

Dated the day of 2021

ST VINCENT'S HEALTHCARE GROUP DAC

and

HEALTH SERVICE EXECUTIVE

OPTION AGREEMENT

NMH SITE

ST VINCENT'S CAMPUS

DUBLIN 4

OPTION AGREEMENT

THIS AGREEMENT is made day of 2021

BETWEEN

- (1) **ST. VINCENT'S HEALTHCARE GROUP (CRO No. 338585)** a designated activity company of Elm Park, Dublin 4 ("**SVHG**") which expression shall include and be deemed to include its successors and assigns);
- (2) **HEALTH SERVICE EXECUTIVE** a statutory body whose address is Parkgate Street, Business Centre, Dublin 8 (the "**HSE**")

IT IS AGREED as follows:

1. Definitions and interpretations

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

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

"**Base Purchase Price**" means the Market Value (as hereinafter defined) of the Property less any taxes which would attach to 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 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 Notices 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 set out in the Deed of Covenant dated 14 October 2010 which forms part of the Campus which and is shown outlined in green on map numbered 3 appended hereto;

"**Expiry Date**" the date of expiry of the term of the Lease or the date of expiry of any renewal of the Lease which may be agreed between the parties hereto;

"**General Conditions**" means the Law Society General Conditions of Sale 2019 Edition including the special conditions issued therewith;

"**Good Marketable Title**" means a title to the Property of a quality commensurate with prudent standards of current conveyancing practice in Ireland and in accordance with the guidelines set down by the Law Society;

"**Health Services**" means the provision, for the benefit of 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” means the occurrence of any of the following events that is not due to the withholding by the HSE of any payments payable to SVHG pursuant to its Service Level Agreements;

- (a) the inability of SVHG to pay its debts as they fall due within the meaning of section 570 of the Companies Act 2014, or the admission by SVHG of its inability to pay its debts as they fall due;
- (b) 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 SVHG or the passing of a resolution for the voluntary winding-up of SVHG otherwise than in the context of a solvent reconstruction or amalgamation which has been previously approved in writing by the HSE;
- (c) 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 SVHG 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
- (d) the proposal, sanction or approval of any composition in satisfaction of the debts of SVHG, 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.
- (e) a request by the directors of SVHG for the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, examiner or the like;
- (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;

“Operating Licence” means the operating licence entered into or to be entered into by the HSE with SVHG and The National Maternity Hospital At Elm Park DAC (**“NMH DAC”**) over the Property;

“Lease” means the 99 years lease of the Property entered into on the date hereof between SVHG and the HSE;

“Market Value” means the estimated amount for which the Property should sell on or about the date of the exercise of the Option between a willing buyer and a willing seller in an arm’s length 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 including the terms of the Assurance referred to at clause 4.3 (k);
- (ii) The existence of any mortgages, charges, or other encumbrances which shall not be discharged in the course of such sale;
- (iii) The availability of services to the property; and
- (iv) The existence of any planning permission for the Property or any statutory restrictions as to its use;

but disregarding

- (i) the value of any buildings or other structures erected on or under the Property,
- (ii) Any statutory entitlement of the HSE to acquire the Property; and
- (iii) Any reduction in rent from an open market rent paid pursuant to the Lease.

“SVHG’s Solicitors” means McCann FitzGerald Solicitors 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(s) on the Campus;

“Property” means that part of the Campus and 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;

“State Authority” 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.

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

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

1.3 Words importing one gender shall be construed as importing any other gender.

1.4 Words importing the singular shall be construed as importing the plural and vice versa.

1.5 The clause headings do not form part of this agreement and shall not be taken into account in its construction or interpretation.

2. Agreement

In consideration of 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 nominees 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 by 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 within 4 months after a Call Option Event only

- (a) in circumstances where HSE is not in material breach of its obligations under the Lease;
- (b) HSE has procured the construction of and is operating the proposed hospital on the Property in accordance with the provisions of the Lease.

The exercise of the Option is without prejudice to any of the HSE or SVHG rights or remedies and to any rights of action which shall accrue or shall have already accrued to the HSE or SVHG.

4.2 The Option Notice shall be served in writing by registered post to SVHG at its registered office with a copy also by registered post to 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 free from any encumbrances, mortgages and/or charges 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 document 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 the 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;
- 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 provide the Health Services and the Pharmacy Facility in the format of the draft set out at the Fourth Schedule;
 - (ii) a covenant on the part of SVHG to use the Covenant Lands as a public hospital in the format of the draft appended at the Fourth Schedule;
 - (iii) the grant of easements rights and privileges described in the Second Schedule to the Lease;
 - (iv) the reservation for SVHG of the easements, rights and privileges described in the Third Schedule to the Lease;
 - (v) an obligation on SVHG to provide the Services as detailed in the Lease subject to the discharge by the HSE of the Service Charge to be calculated in accordance with the terms of the Lease;
 - (vi) a covenant on the part of HSE to use and operate the Property for the Permitted Use specified in the Lease;
 - (vii) a covenant on the part of the HSE to repair and keep the exterior of the Property in good repair and order and such parts of the interior in operational repair as is necessary for the use and enjoyment of SVHG of the exercise of its rights as set out in the Third Schedule of the Lease in relation to the Landlord Area and Landlord Shared Area and the Existing Hospital (as those areas having the meaning ascribed to them in the Lease) in the manner set out in the Lease provided that other than as set out above there is no obligation on the HSE to repair and maintain the interior of the Property;
 - (viii) SVHG shall be entitled to repair and maintain the Landlord Area and the Shared Area, if required;
 - (ix) 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 an undertaking to supply any additional information which it may reasonably be able to supply and produce and execute any documents such as will be necessary to effect first registration in the Property Registration Authority to enable the HSE to become registered as full owner in fee simple with absolute title free from encumbrances. SVHG will also procure that for completion, a capital gains tax clearance certificate (or any similar certificate replacing same) together with any other tax clearances normally provided in sales of property in Ireland is obtained in relation to the sale of its interest in the Property.
 - (x) To effect such insurances as may be necessary to ensure that the insurance of SVHG's adjoining buildings is not compromised.

- (xi) SVHG will provide an up to date general tax clearance certificate before the Base Purchase Price will be paid by the HSE (the HSE will have the discretion to waive this requirement if it so wishes).

4.4 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 represents and warrants to the HSE that as the date of this agreement:

- 5.1 it has Good Marketable Title to the Property and has furnished evidence of same to HSE;
- 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 affecting or capable of 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 though held on accountable trust receipt to the Bank of Ireland;
- 5.4 there are no actions disputes claims or demands between SVHG and any third party affecting or in respect of the Property or any part or any of the boundaries thereof nor is there any litigation threatened nor has any court order been made in relation to the Property or any part thereof 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 (the benefit of which can be assigned to the HSE its successors and assigns) as far as roads and services which have been taken in charge by local authority.

6. Assignment and alienation

6.1 Save where the SVHG is

- (a) Disposing of its interest in the Property, then to such assignee
- (b) Creating security over its interest in this agreement as part of creating security over its interest in the Property as permitted pursuant to the Lease

SVHG shall not create any security over this agreement other than where it is permitted to create security over its freehold interest pursuant to Landlord Covenant 6.4 in the Lease.

- 6.2 SVHG shall not be entitled to dispose of its interest in this agreement without the prior consent of the HSE which consent shall be determined in accordance with Covenant 6.5 of the Lease.
- 6.3 The HSE shall not be entitled to assign or part with the benefit of this agreement (or any part of it) save that the HSE may assign the benefit of this agreement to a State Authority that has simultaneously taken an assignment of the Lease.
- 6.4 SVHG undertakes and agrees that it shall not create or allow to be created any charge (including a security assignment), 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 and shall not attempt to lease, transfer, assign or otherwise to dispose of any interest in the Property or any part of thereof without procuring any necessary consent from the HSE as may be required in the Lease.

6.5 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 that the HSE may assign the benefit of this agreement to a State Authority.

7. Dispute Resolution

If any dispute, question, difference or controversy shall arise between the SVHG and the HSE, touching these presents or any clause, covenant, matter or thing herein contained then and in every or any such case the matter in difference shall be referred by either party to an Arbitrator to be appointed by the President for the time being of the Law Society of Ireland and any such reference shall be deemed to be a submission to Arbitration pursuant to the provisions in that behalf contained in the Arbitration Act, 2010, or any then subsisting statutory modification thereof.

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 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).

HELD in fee simple.

First Schedule

Part Two

**Particulars and Tenure
("the Property")**

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

HELD in fee simple subject to and with the benefit of the Lease but otherwise free from any encumbrances, mortgages and/or charges.

Second Schedule

The Call Option Event

1. The termination (but not the expiry) of the Operating Licence by the HSE in accordance with the termination provisions in that agreement which arises from a default by SVHG (and not for the avoidance of doubt by NMH DAC)
2. The notification by HSE in writing to SVHG of the occurrence of an Insolvency Event.
3. Where SVHG is in material breach of its obligations pursuant to the Lease which has not been rectified within 90 days of written notification by the HSE to SVHG.

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 Certificate of Incorporation on change of name from St. Vincent's Healthcare Group Limited to St. Vincent's Healthcare Group DAC
 - 1.4 Up to date Constitution of St. Vincent's Healthcare Group DAC.
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 Maloney, 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

FOURTH SCHEDULE

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

1. SVHG for itself and its successor and assigns of the Covenant Lands **HEREBY UNDERTAKES, COVENANTS AND AGREES**

1.1 to use the Covenant Lands (excluding the Property) as a Public Hospital at all times (subject to the support of the HSE by way of service level agreements);

1.2 to provide Health Services at the Covenant Lands (excluding the Property) at all times;

1.3 to provide the Pharmacy Facility on the Covenant Lands 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 the 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 Property and every part thereof

2. HSE for itself and its successor and assigns of the Property **HEREBY UNDERTAKES, COVENANTS AND AGREES**

2.1 to use the Property for the Permitted Use specified in the Lease at all times;

2.2 to provide Health Services at the Property at all times;

2.3 save in the case of a State Authority, 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 the Health Services health services similar to the Health Services, are obtained and maintained in respect of the Property (including such insurances as may be required by any law);

2.4 to furnish such evidence as often as SVHG may reasonably require of compliance with the obligations set out in clause 2.3;

2.5 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 Property; and

2.6 to comply with such obligations as set out in 4.3(k) to ensure that SVHG may use those portions of the Property set out in the Third Schedule of the Lease

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