposes of exercising its step in rights under Clause 20.5 (Step-In Rights on Termination).

9.2 HSE Monitoring

The HSE may elect, at its own cost, to undertake its own monitoring at any time, for any purpose connected with this Agreement, including in order to ensure that the Works are being undertaken in accordance with this Agreement, that the Health Facility is being used solely for the provision of the Health Services and to assess whether Capital Amounts have been expended in accordance with Clause 6.1(a). The Grantee will use its reasonable endeavours to assist the HSE in such an exercise. The HSE will be entitled to notify the Grantee of the outcome of the monitoring exercise and the Grantee will have due regard to the HSE's comments. For the avoidance of doubt the HSE acknowledges that it shall not be entitled to issue instructions directly to the relevant Works Contractor pursuant to this Clause 9.2.

10 INSURANCE

10.1 Obligation to Insure

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- (a) The Grantee will, as and from the Commencement Date, ensure that such insurances in respect of the performance of the Works as are required under the relevant Works Contracts and such other insurances as may be required by Law are taken out and maintained, and shall furnish such evidence in this respect as the HSE may require.
- (b) The Grantee will, as and from completion of the Works (and (i) from the Commencement Date in respect of the Health Facility (excluding the incomplete Works) and (ii) from the Restatement Date in respect of the Additional Facilities), ensure that such insurances that would be obtained and maintained by a reasonable and prudent person acting in the course of the provision of health services similar to the Health Services, are obtained and maintained in respect of the Health Facility and the Additional Facilities (including such insurances as may be required by Law) and shall furnish such evidence in this respect as the HSE may require.

10.2 HSE as Co-Insured

The Grantee shall ensure the HSE is named as co-insured on all physical damage and public liability insurance policies taken out by the Design and Build Contractor, each Further Works Contractor and/or the Grantee in respect of the relevant Works and by the Grantee in respect of the Health Facility and the Additional Facilities.

10.3 Reinstatement

The Grantee undertakes to apply all insurance proceeds received under any physical damage policies to complete any required Reinstatement Works.

11 DEFECTS

- 11.1 The issue of (i) a certificate of Substantial Completion in respect of any element of Works in accordance with the Design and Build Contract or (ii) a certificate of substantial or practical completion (or equivalent, as applicable under the terms of the relevant Further Works Contract) in respect of any element of Works in accordance with a Further Works Contract will in no way affect the obligations of the Grantee under this Agreement in respect of any Defects.
- 11.2 In the event that the HSE notifies the Grantee in writing during the Defects Period of any Defect then the Grantee will, if so requested by the HSE, procure the repair and making good of such Defect, as soon as possible, having regard to the nature of same.

12 NOT USED

13 LIAISON PROCEDURE

- 13.1 The Grantee and the HSE agree to liaise closely with each other to facilitate communication between the Parties in respect of the performance of the Works.
- 13.2 The Parties shall comply with the liaison procedures specified by the HSE in relation to all matters arising under this Agreement from time to time other than disputes in which case the provisions of Clause 25 (Dispute Resolution Procedure) shall apply.

14 REPRESENTATIVES

- 14.1 The Grantee shall appoint a contract manager as the Grantee Representative for the purposes of overseeing the performance by the Grantee of its obligations under this Agreement and shall notify the HSE of any replacement Grantee Representative who may be appointed from time to time. The Grantee shall ensure that the Grantee

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Representative, or a competent deputy duly authorised to act on behalf of the Grantee is generally available for consultation with the HSE during normal business hours.

- 14.2 The HSE shall nominate a duly authorised officer to act as the HSE Representative for the purposes of this Agreement. The HSE shall ensure that the HSE Representative or a competent deputy duly authorised to act on the HSE's behalf is generally available for consultation with the Grantee during normal business hours. The HSE shall notify the Grantee of any subsequent replacement for the HSE Representative and any deputies. The removal or replacement of the HSE Representative or any deputies shall not invalidate or otherwise affect any actions or decisions of such a person in such capacity before removal or replacement.

15 REPORTS, RECORDS AND OTHER INFORMATION

- 15.1 The Grantee shall keep such reports and/or records relating to this Agreement in such format and for such periods as the HSE may reasonably notify to the Grantee from time to time provided always that where the HSE's requirements in relation to the format and period that such reports and/or records are to be prepared in or kept for are in excess of those required of the Grantee by Law, then preparation and retention of such reports and/or records shall be at the HSE's cost. Such notification shall include, where appropriate, the relevant dates by which such reports and records must be submitted.
- 15.2 Following the termination or expiry of this Agreement, the Grantee shall, at its own cost, deliver to the HSE, in the manner and at such location as the HSE reasonably specifies, all records which are in existence (or, where those records are required by Law to remain with the Grantee, copies of them) or such part of such records as the HSE may by notice to the Grantee specify.
- 15.3 The Grantee shall, upon reasonable notice, make records available for inspection by or on behalf of the HSE at all reasonable times. The HSE shall be entitled to take copies of all relevant records at the Grantee's cost and for that purpose to use such copying facilities as are maintained at the place where the records are kept.
- 15.4 The Grantee acknowledges the right of the HSE to consult with relevant third parties to obtain any information which the HSE may reasonably require in connection with this Agreement. The Grantee hereby undertakes to instruct such third parties to furnish any such information to the HSE on request subject to such third party being legally entitled to do so.

16 TERMINATION FOR GRANTEE DEFAULT

- 16.1 The Grantee will notify the HSE promptly on becoming aware of the occurrence of a Grantee Default or any event which, with the giving of notice and/or lapse of time and/or making of any determination, would constitute a Grantee Default.
- 16.2 Where the HSE becomes aware of a Grantee Default falling within limbs (a), (c)(iii), (c)(iv), (e) or (i) of the definition of Grantee Default it may, upon notice to the Grantee, terminate this Agreement forthwith.
- 16.3 Where the HSE becomes aware of a Grantee Default other than a Grantee Default listed in Clause 16.2, then the HSE shall:
- (a) give the Grantee twenty (20) Business Days (or such other period as the Parties may agree) from receipt of a written notice specifying details of the Grantee Default, to remedy same; or

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- (b) require the Grantee to put forward for agreement by the HSE within ten (10) Business Days (or such other period as the Parties may agree) of such notice a reasonable programme for the remedying of the breach or breaches, such programme to specify the manner in which the breach or breaches is or are proposed to be remedied and the latest date by which it is proposed that such breach or all such breaches shall be remedied.
- 16.4 Where the Grantee Default is not remedied by the Grantee within the period specified in Clause 16.3 above, then, without prejudice to the other terms of this Agreement, the HSE may, upon a further twenty (20) Business Days-notice to the Grantee, terminate this Agreement and without prejudice to Clause 21 (Transfer of the Site on Termination) but subject to Clause 16.6, exercise its step-in rights on termination as set out in Clause 20.5 (Step-In Rights on Termination) below.
- 16.5 Upon termination of this Agreement under Clause 16.2 or 16.4:
 - (a) the provisions of Clause 20 (Effect of Termination) shall apply; and
 - (b) the provisions of Clause 21 (Transfer of the Site on Termination) shall apply.
- 16.6 Where the HSE serves a notice on the Grantee of its intention to terminate this Agreement pursuant to Clause 16.2 or 16.4, the Grantee may within fifteen (15) Business Days of the HSE's notice (or such longer period as the Parties may agree, in which case the HSE's right to terminate under Clause 16.2 or 16.4 shall be preserved until such time as the HSE elects to revoke the termination notice and/or serves a termination notice under Clause 16.7), serve a notice on the HSE confirming its commitment to pay to the HSE the Replacement Asset Cost in lieu of the HSE's exercise of the Option.
- 16.7 Subject to the HSE's acceptance of the Grantee's commitment under Clause 16.6 (but without prejudice to the HSE's continuing right to terminate this Agreement in accordance with Clause 16.2 or 16.4), the Parties shall enter into such documentation as may be required in order to give effect to the Parties' agreement. Upon formal execution of such documentation and payment of the agreed Replacement Asset Cost by the Grantee to HSE, the HSE shall issue a notice forthwith confirming that this Agreement has terminated. Without prejudice to the foregoing, following the occurrence of a Grantee Default and pending the issue of a termination notice by the HSE pursuant to this Clause 16.7, the HSE shall be entitled to request the Grantee to take whatever action the HSE reasonably believes it needs to take in order to procure the provision of the Health Services at the Health Facility (including, without limitation, the operation of the Health Facility by the HSE or its nominee).
- 16.8 Upon termination of this Agreement pursuant to Clause 16.7,
 - (a) the provisions of Clause 20.1, 20.3 and 20.4 (Effect of Termination) shall apply; and
 - (b) the provisions of Clause 21 (Transfer of the Site on Termination) shall not apply.

17 TERMINATION FOR HSE DEFAULT

- 17.1 Where the Grantee becomes aware of a HSE Default, it may upon notice to the HSE but subject to the provisions of this Clause 17, terminate this Agreement.
- 17.2 Where the Grantee becomes aware of a HSE Default which is capable of remedy, then the Grantee shall give the HSE twenty (20) Business Days (or such other period as the Parties may agree) of receipt of a written notice specifying details of the HSE Default, to remedy same.

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17.3 Where the HSE Default is not remedied by the HSE within the period specified in Clause 17.2 above or is incapable of remedy, then, subject to Clause 17.4, the Grantee may terminate this Agreement by notice in writing to the HSE.

17.4 Where the HSE Default is due to a Change in Circumstances the provisions of Clause 27 (Change in Circumstances) shall apply.

18 GRANTEE VOLUNTARY TERMINATION

18.1 The Grantee may, subject to the payment of compensation to the HSE pursuant to Clause 18.2, terminate this Agreement at any time by giving the HSE five (5) years notice of such termination.

18.2 If the Grantee wishes to terminate this Agreement under this Clause, it must give a termination notice to the HSE stating:

(a) that the Grantee is terminating this Agreement under this Clause 18 (Grantee Voluntary Termination): and

(b) that the Grantee will pay the Replacement Asset Cost to the HSE.

18.3 This Agreement will terminate on the date falling ten (10) Business Days after the date that the HSE receives the Replacement Asset Cost from the Grantee (such receipt to be confirmed in writing by the HSE), provided that the Grantee's right to terminate this Agreement pursuant to this Clause 18 shall expire in the event that the Replacement Asset Cost is not paid in full to the HSE on or before the date that is five (5) years after the date of receipt of the termination notice by the HSE under Clause 18.2. Where the Grantee's right to terminate this Agreement expires pursuant to this Clause 18.3 the HSE shall repay in full to the Grantee that part (if any) of the Replacement Asset Cost that has been paid by the Grantee to the HSE prior to such expiry.

18.4 Upon termination of this Agreement pursuant to this Clause 18,

(a) the provisions of Clause 20.1, 20.3 and 20.4 (Effect of Termination) shall apply; and

(b) the provisions of Clause 21 (Transfer of the Site on Termination) shall not apply.

19 NOT USED

20 EFFECT OF TERMINATION

20.1 Termination of this Agreement will be without prejudice to any accrued rights and obligations of both Parties under this Agreement as at the date of termination.

20.2 Save where this Agreement is terminated for a HSE Default and, subject to Clauses 16.6 to 16.8 and Clause 18, the HSE may elect at its option to exercise any rights, in respect of protecting or realising the State's interest in the Capital Assistance, provided pursuant to Clause 7 (Protection of HSE Interests) of this Agreement.

20.3 Save as provided herein, all future rights and obligations of the HSE and the Grantee under this Agreement will cease and be of no further force and effect upon the termination of this Agreement, without prejudice to any accrued rights or obligations under this Agreement as at the date of termination.

20.4 Termination of this Agreement in accordance with its terms will not prejudice or affect any continuing obligations of each of the Parties under any provisions intended by their nature to continue after termination of this Agreement.

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20.5 Step-In Rights on Termination

- (a) In the event that this Agreement is terminated for a Grantee Default (save where Clause 16.7 applies, but subject to Clause 7.1(d)), the Grantee hereby agrees that, it will assign, upon written request from the HSE, its rights under the Collateral Warranties and/or the Design and Build Contract and/or each Further Works Contract to the HSE for the purpose of allowing the HSE to carry out and complete the Works and/or to facilitate the provision of the Health Services or any part or parts thereof as it will think fit.
- (b) The Grantee will not disrupt or in any way hinder the exercise by the HSE of the rights referred to in Clause 20.5(a) (Step-In Rights on Termination) and the Grantee will provide all reasonable assistance required by the HSE in this regard.

21 TRANSFER OF SITE ON TERMINATION

21.1 The HSE may, in the event of the occurrence of a Grantee Default incapable of remedy pursuant to Clause 16.2 or, if capable of remedy, not remedied within the period specified in Clause 16.3, and without prejudice to Clauses 16.6 to 16.8 and Clause 18, notify the Grantee of the HSE's intention to exercise the Option in accordance with the terms of the Option Agreement.

21.2 Without prejudice to the terms of the Option Agreement, for the purposes of effecting the transfer of the Site to the HSE, the Grantee hereby irrevocably appoints the HSE to be its attorney in its name and on its behalf at any time on or after the event of termination:

- (a) to execute and complete any contracts or instruments which the HSE may require for perfecting the title of the HSE to the Site or any part thereof or for vesting the same in the HSE or its nominees; and
- (b) otherwise generally, to sign, seal, execute and deliver all deeds, assurances, agreements and contracts and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the HSE under this Agreement or which may be deemed expedient by the HSE in connection with the transfer of the Site or any part thereof to the HSE or in connection with any other exercise of any power under this Agreement.

21.3 In relation to the performance of the Works on any termination for Grantee Default (save where Clause 16.7 applies and without prejudice to Clause 20.5(a)), the HSE will have the right (but not the obligation) to require the Grantee to transfer (to the extent permitted) the benefit and burden of any or all agreements under which the Works have been provided, other than the Design and Build Contract and the Collateral Warranties, to it or its nominee, subject to the HSE or such third party complying with all obligations arising to be performed thereunder following such assignment or novation (save any arising or made more onerous by any failure by the Grantee to perform before such assignment or novation) and the Grantee shall use all reasonable endeavours to comply with such requirement.

22 FORCE MAJEURE

Neither Party will be liable for any breach, non-performance or delay in performance of this Agreement that is due to any Force Majeure Event.

23 INDEMNITIES

23.1 The Grantee shall be responsible for, and shall release, hold harmless and indemnify without limitation and upon demand the HSE, its employees, agents and contractors on demand from and against, all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to any third party or to the HSE or for which the HSE is responsible);
- (c) breach of statutory duty; and
- (d) third party actions, Claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of the provision or non-provision of the Health Services and/or the performance or non-performance of the Original Works or, subject always to Clause 4.7, the Further Works.

23.2 The Grantee shall not be responsible or be obliged to indemnify the HSE for:

- (a) any of the matters referred to in Clauses 23.1(a) to 23.1(d) above which arises as a direct result of the Grantee acting on the instruction of the HSE;
- (b) any matter for which the HSE would otherwise be liable to pay or reimburse the Grantee pursuant to Clause 4.7;
- (c) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the HSE, its employees, agents or contractors or by the breach by the HSE of its obligations under this Agreement.

23.3 The HSE shall be responsible for, and shall release, hold harmless and indemnify without limitation and upon demand the Grantee, its employees, agents and contractors on demand from and against, all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to any third party or to the Grantee or for which the Grantee is responsible);
- (c) breach of statutory duty; and
- (d) third party actions, Claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which arise as a direct result of the Grantee acting on the written instruction of the HSE in connection with the Further Works, and save to the extent that the Grantee, its employees, agents and contractors are indemnified in respect of any such matter pursuant to any insurance policy in respect of the Further Works.

23.4 The liability of either party (the "first party") to the other party (the "second party") under any indemnity in this Agreement will be without prejudice to any other right or remedy available to the second party and will be without limitation to any indemnity by the first party under any other provision of this Agreement.

24 LIABILITY

- 24.1 Nothing in this Agreement excludes or limits the liability of either for the death or personal injury resulting from its negligence or that any of its officers, employees or agents.
- 24.2 Subject to Clause 24.4 neither Party nor any of its officers, employees or agents is in any circumstances whatsoever liable to the other Party for:
- (a) any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
 - (b) any indirect or consequential loss.
- 24.3 Each Party acknowledges and agrees that the other Party holds the benefits of Clauses 24.1 and 24.2 for itself and as trustee and agent for its officers, employees and agents.
- 24.4 For the avoidance of doubt nothing in this Clause 24 prevents or restricts either Party from enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.
- 24.5 Notwithstanding Clause 24.2, the HSE shall indemnify and keep the Grantee indemnified against all costs claims losses or liabilities (excluding any indirect or consequential loss) arising to the Grantee directly from the carrying out of any Further Works other than those Further Works which relate to the Car Park Extension or the Relocated Pharmacy (but without prejudice to Clause 4 in relation to the funding of such works), provided that such costs claims losses or liabilities are due to any negligence omission or default of the HSE its servants or agents and save to the extent that (i) such costs claims losses or liabilities arise from, are contributed to and/or are caused by a negligent act of the Grantee or any breach by the Grantee of its obligations pursuant to this Agreement or any Agency Agreement or (ii) such losses arise from mere inconvenience due to the carrying out of such Further Works or (iii) the Grantee receives or is entitled to receive any sums from an insurance policy effected with respect to the Further Works where such policy indemnifies the Grantee.
- 24.6 The HSE shall take into account any material disruption to the Grantee in providing the Health Services arising from the carrying out of the Further Works in assessing and evaluating the performance of the Hospital pursuant to any applicable service level agreements between the Grantee and the HSE.
- 24.7 Each Party acknowledges and agrees that this Clause 24 is fair and reasonable having regard to the circumstances as at the Commencement Date and the Restatement Date.

25 DISPUTES

- 25.1 Save in respect of any dispute relating to Market Value (which dispute shall be dealt with in accordance with the terms of the Option Agreement), any dispute between the Parties shall be referred upon the application of either party to the Chief Executive Officer (or equivalent) of each party. Where the Chief Executive Officers fail to resolve the dispute amicably within 10 (ten) Business Days, either Party may, upon notice to the other Party, refer the dispute to the Expert.
- 25.2 The Expert shall:
- (a) act as an expert and not as an arbitrator and his fees shall be borne by the party against whom he holds or in default of such holding by the Parties equally;

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- (b) afford to the HSE and the Grantee a reasonable opportunity of stating (whether in writing or otherwise as may be decided by him and within time as he may stipulate in that behalf) reasons in support of such contentions as each Party may wish to make relative to the matter or matters under consideration;
- (c) be required to give a decision within 10 (ten) Business Days of being requested to resolve such dispute (or such longer period as the Parties may agree).

25.3 The determination of the Expert shall be binding on the Parties.

26 ACCOUNTING PROCEDURES

Unless otherwise exempted by the HSE pursuant to section 38(5) of the 2004 Act the Grantee shall each, at its own expense:

- (a) keep in such form as may be approved by the HSE (and in accordance with any general direction issued by the Minister for Health), all proper and usual accounts and records of income received and expenditure incurred by it (including the receipt of any Capital Amounts and the manner in which they are spent);
- (b) submit a copy of such accounts annually for audit; and
- (c) supply a copy of its Audited Accounts to the HSE as soon as possible after such accounts have been finalised and in any event no later than twenty (20) Business Days after such reports have been filed with the Companies Registration Office.

27 CHANGE IN CIRCUMSTANCES

27.1 If there is a Change in Circumstances which substantially changes the operation or effect of this Agreement as originally intended by the Parties, then either Party may notify the other that it wishes to review this Agreement and the Parties shall meet and discuss in good faith the nature of the event and its expected duration. As soon as practicable after the occurrence of a Change in Circumstances, the Parties shall discuss how best to continue to perform their obligations as far as possible in accordance with this Agreement.

27.2 If the Parties are unable to agree proposals to mitigate the effects of the Change in Circumstances within one hundred and eighty (180) days, or such period as the HSE may reasonably determine, then either Party may terminate this Agreement by written notice to the other Party having immediate effect.

27.3 Upon termination of this Agreement pursuant to Clause 27.2:

- (a) the provisions of Clause 20.1, 20.3 and 20.4 (Effect of Termination) shall apply; and
- (b) the HSE agrees that the Option Agreement and the Deed of Covenant shall automatically terminate and shall confirm termination of both in writing to the Grantee (and return the executed Option Agreement to the Grantee) as soon as possible thereafter.

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28 COSTS

Each party shall pay its own costs of and incidental to the negotiation, preparation, execution and implementation by it of this Agreement and of all other documents and transactions referred to and contemplated herein.

29 WAIVER

29.1 No omission to exercise or delay in exercising any right, power or remedy provided by Law or under this Agreement shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy precludes or impairs any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under this Agreement.

29.2 Any waiver of any right, power or remedy under this Agreement must be in writing and may be given subject to any conditions thought fit by the HSE. Unless otherwise expressly stated any waiver is effective only in the instance and only for the purpose for which it is given.

30 VARIATION

No variation to this Agreement shall be of any effect unless it is agreed in writing, signed by or on behalf of each Party.

31 NOTICES

31.1 All notices and other communications to be given under or in connection with this Agreement must (except where expressly provided otherwise) be in writing and must either be delivered by hand or sent by registered post. Delivery by courier is regarded as delivery by hand.

31.2 All communications must be sent to the address of the relevant Party, or to such other address of a Party as may be notified by that Party from time to time. Each communication must be marked for the attention of the relevant person.

HSE

Health Service Executive
2/3 Parnell Square East
Dublin 1

For the attention of: Head of Estates
Fax number: 01 8870058

Grantee:
St. Vincent's Healthcare Group
Elm Park
Dublin 4

For the attention of: the Company Secretary
Fax number: 01 269 1264

31.3 A communication is deemed to have been received:

(a) if delivered by hand, at the time of delivery; or

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- (b) if sent by registered post, at the expiration of two clear days after the time of posting; or
- (c) if a communication would otherwise be deemed to have been received outside of normal business hours (being 9:00 a.m. to 5:30 p.m. on a Business Day) under this Clause 31, it is deemed to have been received at the opening of business on the next Business Day.

31.4 For the purposes of this Clause 31:

- (a) words in electronic form shall be deemed to be “writing” for the purposes of all application legislation where “writing” is required; and
- (b) electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the parties.

32 CONFIDENTIALITY

32.1 Each Party agrees, for itself and its respective directors, officers, employees, servants, agents, professional advisers and sub-contractors, to keep confidential and not to disclose to any person (except where provided for in this Clause 32), any of the terms of this Agreement which are of a confidential nature or any confidential or proprietary information provided to it or arising or acquired by it pursuant to the terms or performance of this Agreement (including without limitation any such documents or information supplied in the course of proceedings under the disputes resolution procedure set out or referred to in Clause 25 (Disputes) (together the “**Confidential Information**”).

32.2 Notwithstanding Clause 32.1, a Party shall be entitled to disclose the whole or any part of the Confidential Information:

- (a) to its trustees, directors, officers, employees, servants, sub-contractors, agents, or professional advisers to the extent necessary to enable it to perform (or to cause to be performed) or to enforce any of its rights or obligations under this Agreement subject to the person’s agreement to maintain confidentiality; or
- (b) where the Confidential Information is required to be disclosed to the Minister for Health, the Minister for Finance or any of their department employees, servants, sub-contractors, agents or professional advisers;
- (c) to the extent that the Confidential Information has, except as a result of a breach of confidentiality, become publicly available or generally known to the public or generally known to the public at the time of disclosure;
- (d) to the extent that it has acquired the Confidential Information from a third party who is not in breach of any obligation as to confidentiality to the other Party;
- (e) if and to the extent required by any Law or for the purpose of any judicial inquiry or proceedings;
- (f) if and to the extent required by any securities exchange or regulatory or governmental body to which that party is subject, wherever situated, including (amongst other bodies) the Irish Stock Exchange or the Panel, whether or not the requirement for information has the force of law;
- (g) if and to the extent necessary or desirable to enable a determination to be made under Clause 25 (Dispute Resolution Procedure);

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- (h) to its professional advisers, auditors and bankers;
- (i) if and to the extent the other party has given prior written consent to the disclosure; or
- (j) any registration or recording of any Necessary Consents and property registration.

32.3 Where disclosure is permitted under Clause 32.2, each Party shall ensure the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

32.4 The restrictions contained in this clause shall continue to apply for a period of five years after the termination of the Agreement.

33 ASSIGNMENT AND NOVATION

33.1 This Agreement will be binding on and will enure to the benefit of the Grantee and the HSE and their respective successors and permitted assigns.

33.2 Save as provided herein, the Grantee will not assign, novate, transfer or create or allow to subsist any Encumbrance, trust or interest in this Agreement or any other contract entered into by the Grantee in performing its obligations hereunder or any part thereof or any benefit or interest therein or thereunder, without the prior written consent of the HSE (such consent not to be unreasonably withheld).

33.3 The HSE shall be entitled, without the consent of the Grantee to novate or transfer this Agreement or any of its obligations hereunder (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any authority, department, office, statutory body or agency of the Government or any person whose obligations under this Agreement are guaranteed by the Government or any authority, department, office, statutory body or agency of the Government and shall notify the Grantee in writing of any such novation or transfer.

34 SEVERANCE

Each of the provisions of this Agreement are severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability in that jurisdiction of the remaining provisions of this Agreement shall remain in full force and effect and shall continue to bind the parties.

35 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of the State.

36 JURISDICTION

36.1 Subject to the provisions of Clause 25 (Disputes) each of the Parties to this Agreement irrevocably agrees that the courts of Ireland are to have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement 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 Agreement (the "Proceedings") shall therefore be brought in the courts of Ireland.

36.2 Each of the Parties to this Agreement irrevocably waives any objection to Proceedings in the courts referred to in Clause 36.1 on the grounds of venue or on the grounds of forum non-conveniens.

37 CHANGE IN CONTROL

- 37.1 Subject to Clause 37.2, the Grantee shall procure that save where the prior written consent of the HSE has been obtained (such consent not to be unreasonably withheld or delayed) there shall be no Change in Control of the Grantee.
- 37.2 The HSE shall not withhold its consent to a Change in Control where the proposed Change in Control is a change of the trustees holding the shares on behalf of the Religious Sisters of Charity, provided such Change in Control does not alter the Grantee's main object of providing the Health Services.
- 37.3 The HSE hereby acknowledges and agrees to the outright disposal of shares in the Grantee by members of the Religious Sisters of Charity to St Vincent's Holdings which disposal, whether occurring before or after the Restatement Date, shall not constitute a "Change in Control" for the purposes of this Agreement.

38 SUB-CONTRACTING

- 38.1 The HSE hereby confirms its consent to the appointment of the relevant Works Contractors to undertake the Works as presented to it by the Grantee.
- 38.2 Where the Grantee intends to appoint or approve any party to undertake any of the Works other than the relevant Works Contractors already approved by the HSE, the appointment or approval of any such party will be subject to the approval of the HSE before its appointment (such approval not to be unreasonably withheld or delayed and in any event not to be withheld or delayed on grounds other than the technical ability, competence, experience or financial strength of the proposed party).
- 38.3 The Grantee will not, without the prior written approval of the HSE, (such approval not to be unreasonably withheld or delayed) do or omit to do any act or thing which would immediately or upon the expiry of notice entitle any Sub-Contractor to regard as terminated any Sub-Contract.
- 38.4 The Grantee will not, without the prior written consent of the HSE, (such approval not to be unreasonably withheld or delayed) terminate any of the Sub-Contracts, nor appoint any sub-contractors in addition to or in substitution for the Sub-Contractors, or any of them. The HSE will not withhold such consent on grounds other than the technical ability, competence or financial strength of the proposed Sub-Contractor.
- 38.5 The Grantee shall, and shall use all reasonable endeavours to procure that each Sub-Contractor shall, perform their respective obligations under and observe all of the terms of any Sub-Contracts to which it is a party and the Grantee shall not in any material respect waive, or fail to enforce, any rights it may have under such Sub-Contract without the prior consent of the HSE.
- 38.6 The Grantee shall remain responsible to the HSE for all its obligations under this Agreement. No consent given by the HSE to the appointment of any sub-contractor shall relieve the Grantee from its obligations under same.
- 38.7 The Grantee (as the case may be) shall deliver to the HSE within ten (10) Business Days of the same having been signed or otherwise executed by the relevant parties thereto a copy of each Sub-Contract and of any material amendment (made in accordance with this Agreement) of any of the Sub-Contracts.
- 38.8 Subject to the Clause 7.1(d) and the obligations assumed by the HSE thereunder, the Grantee shall fully indemnify and hold harmless the HSE against all Losses arising as a result of any failure by the Grantee to comply with this Clause 38 including any Claims made against the HSE by any counter-parties to any such Sub-Contracts concerning any breach by the Grantee of such Sub-Contracts, where such breach

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occurred before the effective date of assignment, novation or transfer (as the case may be) of such Sub-Contracts.

38.9 The Grantee shall comply with all other requirements of the HSE concerning contractors engaged to perform the Health Services.

38.10 The Grantee will not without the prior written approval of the HSE make any material amendment to any Sub-Contract.

39 PUBLIC RELATIONS AND PUBLICITY

39.1 Subject to the provisions of Clause 32 (Confidentiality), the HSE reserves the right to publish information about the subject matter of this Agreement (other than financial and/or economic information which the Grantee (acting reasonably) indicates is confidential or commercially sensitive information) as they may deem appropriate from time to time.

39.2 The Grantee shall not by itself, its servants, agents or sub-contractors, communicate with the press, television, radio or other media on, or otherwise use information on, any matter concerning this Agreement without the prior consent of the HSE (such consent not to be unreasonably withheld or delayed).

40 NO AGENCY

The Parties shall at all times be independent contractors, and nothing in this Agreement shall be construed (and the Parties shall not hold out their relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between the HSE and the Grantee or any of the Grantee's or its Sub-Contractors' employees.

41 ENTIRE AGREEMENT

The Agreement entered into constitutes the whole and only agreement between the parties relating to the subject matter of the Agreement.

42 LANGUAGE

42.1 Each notice, demand, request, statement, instrument, certificate or other communication under or in connection with this Agreement shall be:

(a) In English; or

(b) If not in English, accompanied by an English translation made by a translator, and certified by an officer of the party giving the notice to be accurate.

42.2 The receiving party shall be entitled to assume the accuracy of and rely upon any English translation of any document provided pursuant to Clause 42.1 (Language).

43 COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute but one and the same instrument.

44 EXPIRY

This Agreement shall cease to have effect:

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- (a) in relation to the Health Facility, on the Expiry Date (Health Facility), but without prejudice to the provisions of the Option Agreement;
- (b) in relation to the Additional Facilities, on the Expiry Date (Additional Facilities); and
- (c) in relation to any other facilities in respect of which the HSE may agree to make available one or more Capital Amounts, on such date as may be agreed in writing by the HSE and the Grantee,

provided that this Agreement shall cease to have effect for all purposes, subject always to Clause 20 (Effect of Termination), on the Termination Date.

45 AMENDMENT AND RESTATEMENT

- 45.1 The original Grant Agreement is hereby amended and restated as set out in this Agreement and shall continue in full force and effect as so amended and restated.
- 45.2 The Ancillary Agreements are hereby further confirmed and ratified but so that, and for clarification:
 - 45.2.1 this Agreement as so amended and restated constitutes the Grant Agreement for the purposes of each of the Ancillary Agreements;
 - 45.2.2 and the obligations in respect of the “Pharmacy Facility” in the Option Agreement shall apply from the Restatement Date to the Relocated Pharmacy (once constructed);
 - 45.2.3 the term “Expiry Date” in the Option Agreement shall be interpreted to mean the Expiry Date (Additional Facilities).

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SCHEDULE 1
THE SITE AND THE HEALTH FACILITY
Map attached

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SCHEDULE 2
OPTION AGREEMENT

Please see attached:

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Option Agreement

THIS AGREEMENT is made

2010

BETWEEN

- 1) **ST. VINCENT'S HEALTHCARE GROUP LIMITED** of Elm Park, Dublin 4 ("SVHG" which expression shall include and be deemed to include its successors and assigns);
- 2) **THE HEALTH SERVICE EXECUTIVE** a statutory body whose address is Parkgate Street Business Centre, Dublin 8 (the "HSE")

IT IS AGREED as follows:

1 Definition and interpretation

- 1.1 In this agreement the following expressions shall unless the context otherwise requires have the following meanings:

"Base Purchase Price" means the Market Value (as hereinafter defined) of the Property;

"Call Option Event" means any of the events described in the Second Schedule hereto;

"Campus" means the property known as St. Vincent's University Hospital as more particularly set out in Part One of the First Schedule hereto and which is shown for identification purposes outlined in red on map numbered 1 appended hereto;

"Closing Date" means any Working Day after the expiration of twenty Working Days from the date of the Option Notice at the election of the HSE but not later than 12 months after the date of service of the Option Notice;

"Covenant Lands" has the same meaning as that term is given in the Deed of Covenant;

"Deed of Covenant" means the deed a copy of which is appended at the Fourth Schedule;

"Expiry Date" has the meaning given to it in the Grant Agreement;

"General Conditions" means the Law Society General Conditions of Sale 2009 Edition including the special conditions issued therewith;

"Grant Agreement" means the agreement for capital assistance entered into between the HSE and the Grantee on or about the date hereof;

"Grantee Default" has the meaning giving to it in the Grant Agreement;

"Grantee" has the meaning given to it in the Grant Agreement;

"Health Services" means the provision, for the benefit of the public, or medical surgical, nursing services and accommodation for the treatment of sick persons and for the relief, cure, rehabilitation and prevention of sickness and disability, both physical and mental;

"Insolvency Event" has the meaning given to it in the Grant Agreement;

"Market Value" means the estimated amount for which the Property should sell on or about the date hereof between a willing buyer and a willing seller in an arm's-length

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transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion and without regard to costs of sale or purchase and without offset of any associated taxes having regard to all relevant matters including without limitation the following:-

- (i) The title pursuant to which the Property is held;
- (ii) The existence of any mortgages, charges or other encumbrances which shall not be discharged in the course of such sale;
- (iii) The existence, if any, of abnormal ground conditions or archaeological remains which might adversely affect the present or future occupation, development or value of the Property;
- (iv) The availability of services to the Property; and
- (v) The existence of any planning permission for the Property or any statutory restrictions as to its use.
- (vi) But disregarding the value of any buildings or other structures erected on or under the Property;

“Pianora Lease” means a lease dated 1 January 2002 between (1) Una O’Neill and others and (2) Pianora Limited as rectified by a deed of rectification dated 25 May 2005 between (1) SVHG and (2) Pianora Limited

“SVHG’s Solicitors” means Arthur Cox or Such other solicitors as may be appointed from time to time provided that written notification of such appointment is furnished to the HSE;

“Option Fee” means €10.00 (Ten Euro);

“Option Notice” means the notice served pursuant to Clause 4.1 of this Agreement;

“Option” means the option to purchase the Property granted by SVHG to the HSE described in clause 2 of this Agreement;

“Pharmacy Facility” means a facility which stores, prepares and dispenses medicine to the hospital on the Campus;

“Property” means that part of the Campus as is more particularly described in part Two of the First Schedule hereto and which is shown outlined in red on map number 2 attached hereto;

“Working Day” means a day on which banks are generally open in Dublin for business;

“Works” shall have meaning given to that term in the Grant Agreement.

The provisions as to definitions and interpretation set out in the General Conditions shall apply to this option agreement.

- 1.2 Words importing one gender shall be construed as importing any other gender.
- 1.3 Words importing the singular shall be construed as importing the plural and vice versa.
- 1.4 The clause headings do not form part of this agreement and shall not be taken into account in its construction or interpretation.

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- 1.5 Terms not otherwise defined herein shall have the meaning given to them in the Grant Agreement.

2 Agreement

In consideration of the HSE entering into the Grant Agreement and the payment of the Option Fee paid by the HSE to SVHG (receipt of which SVHG acknowledges), SVHG hereby grants to the HSE an option whereby at any time before the Expiry Date, upon or following the occurrence of a Call Option Event, the HSE may require SVHG to sell the Property to the HSE or its nominee upon the terms of this agreement.

3 Base Purchase Price

In the event of the happening of a Call Option Event then the price payable to the HSE for the Property shall be the Base Purchase Price.

4 Exercise of the Option

- 4.1 The Option may be exercised by Service of notice (the "Option Notice") in writing from the HSE to SVHG at any time after a Call Option Event.
- 4.2 The Option Notice shall be served on SVHG at its registered office or at the office of SVHG's Solicitors and the Option is deemed to be exercised on such delivery.
- 4.3 On the exercise of the Option SVHG agrees to sell and the HSE agrees to purchase the Property at the Base Purchase Price on the Closing Date in accordance with this agreement and with the General conditions. For the Purposes of the General Conditions:
- (a) the "Conditions" means this agreement and the General Conditions;
 - (b) the parties shall be deemed to have completed the "Memorandum" in accordance with the terms of this agreement;
 - (c) the "Documents Schedule" means the schedule of documents set out in the Third Schedule hereto;
 - (d) the "Particulars" means the description of the Property set out in the First Schedule hereto;
 - (e) General condition 24 (a) shall be varied so that Base Purchase Price shall be paid in the following manner.
 - (i) 20% thereof on the day which is twenty Working Days after serving of the Option Notice; and
 - (ii) the balance on the Closing Date.
 - (f) the "Date of Sale" is the date of the service of the Option Notice, save for the purposes of General Conditions 15, 43 and 45, where the "Date of Sale" shall be the date hereof;
 - (g) the "Non-Title Information Sheet" has been omitted and the General conditions shall be construed accordingly.
 - (h) save where the context otherwise requires or implies or the text hereof expresses to the contrary, the definitions and provisions as to interpretation set forth in the General conditions shall be applied for the purposes of this agreement;

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- (i) the General Conditions shall apply to the sale insofar as the same are not altered or varied by this agreement and this agreement shall prevail in case of any conflict between it and the General Conditions;
 - (j) the General Conditions shall be read and construed without regard to any amendment therein, unless such amendment shall be referred to specifically in this agreement; and
 - (k) the Assurance of the Property shall include:
 - (i) a covenant on the part of SVHG to maintain at all times not less than 250 car spaces on the Campus available for public use;
 - (ii) a covenant on the part of SVHG to provide the Health Services and the Pharmacy Facility in the format of the draft appended at the Fifth Schedule;
 - (iii) a covenant to use the Covenant Lands as a public hospital in the format of the draft appended at the Fifth Schedule;
 - (iv) the grant of easements rights and privileges described in Part Three of the First Schedule;
 - (v) the reservation of the easements, rights and privileges described in Part Four of the First schedule;
 - (vi) an acknowledgement and undertaking by SVHG for the production of such of the original documents of title to the Property as are held by SVHG; and
 - (vii) a covenant on the part of the HSE to use the Option Property as a Healthcare Facility.
- 4.4 The HSE shall be entitled to take possession of the Option Property as exclusive licensee at any time following service of the Option Notice.
- 4.5 On the exercise hereof, the HSE is hereby granted by way of security pursuant to section 20 of the Powers of Attorney Act 2006 an irrevocable power of attorney for the purpose of signing a memorandum evidencing the agreement to sell the Property on behalf of SVHG in accordance with the terms of this agreement, and to execute in favour of the HSE or its nominees an Assurance of the Property if the Option is exercised.
- 4.6 Notwithstanding any other provision of this Agreement, a deed of assurance shall only be required to be delivered in respect of the transfer of the Option Property when the Base Purchase Price is paid in full (save for any amount which the HSE is required by law to withhold).

5 Title

SVHG represent and warrants to the HSE that as the date of this agreement:

- 5.1 It has Good Marketable Title to the Property;
- 5.2 there are no mortgages charges or debentures (whether legal or equitable and whether fixed specific or floating), liens pledges or any other form of security or encumbrance, easements or profit a prendre or agreements to create the same

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affecting the Property or the documents of title, which have not been disclosed to the HSE prior to the date of this Agreement.

- 5.3 the title deeds to the Property are in the possession of SVHG;
- 5.4 there are no actions disputes claims or demands between SVHG and any third party affecting or in respect of the Property of the Property or any part or any of the boundaries thereof;
- 5.5 the Campus abuts roads and services that have been taken in charge by the local authority or enjoys appropriate easements as far as roads and services which have been taken in charge by the local authority.

6 Assignment and alienation

- 6.1 SVHG shall not be entitled to dispose of its interest in this agreement without the prior consent of the HSE.
- 6.2 Save as permitted by the Grant agreement, SVHG undertakes and agrees that it shall not create or allow to be created any charge, lien, easement, restrictive covenant, lease or other right of enjoyment or occupation or any other encumbrances on or affecting the Property or any part of it without the consent of the HSE (such consent not to be unreasonably withheld or delayed) and shall not attempt to lease, transfer, assign or otherwise to dispose of any interest in the Property or any part of it.
- 6.3 The option is personal to the HSE and the HSE shall not be entitled to assign or part with the benefit of this agreement (or any part of it) save in accordance with the alienation provisions set out in the Grant Agreement.

7 Dispute Resolution

7.1 Agreement or determination of the Base Purchase Price

The Market Value of the Property shall be agreed in writing as soon as reasonably practicable after the date hereof by SVHG and the HSE. If, for any reason, they have not so agreed by 31 December 2010 then either party may by notice in writing to the other require the Market Value of the Property to be determined by an independent chartered surveyor experienced in the valuation of land similar to the Property and who is acquainted with the market in the area in which the Property is located (the "Surveyor")

7.2 Appointment of Surveyor

In default of agreement between the SVHG and the HSE on the appointment of the Surveyor, the Surveyor shall be appointed by the President for the time being of the Society of Chartered Surveyors (or the duly appointed deputy of the President or any person authorised by the President to make appointments on his behalf) (the "President") on the written application of either party to the President.

7.3 Replacement surveyor

If the appointment Surveyor relinquishes his appointment or dies or if it becomes apparent that for any reason he is unable or has become unfit or unsuited (whether because of bias or otherwise) to complete his duties or if he is removed from office by Court Order, a substitute may be nominated in his place and in relation to any such nomination the procedures hereinbefore set for the apply as though the substitution were a nomination de novo, which said procedures may be repeated as many times as may be necessary.

7.4 Functions of the Surveyor

The Surveyor shall:-

- (a) Act as an arbitrator in accordance with the Arbitration Act 2010; and
- (b) Within sixty (60) days of his appointment, or within such extended period as the SVHG and the HSE shall jointly agree in writing, give to each of them written notice of the amount of the Base Purchase Price as determined by him.

7.5 Memorandum of the Agreement of Determination of the Base Purchase Price

As soon as the amount of the Market Value of the Property has been agreed or determined, a memorandum of such agreement or determination shall be prepared by the HSE or its Solicitors and shall be signed by or on behalf of the HSE and SVHG and the parties shall each bear their own costs in respect of their preparation and signature.

First Schedule

Part One

The Campus

ALL THAT AND THOSE the lands and premises known as St Vincent's University Hospital, Elm Park, Dublin 4 more particularly shown outlined in red and marked "A" on the map attached to the Deed of Conveyance dated 1 January 2012 between (1) Una O'Neill, Josephine McDonald and Catherine O'Brien and (2) St Vincent's University Hospital Limited, which said map is also attached hereto as Map 1 (excluding, to avoid any doubt, the lands and premises outlined in red and marked "B" on the said map)

HELD in fee simple

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Part Two

Particulars and Tenure

ALL THAT AND THOSE that part of the Campus shown outlined in red on map 2 attached hereto

HELD in fee simple

Part Three

Easements Rights and Privileges to be granted

Easement rights and privileges granted

The following rights and privileges are to be enjoyed by the HSE in conjunction with SVHG and the tenants and occupiers of the Campus and the Adjoining Property and all other parties or persons having the like rights and easements:

1. A right for the HSE, its agents, servants and licenses to pass and re-pass along the roads or pathways or other circulation routes as may now or at any time henceforth exist on the Campus by day or night and, where appropriate with motor vehicles, for all purposes connected with the beneficial use and enjoyment of the Property as a medical facility.
2. Subject to temporary interruption for repair, alteration or replacement or interruptions outside the control of SVHG, the free and uninterrupted passage and running of utilities to and from the Property through the conduits which are now, or may at any time be, in, under or passing through or over the remainder of the Campus and/or the Adjoining Property;
3. The right, at all reasonable times upon reasonable prior notice except in cases of emergency to enter the Campus and/or the Adjoining Property and any part thereof in order to inspect, cleanse, maintain and repair the conduits providing services and utilities to the Property PROVIDED ALWAYS and the person exercising the foregoing rights shall cause as reasonable practicable any damage thereby caused to the Campus and/or the Adjoining Property;
4. The right at convenient times and upon reasonable prior notice to enter upon relevant parts of the Campus for the sole purpose of viewing the state and condition of the Property.
5. All other easements, quasi-easements, rights and privileges now or hereafter belonging to or enjoyed or required by the Property of or over the remainder of Campus and/or the Adjoining Property.

“Adjoining Property” means all lands and buildings of SVHG its successors in title and assigns adjoining or neighbouring the Campus.

Part Four

Exceptions and Reservations

The following rights and easements are excepted and reserved out of the Property to SVHG the tenants and occupiers of the Campus and the Adjoining Property all other parties or persons having the like rights and easements:

1. The free and uninterrupted passage and running of the utilities to and from the remainder of the Campus and/or the Adjoining through the conduits which are now, or may at any time be, in, under or passing through or over the Property;
2. The right, at all reasonable times upon reasonable prior notice except in cases of emergency to enter the Property in order to inspect, cleanse, maintain and repair the conduits providing services and utilities to the Campus and/or the Adjoining Property PROVIDED ALWAYS that the person exercising the foregoing rights shall cause as little inconvenience as reasonable practicable to the Property and shall make good as soon as reasonably practicable any damage thereby caused to the Property;
3. All other easements, quasi-easements, rights and privileges now or hereafter belonging to or enjoyed or required by the remainder of the Campus and/or the Adjoining Property of or over the Property.

“Adjoining Property” means all lands and buildings of SVHG its successors in title and assigns adjoining or neighbouring the Campus

Second Schedule

The Call Option Event

1. The notification in writing by the HSE to SVHG that a Grantee Default falling within limbs (a) (“Insolvency Event”), (c)(iii) (“Assignment and Novation”), (c)(iv) (“Change in Control”), (e) (“Abandonment or Repudiation”) or (i) (“the occurrence of an Enforcement Event”) of the definition of Grantee Default contained in the Grant Agreement, has occurred ; or
2. The notification in writing by the HSE to SVHG that a Grantee Default (other than that listed at paragraph 1, above) has occurred which the Grantee has failed to remedy within the time periods prescribed in clause 16.3 of the Grant Agreement.

Third Schedule

Documents Schedule

1. Corporate Documents of SVHG as follows:
 - 1.1 Certificate of Incorporation of St. Vincent's University Hospital Limited
 - 1.2 Certificate of Incorporation on change of name from St. Vincent's University Hospital Limited to St. Vincent's Healthcare Group Limited
 - 1.3 Up to date Memorandum and Articles of Association of St. Vincent's Healthcare Group Limited.
2. Certified copy Conveyance dated 1 January 2002, between (1) Una O'Neill, Josephine McDonald and Catherine O'Brien and (2) St. Vincent's University Hospital Limited.
3. Certified copy Rectification dated 21 April 2008 between (1) Una O'Neill, Josephine McDonald and Catherine O'Brien and (2) St. Vincent's Healthcare Group Limited.
4. Certified copy Conveyance dated 30 November 2000 between (1) Mary Fahy, Una O'Neill, Anne McEaney and Kathleen Quirke and (2) Una O'Neill, Josephine McDonald and Catherine O'Brien.
5. Certified copy Conveyance dated 14 March 1989 between (1) Frances Heskin, Mary Maloney and Margaret Maher and (2) Mary Fahy, Una O'Neill, Anne McEaney and Kathleen Quirke.
6. Certified copy Conveyance 1 April 1964 between (1) Mary Redmond and Nora McGrath and (2) Frances Heskin, Mary Jordan, Mary Owens, Mary Moloney, Margaret Redmond and Margaret Maher.
7. Copy Conveyance dated 5 November 1934 between (1) The Munster and Leinster Bank Limited, (2) William S. Hayes, (3) Alfred J. Hollinshed and (4) Honoria O'Connor and other.

EXECUTION TEXT

Fourth Schedule

The Deed of Covenant

Please see attached

THIS DEED dated

2010

BETWEEN:

1. **ST. VINCENT'S HEALTHCARE GROUP LIMITED** of Elm Park, Dublin 4 ("SVHGL") which term shall include its successors and assigns; and
2. **HEALTH SERVICE EXECUTIVE** of Parkgate Street Business Park, Dublin 8 ("HSE") which term shall include its successors and assigns.

BACKGROUND:

- A. SVHGL owns the Campus for an estate in fee simple in possession.
- B. SVHGL is a private limited company established to provide medical, surgical, nursing services and accommodation for the benefit of the public at various healthcare facilities including the Campus.
- C. The HSE is a body corporate established pursuant to the Health Act 2004, whose functions include the management and delivery of health and personal social services or the arrangement for the delivery of such services on its behalf. Pursuant to the Health Act 2004, the HSE may provide financial assistance to undertakings engaged in the provision of health and personal social services in the State and SVHGL is such an undertaking.
- D. The HSE has provided capital assistance to SVHGL in consideration of which SVHGL has agreed to provide this covenant.

8 DEFINITIONS

In this deed unless the context otherwise requires the following expressions shall have the following meanings (clause headings are for reference only and shall not affect the construction or interpretation):

"Campus" means the lands and premises known as St. Vincent's University Hospital, Elm Park, Dublin 4 more particularly shown for identification purposes only outlined in red and marked "A" on the map attached to the Deed of Conveyance dated 1 January 2002 between (1) Una O'Neill, Josephine McDonald and Catherine O'Brien and (2) St Vincent's University

EXECUTION TEXT

Hospital Limited, which said map is also attached hereto as map 1 (excluding, to avoid any doubt the lands and premises outlined in red and marked "B" on the said map);

"Covenant Lands" means that part of the Campus outlined in green on map 2 attached hereto;

"Grant Agreement" means the grant agreement dated the date hereof between (1) HSE and (2) SVHGL;

"Health Services" means the provision, for the benefit of the public, of medical, surgical, nursing services and accommodation for the treatment of sick persons and for the relief, cure, rehabilitation and prevention of sickness and disability both physical and mental and the provision of any services or facilities ancillary to the foregoing;

"New Ward Block" means the ward block facility for which HSE is providing capital assistance pursuant to the Grant Agreement, to be constructed on that part of the Campus outlined in red on the attached map 2 pursuant to a design and build contract dated on or about the date hereof between (1) SVHGL and (2) John Paul Construction Limited;

"Public Hospital" means a hospital providing for the admission of public patients (as defined in the Health Services (In-Patient) Regulations, 1991) for the purpose of section 52 of the Health Act, 1970;

"State" means the Republic of Ireland;

"Tax Life" means the period commencing with the date when the new St Vincent's Private Hospital at Elm Park, Dublin 4 is first used for the purpose of a trade which consist of the operation and management of a qualifying hospital within the meaning of section 268(2A) TCA up to and including the date which is fifteen (15) years after such date or such other period as future changed to legislation may require;

"Term" means the term of the Grant Agreement (including any extensions thereof, as set out therein).

9 WARRANTY

SVHGL warrants and confirms that:

- 9.1 it has good and marketable title to the Covenant Lands;
- 9.2 that it has full capacity to enter into and perform this Agreement and no third party consent or notification is required for it to do so which has not been obtained.

10 COVENANT

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the HSE providing capital assistance pursuant to the Grant Agreement and otherwise, SVHGL for itself and its successors and assigns of the Covenant Lands **HEREBY UNDERTAKES, COVENANTS AND AGREES:**

- 10.1 to use the Covenant Lands as a Public Hospital for the Term;
- 10.2 to provide Health Services at the Covenant Lands for the Term;
- 10.3 ensure that such insurances that would be obtained and maintained by a reasonable and prudent person acting in the course of the provision of health services similar to the Health Services, are obtained and maintained in respect of the Covenant Lands (including such insurances as may be required by any law);

EXECUTION TEXT

- 10.4 to furnish such evidence as often as the HSE may reasonably require of compliance with the obligations set out in clause 3.3;
- 10.5 to apply all insurance proceeds received under any physical damage policies to complete any such works as shall be necessary to repair, reinstate and/or replace the buildings or other structures on the Covenant Lands or any part thereof which is covered by the terms of a physical damage insurance policy.

TO THE INTENT that the burden of such covenants shall run with and bind the Covenant Lands and every part thereof for the Term.

11 FURTHER COVENANT

On the day after the expiry of the Tax Life, SVHGL (which term for the purposes of this clause 4 only shall not include their successors and assigns) **HEREBY UNDERTAKES, COVENANTS AND AGREES** to furnish a new covenant substantially in the form of this deed but including the following further undertakings:

“SVHGL shall not enter

- (a) *mortgage or charge or create any security interest over the Covenant Lands whether by lien, covenant, pledge or otherwise without the prior written consent of the HSE, which consent shall not be unreasonably withheld or delayed but which shall be provided by the HSE where the finance to be secured is for the provision or enhancement of the Health Services for a Public Hospital on the Covenant Lands; or*
- (b) *save in the ordinary course of its business in the provision of the Health Services for a Public Hospital for which no consent shall be required, SVHGL shall not lease, transfer, assign or otherwise dispose of any interest in the Covenant Lands or any part of them without the written consent of the HSE, which consent shall not be unreasonably withheld or delayed but which shall be provided by the HSE where the transaction to be effected is in furtherance of the provision or enhancement of Health Services for a Public Hospital and provided that the successors in title to SVHGL shall first covenant in like manner with the HSE as set out in paragraphs (a) and (b) herein.”*

12 TERMINATION

This deed and the covenants contained in it shall terminate automatically on the earlier of:

- 12.1 the expiration of the Term; or
- 12.2 a new covenant being provided in accordance with clause 4 of this deed;

and the parties hereto agree to execute all documents to formally record such termination as may be reasonably requested by the other.

N WITNESS whereof the parties hereto have entered into these present as a deed the day and year first herein **WRITTEN**

EXECUTION TEXT

MAP 1

EXECUTION TEXT

MAP 2

EXECUTION TEXT

PRESENT when the Common Seal
of **ST. VINCENT'S HEALTHCARE GROUP
LIMITED**
was affixed hereto:

Director

Director/Secretary

The Seal of the
HEALTH SERVICE EXECUTIVE
affixed hereto
was authenticated by

Signature: _____

Name: _____

Fifth Schedule

The Covenant to Provide the Health Services, Pharmacy Facility and to use the Covenanted Lands as a Public Hospital

1 SVHGL for itself and its successors and assigns of the Covenant Lands HEREBY UNDERTAKES, COVENANTS AND AGREES:

- 1.1 to use the Covenant Lands as a Public Hospital at all times;
- 1.2 to provide Health Services at the Covenant Lands at all times;
- 1.3 to provide the Pharmacy Facility on the Campus at all times;
- 1.4 to ensure that such insurances that would be obtained and maintained by a reasonable and prudent person acting in the course of the provision of health services similar to the Health Services, are obtained and maintained in respect of the Covenant Lands (including such insurances as may be required by any law)
- 1.5 to furnish such evidence as often as the HSE may reasonably require of compliance with its obligations set out in clause 1.4;
- 1.6 to apply all insurance proceeds received under any physical damage policies to complete any such works as shall be necessary to repair, reinstate and/or replace the buildings or other structures on the Covenant Lands or any part thereof which is covered by the terms of a physical damage insurance policy.

TO THE INTENT that the burden of such covenants shall run with and bind the Covenant Lands and every part thereof and that the benefit thereof may be annexed to the [assured lands] and every part thereof.

EXECUTION TEXT

PRESENT when the Common Seal
of **ST. VINCENT'S HEALTHCARE GROUP
LIMITED**
was affixed hereto:

Director

Director/Secretary

**The Seal of the
HEALTH SERVICE EXECUTIVE
affixed hereto
was authenticated by**

Signature: _____

Name: _____

EXECUTION TEXT

SCHEDULE 3
DEED OF COVENANT
Please see attached.

THIS DEED dated

2010

BETWEEN:

1. **ST. VINCENT'S HEALTHCARE GROUP LIMITED** of Elm Park, Dublin 4 ("SVHGL") which term shall include its successors and assigns; and
2. **HEALTH SERVICES EXECUTIVE** as Parkgate Street Business Park, Dublin 8 ("HSE") which term shall include its successors and assigns.

BACKGROUND:

- A. SVHGL owns the Campus for an estate in fee simple in possession.
- B. SVHGL is a private limited company established to provide medical, surgical, nursing services and accommodation for the benefit of the public at various healthcare facilities including the Campus.
- C. The HSE is a body corporate established pursuant to the Health Act 2004, whose functions include the management and delivery of health and personal social services of the arrangement for the delivery of such services on its behalf. Pursuant to the Health Act 2004, the HSE may provide financial assistance to undertakings engaged in the provision of health and personal social services in the State and SVHGL is such an undertaking.
- D. The HSE has provided capital assistance to SVHGL in consideration of which SVHGL has agreed to provide this covenant.

2 DEFINITIONS

In this deed unless the context otherwise requires the following expressions shall have the following meanings (clause headings are for reference only and shall not affect the construction or interpretation):

"Campus" means the lands and premises known as St. Vincent's University Hospital, Elm Park, Dublin 4 more particularly shown for identification purposes only outlined in red and marked "A" on the map attached to the Deed of Conveyance dated 1 January 2002 between (1) Una O'Neill, Josephine McDonald and Catherine O'Brien and (2) St. Vincent's University Hospital Limited, which said map is also attached hereto as map 1 (excluding, to avoid any doubt the lands and premises outlined in red and marked "B" on the said map);

"Covenant Lands" means that part of the Campus outlined in green on map 2 attached hereto;

"Grant Agreement" means the grant agreement dated the date hereof between (1) HSE and (2) SVHGL;

"Health Services" means the provision, for the benefit of the public, of medical, surgical, nursing services and accommodation for the treatment of sick persons and for the relief, cure, rehabilitation and prevention of sickness and disability both physical and mental and the provision of any services or facilities ancillary to the foregoing;

"New Ward Block" means the ward block facility for which HSE is providing capital assistance pursuant to the Grant Agreement, to be constructed on that part of the Campus outlined in red on the attached map 2 pursuant to a design and build contract dated on or about the date hereof between (1) SVHGL and (2) John Paul Construction Limited;

"Public Hospital" means a hospital providing for the admission of the public patients (as defined in the Health Services (In-Patient) Regulations, 1991) for the purpose of section 52 of the Health Act, 1970;

“**State**” means the Republic of Ireland;

“**Tax Life**” means the period commencing with the date when the new St. Vincent’s Private Hospital at Elm Park, Dublin 4 is first used for the purposes of a trade which consists of the operation and management of a qualifying hospital within the meaning of section 268(2A) TCA up to and including the date which is fifteen (15) years after such date or such other period as future changes to legislation may require;

“**Term**” means the term of the Grant Agreement (including any extensions thereof, as set out therein).

3 **WARRANTY**

SVHGL warrants and confirms that:

- 3.1 it has good and marketable title to the Covenant Lands;
- 3.2 that it has full capacity to enter into and perform this Agreement and no third party consent or notification is required for it to do so which has not been obtained.

4 **COVENANT**

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the HSE providing capital assistance pursuant to the Grant Agreement and otherwise, SVHGL for itself and its successors and assigns of the Covenant Lands **HEREBY UNDERTAKES, COVENANTS AND AGREES:**

- 4.1 to use the Covenant Lands as a Public Hospital for the Term;
- 4.2 to provide Health Services at the Covenant Lands for the Term;
- 4.3 ensure that such insurances that would be obtained and maintained by a reasonable and prudent person acting in the course of the provision of health services similar to the Health Services, are obtained and maintained in respect of the Covenant Lands (including such insurances as may be required by any law);
- 4.4 to furnish such evidence as often as the HSE may reasonably require of compliance with the obligations set out in clause 3.3;
- 4.5 to apply all insurance proceeds received under any physical damage policies to complete any such works as shall be necessary to repair, reinstate and/or replace the buildings or other structures on the Covenant Lands or any part thereof which is covered by the terms of a physical damage insurance policy.

TO THE INTENT that the burden of such covenants shall run with and bind the Covenant Lands and every part thereof for the Term.

5 **FURTHER COVENANT**

On the day after the expiry of the Tax Life, SVHGL (which term for the purposes of this clause 4 only shall not include their successors and assigns) **HEREBY UNDERTAKES, COVENANTS AND AGREES** to furnish a new covenant substantially in the form of this deed but including the following further undertakings:

“SVHGL shall not either

- (a) *mortgage or charge or create any security interest over the Covenant Lands whether by lien, covenant, pledge or otherwise without the*

EXECUTION TEXT

prior written consent of the HSE, which consent shall not be unreasonably withheld or delayed but which shall be provided by the HSE where the finance to be secured is for the provision or enhancement of the Health services for a Public Hospital on the Covenant Lands; or

- (b) *save in the ordinary course of its business in the provision of the Health Services for a Public Hospital for which no consent shall be required, SVHGL shall not lease, transfer, assign or otherwise dispose of any interest in the Covenant Lands or any part of them without the prior written consent of the HSE, which consent shall not be unreasonably withheld or delayed but which shall be provided by the HSE where the transaction to be effected is in furtherance of the provision or enhancement of Health Services for a Public Hospital and provided that the successors in title to SVHGL shall first covenant in like manner with the HSE as set out in paragraphs (s) and (b) herein.*

6 TERMINATION

This deed and the covenants contained in it shall terminate automatically on the earlier of:

6.1 the expiration of the Term; or

6.2 a new covenant being provided in accordance with clause 4 of this deed;

And the parties hereto agree to execute any documents to formally record such termination as may be reasonably requested by the other.

IN WITNESS whereof the parties hereto have entered into these presents as a deed the day and year first herein **WRITTEN**.

EXECUTION TEXT

MAP 1

EXECUTION TEXT

MAP 2¹

¹ Map of Ward Block to be inserted

EXECUTION TEXT

SCHEDULE 4

Map of Additional Facilities

EXECUTION TEXT

**PRESENT when the Common Seal
of ST. VINCENT'S HEALTHCARE GROUP
was affixed hereto:**

Director

Director/Secretary

**SIGNED AS A DEED
by HEALTH SERVICE EXECUTIVE
in the presence of: -**

Authorised Signatory

Authorised Signatory