

Dated the                    day of                    20

HEALTH SERVICE EXECUTIVE

and

THE NATIONAL MATERNITY HOSPITAL AT ELM PARK DAC

and

ST VINCENT'S HEALTHCARE GROUP

OPERATING LICENCE  
NMH  
ST VINCENT'S CAMPUS  
DUBLIN 4



- (ii) the right of SVHG (in addition to the rights reserved pursuant to the Lease) to exclusive possession and occupation of the SVHG Areas for the purpose of the provision of the SVHG Health Services and for purposes ancillary to the operation of St. Vincent's University Hospital or the Campus; and
- (iii) the right of each of NMH and SVHG (in addition to the rights reserved pursuant to the Lease) to occupy the Shared Areas for the purposes of carrying out the NMH Health Services and the SVHG Health Services, respectively, subject to such arrangements as are entered into between NMH and SVHG in relation to the Shared Areas as detailed in the Facility Operations Agreement;

strictly subject to and in accordance with the terms and conditions 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.

**"Adjoining Property"** means any land and buildings adjoining the Hospital Facility;

**"Agreement"** means this Agreement and all Schedules hereto;

**"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"** means St. Vincent's University Hospital and the Hospital Facility laid out as a hospital campus, being the property outlined in [ ] on plan [ ] appended hereto for identification purposes only, together with any alterations improvements extensions and additions excluding so much of the Campus that relates to St. Vincent's Private Hospital or access roads exclusively serving St. Vincent's Private Hospital;

**"Car Park Spaces"** means so much of the 277 car spaces that have been allocated for the use and enjoyment by users of the Hospital Facility and more particularly defined in the Lease;

**"Change in Control"** means where any person has control of either of the Licensees who did not have control of either of the Licensees when this Agreement was executed or where any person ceases to have control of either of the Licensees. In respect of SVHG the nominees of the Religious Sisters of Charity will be deemed to be the same person as St Vincent's Holdings CLG and any transfer of shares from the former to the latter will not be deemed to be a change of control as such transfer has already been approved by the HSE;

**"Commencement Date"** means the date of execution by the Parties of this Agreement;

**"Confidential Information"** shall have the meaning given to it in Clause 18 (Confidentiality);

**“Encumbrance”** means any mortgage, charge, pledge, lien, hypothecation, option, restriction, right of first refusal, right of pre-emption, thirds 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<sup>2</sup>;

**“Facility Operations Agreement”** the agreement to be entered into before the commencement of the operation of the Hospital Facility between NMH and SVHG in a form satisfactory to the HSE and the Minister for Health to address the use and operation of the Shared Areas by NMH and SVHG in a manner consistent with the Mulvey Agreement, the form of which shall be as set out in the Schedule to this Agreement or such other form as the HSE, NMH, SVHG and Minister for Health may approve in writing;

**“Force Majeure Event”** means an exceptional event or circumstance (including a number of events or circumstances):

- (a) which is beyond a Party’s control,
- (b) which such Party could not reasonably have provided against 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, other civil commotion, pandemic, epidemic or public health crisis 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

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<sup>2</sup> MF Consent of Chargee required

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;

**“Government”** means the Government of Ireland;

**“Health Services”** means the NMH Health Services and the SVHG Health Services as the case may be;

**“Hospital Facility”** means the Hospital Facility at St. Vincent’s University Hospital, Elm Park, Dublin 4, as demised in the Lease including the NMH Areas, SVHG Areas and Shared Areas;

**“Insolvency Event”** means the occurrence of any of the following events in respect of either NMH or SVHG PROVIDED THAT such occurrence is not directly or indirectly caused by any act, neglect or default of the HSE or a breach by the HSE of its obligations under this Licence or the Lease including the withholding by the HSE of any payments payable to either of the Licensee’s pursuant to their respective Service Level Agreements:

- (a) the granting of a winding-up order by a court or the passing of a resolution for voluntary winding-up, bankruptcy, examination or dissolution otherwise than in the context of a solvent reconstruction or amalgamation which has been previously approved in writing by the HSE where such approval is required;
- (b) the granting of an order by a court for the appointment of a liquidator, receiver, examiner or the like over all or any part of assets and undertaking or the taking of possession by or on behalf of any creditor of any property that is the subject of a mortgage, charge or other Encumbrance or security interest;
- (c) the proposal, sanction or approval of any composition in satisfaction of the debts, or scheme of arrangement of affairs, or compromise or arrangement between creditors or members or any class of its creditors or members;
- (d) a request by the directors of either of the Licensees for the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, examiner or the like;
- (e) a supervisor, receiver, administrator, administrative receiver, trustee or encumbrance taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and such distress, execution or other process not being discharged within ten (10) days upon all or any part of assets; or
- (f) 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;

**“Insurance Premium”** means the total premiums and other costs and expenses incurred by the HSE in insuring the Hospital Facility against the Insured Risks;

**“Insured Risks”** has the meaning ascribed to it in the Lease;

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

**“Lease”** means the 299 year lease dated [ ] between SVHG and the HSE for the lease of the Hospital Facility;

**“Licence Period”** means:

(a) for NMH only:

- (i) the initial period of seventy-five (75) years from the Commencement Date (the **“First Period”**); and
- (ii) the further period of fifty (50) years commencing, without any steps having to be first taken or consents having to be first obtained by any party, on the expiry of the First Period (the **“Second Period”**) PROVIDED THAT no NMH Termination Notice has been validly served by the HSE in accordance with clause 8.2.8 (a) hereof and is subsisting on the expiry of the First Period; and
- (iii) the further period of fifty (50) years commencing, without any steps having to be first taken or consents having to be first obtained by any party, on the expiry of the Second Period (the **“Third Period”**) PROVIDED THAT no NMH Termination Notice has been validly served by the HSE in accordance with clause 8.2.8 (a) hereof and is subsisting on the expiry of the Second Period; and
- (iv) each subsequent period of fifty (50) years for the remainder of the term of the Lease (less the last 3 months) commencing, without any steps having to be first taken or consents having to be first obtained by any party, on the expiry of the Third Period and each subsequent fifty (50) year period (the **“Remaining Periods”**) PROVIDED THAT no NMH Termination Notice has been validly served by the HSE in accordance with clause 8.2.8 (a) hereof and is subsisting on the expiry of the Third Period and each subsequent fifty (50) year period;

(b) for SVHG only:

- (i) the First Period; and
- (ii) the Second Period PROVIDED THAT no SVHG Termination Notice has been validly served by the HSE in accordance with clause 8.2.8 (b) hereof and is subsisting on the expiry of the First Period; and

- (iii) the Third Period PROVIDED THAT no SVHG Termination Notice has been validly served by the HSE in accordance with clause 8.2.8 (b) hereof and is subsisting on the expiry of the Second Period; and
- (iv) the Remaining Periods PROVIDED THAT no SVHG Termination Notice has been validly served by the HSE in accordance with clause 8.2.8 (b) hereof and is subsisting on the expiry of the Third Period and each subsequent fifty (50) year period; and

**“Licensee Default”** means the occurrence of any of the following events in respect of either NMH or SVHG PROVIDED THAT such occurrence is not directly or indirectly caused by any act, neglect or default of the HSE or a breach by the HSE of its obligations under this Licence or the Lease including the withholding by the HSE of any payments payable to either of the Licensee’s pursuant to their respective Service Level Agreements:

- (a) an Insolvency Event;
- (b) a material breach by either of the Licensees of their respective obligations under any of the following clauses of this agreement:
  - (i) Clause 19 (Assignment and Novation); or
  - (ii) Clause 23 (Change in Control);
- (c) a material breach by either of the Licensees of their respective obligations under Clause 4 (Licensees Covenants) of this agreement to provide the NMH Health Services or the SVHG Health Services as the case may be which breach results in a material curtailment in the provision of the NMH Health Services or the SVHG Health Services (as the case may be);
- (d) a material breach by either of the Licensees of that Party’s obligations under its Service Level Agreement PROVIDED THAT the existence of such breach is acknowledged by the relevant Licensee or is determined in accordance with the dispute resolution mechanism contained in the relevant Service Level Agreement; or
- (e) for NMH only, National Maternity Hospital fails to transfer its title to the National Maternity Hospital Buildings to the HSE or its nominee within a period of two (2) years from the Commencement Date;

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

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

**“Minor Works”** means internal non-structural works which do not require a statutory consent and do not have any material adverse effect on the operation of the Hospital Facility;

**“Mulvey Agreement”** means the Report to the Minister for Health on the Terms of Agreement between the National Maternity Hospital and St. Vincent’s Hospital Group by Kieran Mulvey Dated 21 November 2016;

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

**“National Maternity Hospital”** means the body politic and corporate by the name of the Governors of the National Maternity Hospital, Dublin, incorporated by the NMH Charter (as amended);

**“National Maternity Hospital Buildings”** means the hereditaments and premises comprising the National Maternity Hospital, Dublin, being the property outlined in [ ] on plan [ ] appended hereto for identification purposes;

**“NMH Areas”** means so much of the Hospital Facility that is exclusively occupied, operated and managed by NMH, and of which NMH has Protected Use, being the property outlined in [ ] on plan [ ] appended hereto for identification purposes only;

**“NMH Charter”** means Charter or Letters Patent under the Great Seal of Ireland bearing date the 14th day of May 1903 (as amended), pursuant to which the National Maternity Hospital was incorporated;

**“NMH Health Services”** means the provision of all clinically appropriate and legally permissible healthcare services, including research, by a maternity, gynaecology, obstetrics and neonatal hospital, and a range of related health services in the community;

**“Protected Use”** means the exclusive possession and occupation, use and quiet enjoyment by the NMH without interruption of the NMH Areas for the purpose of the provision of the NMH Health Services;

**“Service Level Agreements”** means all current and future service level agreements agreed and executed between the HSE and the Licensees, respectively, in respect of the operation and management (to include but not limited to budgets, staffing (including consultant numbers), targets and performance criteria) of the Hospital Facility;

**“Shared Areas”** means so much of the Hospital Facility that is shared between NMH and SVHG being the property outlined in [ ] on plan [ ] appended hereto for identification purposes only;

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

**“State Authority”** means a Minister of the Government of Ireland, the Commissioners of Public Works in Ireland, a State body of the Irish State or an agency of the Irish State with responsibility for the provision of health services in the State;

**“St. Vincent’s Private Hospital”** means the hospital known as St. Vincent’s Private Hospital not being part of Campus, being the property outlined in [ ] on plan [ ] appended hereto for identification purposes only;

**“St. Vincent’s University Hospital”** means that part of the Campus laid out as St. Vincent’s University Hospital, being the property outlined in [ ] on plan [ ] appended hereto for identification purposes only;



**“SVHG Areas”** means so much of the Hospital Facility that is exclusively occupied, operated and run by SVHG being the property outlined in [ ] on plan [ ] appended hereto for identification purposes only;

**“SVHG Health Services”** means the provision (without religious, ethnic or other distinction or ethos) 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 (including research), both physical and mental in those parts of the Hospital Facility comprising the SVHG Areas and the Shared Areas and as ancillary to the services provided in St. Vincent’s University Hospital and such other related services as agreed with the HSE;

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

**“Termination Payment”** means the payment to be made by the HSE to the National Maternity Hospital pursuant to clause 8.2.10 hereof in the sum of €[ ] in the event that this Agreement insofar as it relates to NMH is terminated within 50 years of the Commencement Date;

**“Termination Date”** means any date of early termination of this Agreement validly in accordance with Clause 8; and

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

1.2 In the Agreement:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to one gender include all other genders;
- 1.2.3 references to persons include bodies corporate, unincorporated associations and partnerships, in each case whether or not they have a separate legal personality;
- 1.2.4 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 the Agreement;
- 1.2.5 the word “including” and its variations are to be construed without limitation;
- 1.2.6 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;
- 1.2.7 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 in this Agreement and any reference in a Schedule to a “paragraph” is a reference to a paragraph in that Schedule;
- 1.2.8 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, or deed or other instrument as amended, varied, supplemented, substituted or novated from time to time; and

1.2.9 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**

This Agreement sets out the terms and conditions agreed between the parties detailing the basis upon which the HSE agrees to Licence the Hospital Facility and the Licensees agree to operate the Hospital Facility upon the terms and conditions as hereinafter contained.

## **3 THE LICENCE**

In consideration of this Agreement, in consideration of the Lease and in consideration of the sum of €1.00 now paid by each of the Licensees to the Licensor (the receipt of which the Licensor hereby acknowledges) and in further consideration of the stipulations, terms, conditions, covenants and undertakings on each of the Licensees' part, respectively, the HSE HEREBY GRANTS this Licence (and, insofar as SVHG has reserved rights pursuant to the Lease to consent to this Licence), SVHG HEREBY GRANTS AND CONFIRMS this Licence:

3.1 to NMH during the Licence Period the full rights to exclusive possession and occupation and to the Protected Use of the NMH Areas for the purposes of the provision of the NMH Health Services and all ancillary purposes thereto;

3.2 to SVHG (in addition to the rights reserved pursuant to the Lease) during the Licence Period the full rights to exclusive possession and occupation of the SVHG Areas for the purpose of the provision of the SVHG Health Services and for purposes ancillary to the operation of St. Vincent's University Hospital or the Campus; and

3.3 to NMH and SVHG (in addition to the rights reserved pursuant to the Lease) during the Licence Period the full rights to occupy the Shared Areas for the purposes of carrying out the NMH Health Services and the SVHG Health Services, respectively, subject to such arrangements as are entered into between NMH and SVHG in relation to the Shared Areas as detailed in the Facility Operations Agreement.

## **4 THE LICENSEES' COVENANTS**

4.1 The Licensees each HEREBY COVENANT as follows PROVIDED THAT:

(i) as to that part of the Hospital Facility comprising the NMH Areas, NMH only shall have any responsibility or liability to the HSE;

(ii) as to that part of the Hospital Facility comprising the SVHG Areas, SVHG only shall have any responsibility or liability to the HSE; and

- (iii) as to that part of the Hospital Facility comprising the Shared Areas, SVHG only shall have any responsibility or liability to the HSE albeit subject to and with the benefit of the obligations on its part and on the part of NMH pursuant to the Facility Operations Agreement;

and which is so agreed and confirmed by the HSE.

- 4.2 For NMH only, to provide the NMH Health Services and to use the NMH Areas solely for the provision of the NMH Health Services and to observe and comply with the terms of the Facility Operations Agreement.
- 4.3 For SVHG only, to provide the SVHG Health Services and to use the SVHG Areas solely for the provision of the SVHG Health Services and to observe and comply with the terms of the Facility Operations Agreement.
- 4.4 To use the Hospital Facility in compliance with all statutory or regulatory requirements and any codes of practice governing or relating to the use of the Hospital Facility including best international practice.
- 4.5 To preserve the clinical and operational independence of the NMH in the provision of NMH Health Services in the NMH Areas, including strategic planning in relation to the development of such services in the future in accordance with developing best practice, free from interference from any party;
- 4.5 To observe and comply with the objects and reserved powers of the constitution of the NMH;
- 4.6 Not to alienate, assign, transfer, licence, 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 Hospital Facility or any assets, to include the Car Park Spaces, and not so as might adversely impact the effective running of the Hospital Facility financial or otherwise under this Agreement in pursuance of the NMH Health Services or the SVHG Health Services and further provided always that any licensing of part of the Hospital Facility by NMH is subject to the consent of the HSE, such consent not to be unreasonably withheld or delayed.
- 4.7 To procure that all Necessary Consents (including, for the avoidance of doubt any planning permission) required in connection with providing 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.
- 4.8 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.
- 4.9 Not to cause suffer or permit a recurring and persistent nuisance to take place in the Hospital Facility and not to do or bring or allow to be brought into or upon any part of the Hospital Facility any act item or thing which shall or may be or become a recurring or persistent nuisance or is highly likely to cause material damage or material disruption to the Hospital Facility.
- 4.10 To keep in good order repair and condition and renew where appropriate the Hospital Facility and every part thereof including the interior, exterior, external

areas and structural parts of all buildings and structures from time to time on the Hospital Facility together with all external fixtures fittings plant machinery and equipment from time to time on or serving the Hospital Facility and as often as may be necessary or appropriate to rebuild reinstate and renew the Hospital Facility and such buildings and structures.

- 4.11 To keep and maintain the exterior and interior of the Hospital Facility and all external and internal parts of the buildings and structures from time to time on the Hospital Facility in good decorative order and condition.
- 4.12 Not to deposit or permit to be deposited any rubbish or refuse upon any unbuilt part of the Hospital Facility (other than in such areas as may be designated for this purpose).
- 4.13 To keep clean and tidy the Hospital Facility.
- 4.14 To pay and discharge all existing and future rates taxes assessments duties charges impositions and outgoings whatsoever whether imposed by statute or otherwise and whether of a national or local character and whether of the nature of capital or revenue which are now or may hereafter during the License Period or any period of extension thereof be assessed charged or imposed upon the Hospital Facility or upon the HSE (other than HSE's capital or income taxes) or the occupier thereof in respect of the Hospital Facility or in respect of the use or occupation of same and to fully and effectually indemnify the HSE against the same (whether arising from a liability at law or not) and against any expenses (legal or otherwise) in connection therewith PROVIDED THAT if any such rates taxes assessments duties charges impositions or outgoings as aforesaid are or at any time during the Licence Period shall be charged assessed or imposed in respect of the Hospital Facility in common with other premises and not separately the Licensees will on demand pay to the HSE or as it directs a due proportion thereof to be reasonably determined by the HSE and to be recoverable as arrears.
- 4.15 To pay for all gas electricity fuel refuse services and other utilities supplies and services used or consumed on or in connection with the Hospital Facility together with all metered water charges in respect of the Hospital Facility and all charges for meters and telecommunications equipment (including rental and cost of use) and all refuse and waste charges levied or payable in respect of the Hospital Facility and to comply with the requirements and regulations of the statutory authorities or other supply companies with regard to any waste management measures, conduits, installations or equipment relating to any such utilities supplies and services (including sprinkler systems) within the Hospital Facility and to indemnify the HSE against any non-payment or breach thereof.
- 4.16 To file a stamp duty return and pay any stamp duty or VAT arising on this Agreement.
- 4.17 To pay the Insurance Premium upon demand from the HSE from the Commencement Date.
- 4.18 Not to suffer or cause any obstruction or damage to the Adjoining Property or any conduits or utilities serving the Hospital Facility or the Adjoining Property.
- 4.19 Subject to the HSE procuring insurances in relation to the Hospital Facility and upon the HSE notifying the Licensees of the terms pertaining to such insurance, to comply with such terms. Due to the interconnecting nature of the Hospital

Building and the adjoining Campus, the HSE, NMH and SVHG will consult with regard to the insurances to be put in place.

- 4.20 On the determination of this Agreement for whatever reason to vacate the Hospital Facility and to leave the same in a good repair and condition and in compliance with this agreement as is evidenced by the Condition Report agreed between the Parties at the commencement of this Licence.
- 4.21 To maintain in force throughout the duration of this Agreement adequate public and employers liability insurance in respect of the Hospital Facility, anything protruding therefrom and the use thereof against liability to third parties or injury to or death of any person or damage to any property and to maintain such insurance for the benefit of the HSE to the extent of the Licensee's obligations to the HSE under this Agreement as well as the Licensees and to procure that each such policy of insurance contains a provision that the policy shall not be cancelled without giving thirty (30) days prior notice in writing to the HSE.
- 4.22 To produce to the HSE prior to the commencement of this Agreement, and upon request by the HSE during the term of this Agreement, evidence of cover and conditions relating to any insurance specified in Clause 4.21 of this Agreement.
- 4.23 To comply at all times with the reasonable regulations made by the HSE (or made pursuant to the Lease) and made known in writing to the Licensees for the good management of the Hospital Facility, provided that the Licensees shall not be obliged to comply with regulations that impose liabilities or obligations on the Licensees that are not reasonable or inconsistent with the terms of this Licence.
- 4.24 To notify the HSE as soon as reasonably possible of any notification or requirement from or the relevant planning authority relating to the Hospital Facility or the use thereof.
- 4.25 Not to knowingly permit noise from any equipment or appliance (including but without prejudice to the generality of the foregoing any radio or television, or audio equipment) on the Hospital Facility to be audible outside the Hospital Facility save that announcements made over a loudspeaker system in the entrance area at a reasonable noise level will be deemed to not be in breach of such requirement.
- 4.26 To observe (and procure the observance by the Licensee's employees of) the HSE's and the local authorities reasonable requirements for the time being relating to the removal of refuse from the Hospital Facility and provide and maintain sufficient containers of an approved design to the reasonable satisfaction of the HSE and the local authority as may be necessary for the disposal of all such refuse.
- 4.27 Not to permit unnecessary or surplus empty containers or rubbish of any description to accumulate upon the Hospital Facility and not to discharge into any conduit any deleterious matter or any substance which may be or may become a source of danger or damage to the Hospital Facility or the Hospital Facility or any other property or which may become a source of injury to any person.
- 4.28 Not to obstruct the access to or means of working of firefighting equipment installed in the Hospital Facility and not to damage or interfere with such equipment.

4.29 Not to make any structural alterations or permanent additions to any part of the Hospital Facility except as shall have been previously approved in writing by the HSE such consent not to be unreasonably withheld or delayed PROVIDED THAT:

4.29.1 NMH shall not require the prior written consent of the HSE or SVHG to carry out Minor Works to NMH Areas conducive to the advancement and improvement of patient care and the operation by NMH of the NMH Areas in furtherance of the NMH Health Services;

4.29.2 SVHG shall not require the prior written consent of the HSE to carry out Minor Works to SVHG Areas; and

4.29.3 Neither SVHG or NMH shall require the prior written consent of the HSE to carry out Minor Works to the Shared Areas albeit subject to and with the benefit of the obligations on their respective parts pursuant to the **Facility Operations Agreement**.

Upon carrying out any such Minor Works to the NMH Areas or SVHG Areas, NMH or SVHG (as the case may be) will:

- (1) notify the HSE of the details of the Minor Works;
- (2) observe and perform all of the obligations pursuant to any Necessary Consents insofar as they are relevant to the Minor Works;
- (3) carry out the Minor Works in a good and workmanlike manner with due skill and care; and
- (4) ensure that the no pre-existing statutory compliance certification or accreditation is compromised by the Minor Works;

4.30 SVHG shall be permitted to carry out variations (structural or otherwise) to the SVHG Areas provided always that any variations that require a statutory consent will require the consent of the HSE (such consent not to be unreasonably withheld or delayed).

4.31 To observe and comply with the covenants and conditions contained in the Lease insofar as they affect the Hospital Facility.

4.32 To pay and discharge any Value Added Tax arising either on the grant of this Licence or any other cost or expense payable thereunder.

4.33 To permit the free and uninterrupted passage and running of water, soil, gas, air, electricity, telephone transmissions, radio transmissions, television transmissions, oil, heating fuels and other services ("the Services") through all channels, conduits, pipes, drains, sewers, wires, cables and other conducting media ("the Utilities") which are now or may at any time be in, under or passing through the NMH Areas, SVHG Areas, Shared Areas, the Hospital Facility and the Campus.

4.34 for NMH only, to procure the transfer of title to the National Maternity Hospital Buildings to the HSE or its nominee within a period of two (2) years from the Commencement Date.

## 5 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

## 5.1 Licensees' Warranty

The Licensees each represent and warrant to the HSE that, as at the Commencement Date:

- 5.1.1 they each have the full power and authority to execute and deliver this Agreement and to perform their obligations hereunder and that all necessary corporate action or otherwise has been taken (and not revoked) and any 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 to the Licensees enforceable in accordance with the terms hereof;
- 5.1.2 they each have an up to date Tax Clearance Certificate and produce same to the HSE upon request; and
- 5.1.3 all written information furnished by or on their behalf in connection with the negotiation of this Agreement or delivered by or on their 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 and there are no other facts or matters of which they are 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.

## 5.2 HSE Warranty

- 5.2.1 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.

## 6 ACCESS AND MONITORING

### 6.1 HSE Access

Subject to any health and safety requirements imposed by Law and, where relevant, the Licensees will procure that;

- 6.1.1 the HSE and any persons nominated by them will have access to the Hospital Facility at all reasonable times on giving forty-eight (48) hours' notice (or such reduced notice having regard to the nature of an emergency involving a clear threat to the Health Facility or the persons therein notice in the case of an emergency but in any event shall not be less than two (2) hours' notice);

- 6.1.2 the HSE has access to the Hospital Facility for the purpose of conducting monitoring in accordance with Clause 6.2; and
- 6.1.3 the HSE will be entitled to enter upon any property used by the Licensees as training or workshop facilities and places where work is being prepared or materials being obtained in pursuance of the Health Services and in respect of any third party property, the Licensees shall use reasonable endeavours to obtain such right of access.

## 6.2 HSE Monitoring

The HSE may elect, at its own cost, to undertake its own monitoring at any time, for any purpose connected with the Agreement, including in order to ensure that the Hospital Facility is being operated in accordance with this Agreement and that the Hospital Facility is being used solely for the provision of the Health Services. The Licensees will use all reasonable endeavours to assist the HSE in such an exercise. The HSE shall notify the Licensees of the outcome of the monitoring exercise and the Licensees will have due regard to the HSE's comments and the HSE to the Licensees' responses and the Licensees will implement any recommendations of the HSE without delay.

## 7 LIAISON PROCEDURE

- 7.1 The Licensees and the HSE agree to liaise with each other to facilitate co-operative and meaningful communication between the Parties in respect of the performance of the NMH Health Services and the SVHG Health Services, respectively.
- 7.2 The Parties shall comply with the agreed 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 8 shall apply.

## 8 TERMINATION FOR LICENSEE DEFAULT

- 8.1 The HSE shall not be entitled to terminate this Licence unless it has first complied with all of its obligations contained in this clause 8. The Licensees will notify the HSE promptly on becoming aware of the occurrence of a Licensee Default.
- 8.2 Where the HSE has been notified or becomes aware of a Licensee Default, then the HSE shall be entitled to:
  - 8.2.1 in respect of a Licensee Default by NMH (the "NMH Default"), serve NMH with notice in writing:
    - (a) specifying the details of the alleged NMH Default; and
    - (b) requiring NMH, within ninety (90) Business Days from the date of receipt by NMH of the notice (or such longer period as the Parties may agree in writing having regard to the nature of the NMH Default):
      - (i) where the alleged NMH Default is capable of remedy within such timeframe, to remedy the alleged NMH Default; or



- (ii) where the alleged NMH Default is not capable of remedy within such timeframe, NMH shall put forward a reasonable programme for the remedying of the alleged NMH Default within thirty (30) Business Days of the service of the default notice by HSE, such programme to specify the manner in which the breach or breaches is or are proposed to be remedied and a time frame that such breach or all such breaches shall be remedied (the “**NMH Rectification Plan**”); and

8.2.2 in respect of a Licensee Default by SVHG (the “**SVHG Default**”), serve SVHG with notice in writing:

- (a) specifying the details of the alleged SVHG Default; and
- (b) requiring SVHG, within ninety (90) Business Days from the date of receipt by SVHG of the notice (or such longer period as the Parties may agree in writing having regard to the nature of the alleged SVHG Default);
  - (i) where the alleged SVHG Default is capable of remedy within such timeframe, to remedy the alleged SVHG Default; or
  - (ii) where the alleged SVHG Default is not capable of remedy within such timeframe, SVHG shall put forward a reasonable programme for the remedying of the alleged SVHG Default within thirty (30) Business Days of the service of the default notice by HSE, such programme to specify the manner in which the breach or breaches is or are proposed to be remedied and the timeframe which it is proposed that such breach or all such breaches shall be remedied (the “**SVHG Rectification Plan**”).

8.2.3 In the event that an NMH Default or an SVHG Default cannot be remedied within the time period specified in clause 8.2.1 or clause 8.2.2 and the Parties cannot agree an NMH Rectification Plan or an SVHG Rectification Plan, the Parties shall co-operate and act reasonably in order to agree an NMH Rectification Plan or an SVHG Rectification Plan failing which either party may refer the matter in dispute to mediation, the mediator to be appointed in accordance with clause 8.2.7 below.

8.2.4 Where the NMH Default is not remedied by NMH either:

- (a) in accordance with clause 8.2.1(b)(i) above; or
- (b) in accordance with the implementation of the NMH Rectification Plan pursuant to clause 8.2.1(b)(ii) above;

then, upon a further eighty (80) Business Days’ notice in writing by the HSE to NMH, the HSE shall be entitled to terminate this Agreement, insofar as it extends to the rights granted to NMH in respect of the NMH Areas and the Shared Areas only, forthwith and take possession of the NMH Areas and the Shared Areas unless NMH has during that period first

referred a dispute to a mediator in accordance with Clause 8.2.7 hereof below.

For the avoidance of doubt, where the HSE terminates the Agreement, insofar as it extends to the rights granted to NMH in respect of the NMH Areas and the Shared Areas only, pursuant to this clause 8.2.4, then the Agreement shall remain in full force and effect insofar as it extends to the rights granted to SVHG in respect of the SVHG Areas and the Shared Areas only.

8.2.5 Where the SVHG Default is not remedied by SVHG either:

- (a) in accordance with clause 8.2.2(b)(i) above; or
- (b) in accordance with the implementation of the SVHG Rectification Plan pursuant to clause 8.2.2(b)(ii) above;

then, upon a further ninety (90) Business Days' notice in writing by the HSE to SVHG, the HSE shall be entitled to terminate this Agreement, insofar as it extends to the rights granted to SVHG in respect of the SVHG Areas and the Shared Areas only, forthwith and take possession of the SVHG Areas and the Shared Areas unless SVHG has during that period first referred a dispute to a mediator in accordance with Clause 8.2.7 hereof below (without prejudice to the rights reserved by SVHG over the SVHG Areas and the Shared Areas pursuant to the Lease).

For the avoidance of doubt, where the HSE terminates the Agreement, insofar as it extends to the rights granted to SVHG in respect of the SVHG Areas and the Shared Areas only, pursuant to this clause 8.2.5, then the Agreement shall remain in full force and effect insofar as it extends to the rights granted to NMH in respect of the NMH Areas and the Shared Areas only.

8.2.6 The Parties agree to act reasonably in order to avoid any dispute arising between the Parties out of either an alleged NMH Default or an alleged SVHG Default (the “**Default Dispute**”). In the event of a Default Dispute, the Parties shall act reasonably to minimise the potential impact of a Default Dispute on the performance of their respective obligations and compliance with the conditions contained in this Agreement. In the first instance upon a Default Dispute arising between the Parties, the Parties shall make all reasonable attempts to resolve the Default Dispute by mutual agreement.

8.2.7 Notwithstanding clauses 8.2.4, 8.2.5 and 8.2.6 hereof, in the event that the relevant Parties are unable to resolve the Default Dispute by mutual agreement, then the Default Dispute shall be referred to mediation. To initiate the mediation, one Party shall give notice in writing to the other Party requesting mediation. Unless otherwise agreed between the Parties, the mediator shall be nominated on the application of either Party to the President for the time being of the Law Society of Ireland or, should the said President be absent, unwilling or unable to do so, by the next senior officer of the Law Society of Ireland who is ready, willing and able to make the nomination, whereupon the mediator will be appointed by the Parties. The mediation shall start not later than thirty (30) Business Days after the date of appointment of the mediator. During the mediation process

contained in this clause, neither Party shall resort to Court proceedings or any other method of dispute resolution.

8.2.8 Notwithstanding clause 8.2.7 hereof, if the Parties are unable to resolve the Default Dispute by mediation within ninety (90) Business Days after the date of appointment of the mediator, or such longer period as agreed between the Parties, then:

- (a) in the case of a Default Dispute arising out of an alleged NMH Default, the HSE shall be entitled to serve a notice in writing to NMH to terminate this Agreement insofar as it extends to the rights granted to NMH in respect of the NMH Areas and the Shared Areas only forthwith and take possession of the NMH Areas and the Shared Areas by giving NMH ninety (90) Business Days' prior notice ("the **NMH Termination Notice**"); and
- (b) in the case of a Default Dispute arising out of an alleged SVHG Default, the HSE shall be entitled to serve a notice in writing to SVHG to terminate this Agreement insofar as it extends to the rights granted to SVHG in respect of the SVHG Areas and the Shared Areas only forthwith and take possession of the SVHG Areas and the Shared Areas by giving SVHG ninety (90) Business Days' prior written notice (the "**SVHG Termination Notice**") (without prejudice to the rights reserved by SVHG over the SVHG Areas and the Shared Areas pursuant to the Lease).

8.2.9 For the avoidance of doubt, where the HSE terminates the Agreement, insofar as it extends to the rights granted to NMH in respect of the NMH Areas and the Shared Areas only, pursuant to clause 8.2.8(a), then the Agreement shall remain in full force and effect insofar as it extends to the rights granted to SVHG in respect of the SVHG Areas and the Shared Areas only.

For the avoidance of doubt, where the HSE terminates the Agreement, insofar as it extends to the rights granted to SVHG in respect of the SVHG Areas and the Shared Areas only, pursuant to clause 8.2.8(b), then the Agreement shall remain in full force and effect insofar as it extends to the rights granted to NMH in respect of the NMH Areas and the Shared Areas only.

8.2.10 Where the HSE terminates the Agreement, insofar as it extends to the rights granted to NMH in respect of the NMH Areas and the Shared Areas only, pursuant to clause 8.2.8(a), then NMH shall vacate the Hospital Facility on the same day as receipt by NMH of the Termination Payment PROVIDED THAT NMH shall not be obliged to vacate the Hospital Facility at any time prior to the expiry of the NMH Termination Notice. For the avoidance of doubt, NMH shall not be obliged to vacate the Hospital Facility at any time prior to receipt by NMH of the Termination Payment from the HSE provided always that the Termination Payment is not due and payable to the NMH where the termination of this Agreement is due to a breach of clause 4.34 of this Agreement.

## 9 EFFECT OF TERMINATION

- 9.1 Termination of this Agreement will be without prejudice to any accrued rights and obligations of any of the Parties under this Agreement as at the date of termination and is strictly without prejudice to the SVHG's rights pursuant to the Lease.
- 9.2 Save as provided herein, and subject to clauses 8.2.8 and 8.2.9 hereto, all future rights and obligations of the HSE and the Licensees 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.
- 9.3 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.

## 10 **FORCE MAJEURE and FUNDING**

- 10.1 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.
- 10.2 It is agreed and acknowledged by the HSE that compliance with the terms of this Agreement is subject to appropriate funding being provided to SVHG and NMH in line with Service Level Agreements and this Agreement cannot be terminated by the HSE where the breach or default by SVHG/NMH relates directly to funding not being made available by the HSE to provide the service or carry out the work that gives rise to the breach or default.

## 11 **INDEMNITIES**

- 11.1 The Licensees shall:
  - (i) for NMH only, as to that part of the Hospital Facility comprising the NMH Areas and Shared Areas;
  - (ii) for SVHG only, as to that part of the Hospital Facility comprising the SVHG Areas and the Shared Areas albeit subject to and with the benefit of the obligations on its part and on the part of NMH pursuant to the Facility Operations Agreement;

be responsible for, and shall each release, hold harmless and indemnify without limitation and upon demand the HSE, its employees, agents and contractors 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 by NMH of the NMH Health Services or by SVHG of the SVHG Health Services, respectively.

11.2 The Licensees shall not be responsible or be obliged to indemnify the HSE for:

11.2.1 any of the matters referred to in clause 11.1 above which arises as a result of the Licensees acting directly on the instruction of the HSE; and

11.2.2 any injury, loss, damage, cost and expense caused by the negligence, act, neglect or default of the HSE, its employees, agents or contractors or by the breach by the HSE of its obligations under this Agreement.

11.3 The liability of the either Party under any indemnity in this Agreement will be without prejudice to any other right or remedy available to that Party and will be without limitation to any indemnity by that Party under any other provision of this Agreement.

## 12 LIABILITY

12.1 Nothing in this Agreement excludes or limits the liability of either Party for death or personal injury resulting from its negligence or that of any of its officers, employees or agents.

12.2 Each Party acknowledges and agrees that the other Party holds the benefits of Clauses 12.1 for itself and as trustee and agent for its officers, employees and agents.

12.3 For the avoidance of doubt, nothing in this Clause 12 prevents or restricts either Party enforcing any obligation (including suing for a debt) owed to it under or pursuant to this Agreement.

12.4 Each Party acknowledges and agrees that this Clause 12 is fair and reasonable having regard to the circumstances as at the Commencement Date.

## 13 HSE COVENANTS

13.1 Protected Use

The HSE acknowledges, accepts and guarantees to NMH the Protected Use by NMH of the NMH Areas.

13.2 Quiet Enjoyment

The HSE shall permit NMH and SVHG to peaceably hold and enjoy the NMH Areas and the SVHG Areas, respectively, for the duration of the Licence Period without any interruption by the HSE or any person lawfully claiming through, under or in trust for it.

13.3 Exercise of Rights

In exercising any of the HSE's rights of entry or other rights in relation to the Hospital Facility:

- (a) to take all necessary steps to ensure that as little damage is done to the Hospital Facility and as little inconvenience is caused to Hospital Facility and any occupiers as is reasonably practicable; and
- (b) to make good without delay any damage which may be caused by such exercise.

#### 13.4 Lease

The HSE will comply with all of the tenant's covenants and conditions contained in the Lease.

#### 13.5 The HSE further covenants with the each of the Licensees:

- 13.5.1 to preserve the clinical and operational independence of NMH free from interference from any party and to support the NMH to provide the NMH Health Services including assisting with strategic planning in relation to the development of such services in the future in accordance with developing best practice.
- 13.5.2 to assist SVHG in relation to the management of St. Vincent's University Hospital and the SVHG Areas and the Shared Areas.
- 13.5.3 to comply with its obligations pursuant to the Lease.
- 13.5.4 to insure the Hospital Facility in accordance with the provisions of the Lease and to reinstate the Hospital Facility as soon as reasonably practicable.
- 13.5.5 to procure that any latent defect that occurs in relation to the construction of the Hospital Facility is remedied in a timely manner; and
- 13.5.6 to act in good faith in its dealings with each of the Licensees in their operation of the Health Facility.

#### 13.6 Acknowledgement

The Parties acknowledge that the SVHG Area and the Shared Areas are critical for the operation of St. Vincent's University Hospital and that the use of these areas requires the maintenance power and services supply and operation of these areas at all times. HSE confirm and covenant with SVHG that HSE will not do anything which could impact the operation of the SVHG Areas and the Shared Areas so as to ensure that the SVHG Areas and the Shared Areas have all requisite services required by SVHG and are properly maintained and operated to ensure that there is no interruption to SVHG's use of those areas or services supplied to facilitate the operation of St. Vincent's University Hospital. This obligation will survive the termination of this Licence.

#### 13.7 Services

To permit the free and uninterrupted passage and running of the Services through the Utilities which are now or may at any time be in, under or passing

through the NMH Areas, SVHG Areas, Shared Areas, the Hospital Facility and the Campus.

**14 COSTS**

The HSE 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 and make such contribution to the Licensees costs as have been agreed.

**15 WAIVER**

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 and will not affect the validity of this Agreement or any part thereof. 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.

**16 VARIATION**

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

**17 NOTICES**

17.1 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.

17.2 All communications must be sent to the registered office or principal place of business dress of the relevant Party. Each communication must be marked for the attention of the relevant person.

**HSE**

**Health Service Executive**

[ ]

For the attention of: Head of Estates

**NMH:**

[ ]

[Elm Park  
Dublin 4]

For the attention of: the Company Secretary

**SVHG:**

[ ]

[Elm Park  
Dublin 4]

For the attention of: the Company Secretary

- 17.3 A communication is deemed to have been received:
- 17.3.1 if delivered by hand, at the time of delivery; or
  - 17.3.2 if sent by registered post, at the expiration of two clear days after the time posting; or
  - 17.3.3 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 17, it is deemed to have been received at the opening of business on the next Business Day.
- 17.4 For the purposes of this Clause 17:
- 17.4.1 words in electronic form shall be deemed to be “writing” for the purposes of all application legislation where “writing” is required; and
  - 17.4.2 electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the parties.

## 18 CONFIDENTIALITY

- 18.1 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 18), 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 together the “**Confidential Information**”).
- 18.2 Notwithstanding Clause 18.1, a Party shall be entitled to disclose the whole or any part of the Confidential Information:
- 18.2.1 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
  - 18.2.2 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;
  - 18.2.3 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;
  - 18.2.4 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;



- 18.2.5 if and to the extent required by any Law or for the purpose of any judicial inquiry or proceedings;
  - 18.2.6 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;
  - 18.2.7 to its professional advisers, auditors, bankers and insurers;
  - 18.2.8 where required by SVHG or HSE to deal with any property interest;
  - 18.2.9 if and to the extent necessary or desirable to enable a determination to be made under Clause 22 (Dispute Resolution Procedure)
  - 18.2.10 if and to the extent the other party has given prior written consent to the disclosure; or
  - 18.2.11 any registration or recording of any Necessary Consents and property registration.
- 18.3 Where disclosure is permitted under Clause 18.2, each Party shall ensure the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
- 18.4 The restrictions contained in this clause shall continue to apply for a period of five (5) years from the date of the Agreement.

## 19 **ASSIGNMENT AND NOVATION**

- 19.1 This Agreement will be binding on and will enure for the benefit of the Licensees and the HSE and their respective successors and permitted assigns.
- 19.2 The Licensees 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 Licensees in performing its obligations hereunder or any part thereof or any benefit or interest therein or thereunder.
- 19.3 The HSE shall be entitled, without the consent of the Licensees to assign the benefit of this Agreement to or to novate or transfer its obligations (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any State Authority or any person whose obligations under this Agreement are wholly guaranteed with responsibility for the provision of health services in the State by the Government or any authority, department, office, statutory body or agency of the Government and shall notify the Licensees in writing of any such novation or transfer provided that such body assumes responsibility for all of the agreements referred to in this Agreement .

## 20 **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.

21 **GOVERNING LAW**

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

22 **JURISDICTION**

22.1 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.

22.2 Each of the Parties to this Agreement irrevocably waives any objection to Proceedings in the courts referred to in Clause 22.1 on the grounds of venue or on the grounds of forum non-conveniens.

23 **CHANGE IN CONTROL**

23.1 The Licensees shall each procure in so far as is within their control or power of procurement that there shall be no Change in Control in the Licensees, respectively without the consent of the HSE.

23.2 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 Licensees, provided such Change in Control does not alter the relevant Licensee’s main object of providing either the NMH Health Services or the SVHG Health Services, as the case may be and further provided that the Licensees shall not transfer any shares to any religious order(s) or it’s or their nominees.

24 **PUBLIC RELATIONS AND PUBLICITY**

24.1 Subject to the provisions of Clause 18 (Confidentiality), the HSE and the Licensees shall agree a public statement about the subject matter of this Agreement (other than financial and/or economic information which the Licensees (acting reasonably) indicates is confidential or commercially sensitive information) as they may deem appropriate acting reasonably from time to time.

24.2 The Licensees and HSE, with the consent of each of the other respective Parties, shall be permitted to make public statements in relation to the subject matter of this Agreement.

25 **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 Licensees or any of the Licensees’ or its Sub-Contractors’ employees.

26 **ENTIRE AGREEMENT**

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

**27 DEED OF RENUNCIATION**

The Licensees agree to enter into a deed of renunciation on the execution of this agreement to renounce any entitlement (if any) which they may have under the provisions of the Landlord and Tenant Acts to a new tenancy in the Hospital Facility on the expiry or sooner determination of this Licence.

**28 LANGUAGE**

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

28.1.1 In English; or

28.1.2 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.

28.2 The receiving party shall be entitled to assume the accuracy of and rely upon any English translation of any document provided pursuant to Clause 27.1 (Language).

**29 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.

**30 EXPIRY**

This Agreement shall expire on the expiration of the Licence Period or the earlier termination in accordance with clause 8 hereof.

**SCHEDULE**

**Approved Form of Facility Operations Agreement**

Signed and Delivered as a Deed by

---

HEALTH SERVICE EXECUTIVE  
[*appropriate execution block to be inserted*]

Signed and Delivered as a Deed by

---

[THE NATIONAL MATERNITY HOSPITAL  
AT ELM PARK DAC]  
[*appropriate execution block to be inserted*]

Signed and Delivered as a Deed by

---

[ST. VINCENT'S HEALTHCARE GROUP DAC]  
[*appropriate execution block to be inserted*]