



HEALTH SERVICE EXECUTIVE

And

THE PROVIDER

SERVICE ARRANGEMENT

For Profit

ARRANGEMENT STRUCTURE

This Arrangement consists of two parts:

- Part 1 which comprises 34 clauses and incorporates Schedules 1 to 6; and
- Part 2 which comprises all HPSRs entered into with all Funding Health Regions, Funding IHAs or national offices of the Executive (or, where applicable, each Funding CHO or Hospital Group) in respect of this Arrangement.

Note 1 – Part 1:

- The clauses set out in Part 1 are standard for all Arrangements with Providers in the same care group as the Provider.
- The Schedules attached to (and which form part of) Part 1 are standard for all Providers in the same category as the Provider.
- Part 1 shall be executed by the parties at the commencement of the Duration of this Arrangement.
- With regard to signing of Part 1:
 - In the case of a Provider funded by a single Health Region, Part 1 shall be executed by or on behalf of the REO for the Funding Health Region at the commencement of the Duration of this Arrangement.
 - In the case of a Multi-Funded Provider, execution of Part 1 shall be arranged by the Lead Health Region and executed by or on behalf of the Lead REO for the HSE, at the commencement of the Duration of this Arrangement. This signed Part 1 shall be the only Part 1 which shall be executed by the parties in respect of an Arrangement with a Multi-Funded Provider and it shall apply to the entire Arrangement with all Funding Health Regions.
 - Where a Provider is funded by a national office of the Executive and that national office of the Executive is the lead funder, execution of Part 1 shall be arranged by and Part 1 shall be executed by the National Director in respect of the applicable national office at the commencement of the Duration of this Arrangement.

Note 2 – Part 2 – Healthcare Provider Specific Requirements (HPSR):

- The **HPSR** is in standard format but, in respect of each Arrangement, the required information in respect of the specific Arrangement shall be populated by the Executive and the Provider (as applicable).
- The **HPSR** is executed by the parties at the commencement of the Duration of this Arrangement and then annually throughout the Duration of this Arrangement.
- In respect of a Multi-Funded Provider, separate **HPSRs** shall be entered into with each Funding Health Region, Funding IHA or national office of the Executive (or, where applicable, each Funding CHO, or Hospital Group) at the commencement of the Duration of this Arrangement and then annually throughout the Duration of this Arrangement. A single Part 1 (signed on behalf of the Executive and the Provider in accordance with Note 1 above) together with the **HPSRs** for each Funding Health Region, Funding IHA or national office of the Executive (or,

where applicable, each Funding CHO, or Hospital Group) will together comprise the Arrangement for a Multi-Funded Provider.

Note 3 – With regard to execution of the Arrangement, see also Clause 34.12 (Counterparts).

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PART 2 OF SERVICE ARRANGEMENT

Healthcare Provider Specific Requirements (HPSR)

Section 1 – Contact Details

Section 2 – Funding Particulars

Section 3 – Service Delivery Specification

Section 4 – Further Information and Governance Requirements

SERVICE ARRANGEMENT – PART 1

THIS SERVICE ARRANGEMENT is made on [redacted] and applies for a period commencing on 01/09/2025 (the “Commencement Date”) and continuing until 31/12/2026 (the “Expiration Date”).

BETWEEN:

- (1) **HEALTH SERVICE EXECUTIVE**, a statutory body, having its principal headquarters at Oak House, Lime Tree Avenue, Millennium Park, Naas, Co. Kildare, details in respect of which are set out in Part A of Section 1 of the Healthcare Provider Specific Requirements (Contact Details), or any successor body, (the “Executive”);

AND

[NAME OF PROVIDER], of [address], details in respect of which are set out in Part B of Section 1 of the Healthcare Provider Specific Requirements (Contact Details), (the “Provider”).

BACKGROUND

- (A) The Executive is required by statute to manage and deliver, or arrange to be delivered on its behalf, health and personal social services.
- (B) The Executive wishes to procure the provision of the Services and the Provider wishes to provide the Services.
- (C) Now, therefore, the Executive and the Provider enter into this Arrangement for the provision of the Services to the Service Users on the terms and conditions specified below and in relation to the applicable Catchment Area.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Arrangement (including the Background):

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

“**Additional Services**” has the meaning given in Clause 4.3 (Funding);

“**Arrangement**” means this service arrangement, comprising Part I including its Schedules and all HPSRs entered into in respect of this Arrangement, together with any amendments thereto agreed in writing between the parties;

“**Authorised Person**” has the meaning given in Clause 10.2 (Access Rights);

“**Board of the Provider**” means the board of directors or other governing body of the Provider;

“**Business Day**” means a day (other than a Saturday or a Sunday) on which banks are open for business in Ireland;

“**C&AG**” means the Comptroller and Auditor General;

“**Catchment Areas**” means such areas as may be described at paragraph B (Details of the Services) of Section 3 (Service Delivery Specification) of the HPSR;

“Category 1 Incident” has the meaning ascribed to such term in the Incident Management Framework;

“Change of Control” means the change in ownership or control of a company where:

- (a) ownership means ownership (either alone or together with other affiliates) of more than 50% of the voting rights of, or interests giving the right to vote at general meetings of, or the rights to distributions on account of equity of, the relevant company; and
- (b) control means the power (whether through the ownership of voting securities, by contract or otherwise and whether alone or together with other affiliates) to direct the management or policies, or activities, of the relevant company or to appoint or remove (or to direct the appointment or removal of) directors of the relevant company holding a majority of the voting rights exercisable at meetings of its board on all, or substantially all, matters (and controlled shall be construed accordingly);

“Chief Officer” refers to a chief officer of a CHO;

“CHO” means a community healthcare organisation of the Executive;

“Claiming party” has the meaning given in Clause 28 (Force Majeure);

“Code of Governance” means the HSE Code of Governance prepared and published by the Executive pursuant to Section 35 of the 2004 Act;

“Codes of Practice” means, in respect of the Services, any applicable codes of practice, guidance, circulars, policies, directions, protocols, standards or other document of a similar nature (as same may be amended or replaced from time to time) that has issued or may be issued by the Executive, the Child and Family Agency or any other regulatory or standard setting body from time to time, including any clinical guidance applicable to the Services which may be provided by the professional colleges (as same may be amended or replaced from time to time) including those referenced in Schedule 6 (Codes of Practice);

“Commencement Date” means the date on which this Arrangement comes into effect;

“Companies Act” means the Companies Act 2014 and every statutory modification and re-enactment thereof for the time being in force;

“Contract Change Note” or **“CCN”** has the meaning ascribed to such term in Clause 34.10 (Variation);

“Corporate Plan” means the HSE Corporate Plan 2021-2024 and any subsequent corporate plan prepared and approved in accordance with Section 29 of the 2004 Act;

“Data Protection Laws” means all applicable legislation relating to personal data and privacy, including the Data Protection Acts, 1988-2018, the Data Sharing and Governance Act 2019, the General Data Protection Regulation (EU) 2016/679 (the “GDPR”), the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the European Communities (Electronic Communications, Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. 336/2011) and any secondary legislation, including any statutory instrument, order, rule or regulation, made thereunder and any regulations or other legislative measures and/or implemented and/or delegated acts thereunder;

“Duration of this Arrangement” means a period commencing on the Commencement Date and continuing until the Expiration Date, unless terminated in accordance with Clause 31 (Termination or Expiry) provided always that the details of the HPSRs shall be agreed annually by the parties or at such other time as notified by the Executive;

“EMR” refers to the Executive’s Employment Monitoring Returns;

“euro” or **“EUR”** means the currency unit of the participating Member States of the European Union as defined in Article 2 of Council Regulation 974/98/EC on the introduction of the euro;

“Expiration Date” has the meaning given to it in this Part 1;

“Financial Regulations” means the National Financial Regulations of the Executive as the same may be amended or varied from time to time;

“Financial Year” has the meaning given in paragraph A (Funding Details) of Section 2 (Funding Particulars) of the HPSR;

“First Notification Letter” has the meaning given in Clause 12.1 (Performance Issues);

“First Performance Notice” means a notice given in accordance with Clause 12.1(d) (Performance Issues);

“FOI Act” has the meaning given in Clause 25.1 (Freedom of Information);

“Force Majeure” has the meaning given in Clause 28.1 (Force Majeure);

“Funding” has the meaning given in Clause 4.1 (Funding);

“Funding CHO” means a CHO which provides Funding to the Provider pursuant to this Arrangement and which enters into a HPSR with the Provider in respect of such Funding;

“Funding Health Region” means a Health Region which provides Funding to the Provider pursuant to this Arrangement and which enters into a HPSR with the Provider in respect of such Funding;

“Funding IHA” means an IHA which provides Funding to the Provider pursuant to this Arrangement and which enters into a HPSR with the Provider in respect of such Funding;

“Health Acts” means the Health Acts 1947 to 2020;

“health and personal social services” has the meaning ascribed to such term in the 2004 Act;

“Health Region” means a health region created by virtue of the HSE Restructuring;

“Health Region Executive Management Team” means in respect of a Health Region, its executive management team;

“Healthcare Provider Specific Requirements” means the Healthcare Provider Specific Requirements in respect of each Funding Health Region, Funding IHA or national office of the Executive (or, where applicable, each Funding CHO or Hospital Group) or which is signed by the parties on an annual basis in respect of this Arrangement and which forms part of this Arrangement;

“HIQA” refers to the Health Information and Quality Authority;

“Hospital Group CEO” refers to a chief executive officer of a hospital group of the Executive;

“HPO” means the Healthcare Pricing Office;

“HPSR” means the Healthcare Provider Specific Requirements;

“HSE Health Regions Implementation Plan” means the plan for the HSE Restructuring outlined in the Executive’s publication entitled *“Organisational Reform – HSE Health Regions – Implementation Plan July 2023”* as same may be amended, replaced or supplemented from time to time;

“HSE Restructuring” means the restructuring of the Executive in respect of which, implementation commenced in February 2024 and which involves the establishment of six new Health Regions to replace CHOs and Hospital Groups, establishment of IHAs and various other structural, organisational, operational and other related changes in accordance with, inter alia, the HSE Health Regions Implementation Plan;

“ICT” means information and communication technology;

“IHA” means an Integrated Healthcare Area which is a sub-geographical within a Health Region;

“IHA Manager” in respect of an IHA refers to an Integrated Healthcare Area Manager of such IHA;

“Incident” means, as defined by the Incident Management Framework, an event or circumstance which could have, or did lead to unintended and/or unnecessary harm. Incidents include adverse events which result in harm, near misses which could have resulted in harm, but did not cause harm, either by chance or timely intervention, and staff or service user complaints which are associated with harm. Incidents can be clinical or non-clinical and include Incidents associated with harm to:

- (a) patients, service users, staff and visitors;
- (b) the attainment of the Executive’s objectives;
- (c) ICT systems;
- (d) data security e.g. data protection breaches; or
- (e) the environment;

“Incident Management Framework” means the Executive’s Incident Management Framework and Guidance 2020 as same may be amended from time to time;

“Infectious Disease” and **“Infectious Diseases”** shall be construed in accordance with the Infectious Diseases Regulations, 1981;

“Key Personnel” means such persons as may be identified by the Provider and the Executive in Section 3(C) (Service Delivery Specification) of the HPSR as key personnel;

“Lead Health Region” means, in respect of a Multi-Funded Provider, with regard to any year during the Duration of this Arrangement, either (i) the Funding Health Region providing the highest allocation of Funding to such Multi-Funded Provider during such year on the basis of the HPSRs forming part of the Arrangement with such Multi-Funded Provider in respect of that year or (ii) such other Funding Health Region as may be designated by the HSE as the Lead Health

Region in respect of such Multi-Funded Provider, and which shall be confirmed in writing by the Executive to the Provider;

“Lead REO” in respect of a Multi-Funded Provider means, the REO of the Lead Health Region from time to time;

“Major Incident” means an occurrence:

- (a) causing an unexpected surge in demand for the Services; or
- (b) materially impacting on any aspect of the Services

which the Provider could not reasonably have foreseen or taken steps to avert, with the direct result that the resources of the Provider (in terms of Provider Personnel, stock and beds or otherwise) are insufficient to deal fully with that occurrence at the same time as providing the Services in full compliance with this Arrangement;

“Minister” means the Minister for Health;

“Multi-Funded Provider” means a Provider which receives Funding from more than one funding source within the Executive, for example, from more than one Funding IHA, Funding CHO, Hospital Group, national office of the Executive or Funding Health Region (or a combination of the above) pursuant to this Arrangement;

“National Director” means a member of the Senior Leadership Team of the Executive;

“NIMS” means The National Incident Management System (NIMS), the primary legislation governing which is the National Treasury Management Agency (Amendment) Act, 2000 and Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023, and which is a confidential and secure web based system risk management tool through which Notifiable Incidents are required to be reported;

“Non-claiming party” has the meaning given in Clause 28 (Force Majeure);

“Non-Compliance” means a significant failure by the Provider to observe its obligations under this Arrangement;

“Non-Scope Services” has the meaning given in Clause 4.4;

“Notifiable Incident” has the meaning ascribed to such term in the Patient Safety (Notifiable Incident and Open Disclosure) Act 2023;

“NSP” means the National Service Plan of the Executive approved by the Minister pursuant to section 31 of the 2004 Act from time to time;

“Office Working Hours” means 9.00a.m. to 5.00p.m.;

“Performance Monitoring Framework” has the meaning given in Clause 9.2 (Monitoring, Review and Evaluation);

“Person Centred” has the meaning outlined in HIQA’s National Standards for “Safer Better Healthcare”, as amended from time to time;

“Pre-contractual Statement” has the meaning given in Clause 34.9 (Entire Agreement);

“Professional Medical Services” means:

- (a) services provided by registered medical practitioners or registered dentists of a diagnostic or palliative nature, or consisting of the provision of treatment, or the conduct of research in respect of any illness, disease, injury or other medical condition;
- (b) services provided by other health professionals in the performance of their duties, including pharmacists, nurses, midwives, paramedics, ambulance personnel, laboratory technicians; or
- (c) services connected with the provision of health or medical care provided by persons acting under the direction of a person to whom paragraph (a) or (b) applies;

“Protected Disclosure” has the meaning ascribed to such term in Protected Disclosures Act 2014 as amended or a disclosure to which Part 9A of the Health Act 2004 applies;

“Provider Personnel” means all officers, employees, volunteers, agents and contractors employed, engaged, supplied or utilised by the Provider or by any sub-contractor or agent of the Provider for any purpose whatsoever including without limitation for the purpose of providing or assisting directly or indirectly the provision of Services to Service Users;

“Public Procurement Law” means, to the extent applicable to and binding upon the Provider:

- (a) European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. 284 of 2016) and by the European Union (Award of Concession Contracts) Regulations 2017 (S.I. 203 of 2017);
- (b) Council Directive 2007/66/EC as implemented into Irish law through the European Communities (Public Authorities’ Contracts) (Review Procedures) Regulations 2010 (S.I. 130 of 2010), as amended by (i) the European Communities (Public Authorities’ Contracts) (Review Procedures) (Amendment) Regulations 2015 (S.I. No. 192 of 2015) and (ii) the European Communities (Public Authorities’ Contracts) (Review Procedures) (Amendment) Regulations 2017 (S.I. No. 327 of 2017);
- (c) Rules of the Superior Courts (Review of the Award of Public Contracts) 2010 (S.I. No. 420 of 2010);
- (d) any other legislation in relation to public procurement law having the force of law in Ireland from time to time;
- (e) any duties and obligations in relation to public procurement arising under common law, decisions of the courts of law in Ireland and the General Court and the Court of Justice of the European Union in relation to public procurement law;
- (f) all the public procurement guidelines, Circulars and policies issued by the Department of Finance, the Department of Public Expenditure, NDP Delivery and Reform, the Office of Government Procurement or other Government Department authorised to issue public procurement law guidance; and
- (g) all other legally binding duties and obligations in relation to public procurement arising under international, European Union law or national law;

“REO” refers to a regional executive officer of a Health Region;

“Reorganisation or Restructuring” means:

- (a) any significant reconstruction, reorganisation or change in the constitution of the Provider or its associated undertakings, including without limitation in the case of a company, any significant variation in the share capital of the company, a capitalisation issue, rights issue, sub division, consolidation or reduction in the capital of the company, compromise or arrangement sanctioned by the court under Chapter 1 of Part 9 of the Companies Act;
- (b) acquisition of all or part of the Provider’s undertaking associated with the Services by any person;
- (c) any merger, de-merger, amalgamation or sub-division, howsoever effected, relating to the Provider; or
- (d) a Change of Control of the Provider;

“Reorganisation or Restructuring Notice” means written notice of the applicable period as set out below (or such other period as may be agreed by the parties):

- (a) 2 months where the Term is 1 year or less;
- (b) 4 months where the Term is between 1 year and 2 years; and
- (c) 6 months where the Term is greater than 3 years;

“Review Meetings” means the meetings held pursuant to Clause 11.2 (Review Process);

“Review Process” has the meaning given in Clause 11 (Review Process);

“Second Notification Letter” has the meaning given in Clause 12.2 (Performance Issues);

“Second Performance Notice” means a notice given in accordance with Clause 12.2(d) (Performance Issues);

“Senior Accountable Officer” has the meaning ascribed to such term in the Incident Management Framework;

“Serious Breach Notice” means written notice of the applicable period as set out below (or such other period as may be agreed by the parties):

- (a) 1 month where the Term is 1 year or less;
- (b) 2 months where the Term is between 1 year and 2 years; and
- (c) 3 months where the Term is greater than 3 years;

“Serious Reportable Event” means, as defined in the Incident Management Framework, a defined subset of Incidents which are either serious or that should not occur if the available preventative measures have been effectively implemented by the Provider;

“Services” in respect of this Arrangement, means the services as set out in Section 3 (Service Delivery Specification) of all HPSRs forming part of the Arrangement and, in respect of a particular Funding Health Region (or, where applicable, a particular Funding IHA, Funding CHO, Hospital

Group or national office of the Executive) means the services as set out in the applicable HPSR in respect of such particular Funding Health Region (or, where applicable, a particular Funding IHA, Funding CHO, Hospital Group or national office of the Executive), in either case, such Services to be provided by the Provider in accordance with the terms of this Arrangement;

“Service Users” means each person who is referred or presents to the Provider as part of the provision of the Services;

“Strategic Claim” means any claim, action, demand or proceedings (each a **“Claim”**) against the Provider, in respect of which any of the following apply (as determined by the Executive):

- (a) the Claim could result in the judicial interpretation of a point of law or legislation relevant to the Executive (including, but not limited to, the Health Acts and any statutory instruments made thereunder);
- (b) the Claim has the potential to have national policy, financial or other implications;
- (c) the Claim may influence or direct future Executive policy or guidelines;
- (d) the Claim may or could have a material impact on the Funding or Services provided under this Arrangement; or
- (e) the Claim is otherwise of strategic importance to the Executive;

“Term” means the period of time between the Commencement Date and the Expiration Date;

“Termination Notice” means written notice of the applicable period as set out below (or such other period as may be agreed by the parties):

- (a) 4 months where the Term is 1 year or less;
- (b) 8 months where the Term is between 1 year and 2 years; and
- (c) 12 months where the Term is greater than 3 years;

“Year” means a calendar year from 1 January to 31 December, save that in the first year of this Arrangement, it shall be the period from the Commencement Date to 31 December.

1.2 In this Arrangement:

- (a) references to Clauses, paragraphs and Schedules are to Clauses, paragraphs and Schedules to this Arrangement;
- (b) references to a **“company”** shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (c) references to a **“person”** shall be construed so as to include any individual, firm, company, government, state or agency of a state, local authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (d) a reference to any statute or legislative provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, re-enacted or consolidated;

- (e) any reference to a “**day**” or a “**Business Day**” shall mean a period of twenty-four (24) hours running from midnight to midnight except in Clause 34.3 (Notices) where it means a weekday (excluding a Saturday, Sunday or any public or bank holiday);
 - (f) references to times are to times in Ireland;
 - (g) references to a “**month**” shall mean a calendar month;
 - (h) a reference to any other document referred to in this Arrangement is a reference to that other document as amended, varied, novated or supplemented at any time;
 - (i) any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or other similar expression shall be construed as illustrative and shall not limit the sense or meaning of the words preceding those terms;
 - (j) references to the singular include the plural and vice versa;
 - (k) references to the masculine include the feminine and vice versa; and
 - (l) save as otherwise provided in this Arrangement, the Interpretation Act 2005 applies to this Arrangement in the same way as it applies to an enactment.
- 1.3 All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Arrangement.
- 1.4 In the event of any conflict between Part I of this Arrangement and the HPSR, Part I of this Arrangement shall prevail, unless explicitly stated otherwise.
- 1.5 The parties acknowledge that implementation of the HSE Restructuring will occur in the course of the Duration of this Arrangement on a phased implementation basis with various changes to occur at various times throughout the transition period for the purpose of establishing the Health Regions and Health Region Executive Management Teams and transferring certain rights, responsibilities and accountabilities relating to this Arrangement from the current holders to the transferees of such rights, responsibilities and accountabilities under the HSE Restructuring (not least the transfer of certain rights, responsibilities and accountabilities from National Directors to REOs or, in certain cases, to the Lead REO by virtue of the HSE Restructuring) as envisaged by the HSE Health Regions Implementation Plan. The parties further acknowledge and agree that this Arrangement shall be subject to and implemented in a manner which gives effect to the HSE Restructuring. Following the replacement of CHOs and Hospital Groups by Health Regions and IHAs as part of the HSE Restructuring, overall responsibility for the Arrangement on the part of the Executive will be held by the Lead REO (or, where applicable, National Director) but, where appropriate, certain responsibilities may be assumed by REOs (or, for example, other members of the Health Region Executive Management Team) of other Funding Health Regions or to units/divisions within the HSE Centre (as referred to in the HSE Health Regions Implementation Plan).
- 1.6 Wherever it is provided in the Arrangement that, following and as a result of implementation of the HSE Restructuring, a responsibility is held, a determination must be made, an action approved or a consent provided by an REO or Lead REO or by an employee of the HSE of a grade no lower than REO or Lead REO, in circumstances where a HPSR is entered into with a national office of the Executive, the foregoing references to REO shall be deemed to be references to the National Director of the applicable national office of the Executive (and, where that national office is the lead funder, the foregoing references to Lead REO shall be deemed to be references to the

National Director) and the foregoing references to an employee of the Executive of a grade no lower than REO or Lead REO shall be deemed, for this purpose, to include a National Director.

2. PRINCIPLES OF ARRANGEMENT

- 2.1 The Executive hereby agrees to provide the Funding to the Provider to provide the Services subject to the terms and conditions of this Arrangement and the Provider hereby accepts such Funding. For the avoidance of doubt, the parties agree that the Funding is payable for the provision of the Services and the extent of the Services to be provided shall be specified in Section 3 (Service Delivery Specification) of the HPSR. The Provider shall apply the Funding exclusively for the provision of the Services.
- 2.2 As a condition to the provision of the Funding, the Provider hereby commits to support, implement and advance any change and modernisation of health and personal social services required by the Executive in line with Government policy over the course of the Duration of this Arrangement.
- 2.3 As a condition to the provision of the Funding and in accordance with the terms of this Arrangement, the parties agree that in carrying out their respective obligations under this Arrangement, they shall each endeavour, within the agreed Funding and without prejudice to any statutory rights or obligations of the Executive, to:
- (a) develop and deliver the Services to a high quality and standard and in line with national health strategy, in particular Slaintecare, and/or any other applicable national framework for action to improve the health and wellbeing of people living in Ireland;
 - (b) seek to respond to the assessed needs of Service Users and to improve accessibility to the Services;
 - (c) collaborate with other service providers (including voluntary, community and statutory service providers and agencies);
 - (d) pursue the development of processes that enable local communities and Service Users to be involved in decision-making in the planning and delivery of the Services;
 - (e) demonstrate their commitment to the principle of accountability in relation to the management of public funds and public trust in terms of systems of controls, record keeping, monitoring and evaluation;
 - (f) comply with the Codes of Practice with a view to continuous quality improvement;
 - (g) recognise the importance of providing Person Centred, needs-led services which reflect best practice and are responsive to Service Users;
 - (h) recognise the need to provide the Services in a cost efficient manner;
 - (i) protect, preserve, recognise and acknowledge any proprietary interest of the Executive, the State or any other statutory body in all property, whether real or personal, used in relation to or in connection with the Services; and
 - (j) maintain the best standards of business ethics to include taking all reasonable steps to prevent their employees or agents from making, receiving, providing or offering gifts of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to this Arrangement or for showing or forbearing to

show favour or disfavour to any person in relation to this Arrangement or for the purpose of influencing individuals, firms or bodies corporate to act contrary to either parties' interests.

2.4 Notwithstanding any other provision of this Arrangement, the parties agree that the requirements, requests and obligations arising from this Arrangement are limited to and applicable only in respect of the Services and Funding provided pursuant to this Arrangement.

2.5 The Executive reserves all of its statutory powers, discretion and rights in respect of the management and delivery of health and personal social services and may carry out strategic reviews of the provision of such services from time to time. For the avoidance of doubt and except as specifically agreed in writing from time to time in accordance with the HPSR, the Executive makes no commitment, provides no warranty, representation, or guarantee to the Provider as to:

- (a) the nature, continuation or amount (if any) of Services to be provided under this Arrangement; nor
- (b) the proportion or mix of Services which may be required from time to time; nor
- (c) the number of providers which may be engaged from time to time to provide Services to the Executive; nor
- (d) the continued retention of the Provider as a provider for the provision of Services to the Executive,

and no expectation or continuity of provision of services for the Executive or entry into of any future arrangement with the Executive is committed, guaranteed, represented or warranted.

3. **ROLES AND RESPONSIBILITIES**

3.1 **Duties of the Executive**

- (a) Subject to the Executive's statutory responsibilities and obligations with respect to the provision of the Services generally and to the Executive's responsibilities in relation to public funds, and having regard to the level of funding made available to it by the Exchequer, the Executive will put in place an agreed payments schedule and conditions in respect of the Funding to be provided under this Arrangement.
- (b) Subject to the Executive's statutory responsibilities and obligations with respect to the relationship of the Executive with the Provider, and having regard to the Executive's responsibilities in relation to public funds, the Executive shall:
 - (i) endeavour to contract and deal with the Provider at all times in accordance with the Code of Governance of the Executive;
 - (ii) subject to any obligations of confidentiality (including obligations in respect of the "in camera" rule) imposed on the Executive, provide the Provider with any information that the Executive has, which in the reasonable opinion of the Executive, is necessary for the performance by the Provider of its obligations under this Arrangement.

3.2 Duties of the Provider

(a) General

- (i) The Provider shall provide the Services in accordance with the specifications outlined in Section 3 (Service Delivery Specification) of the HPSR, the Codes of Practice and, where necessary, with such instructions as may be issued by the Executive in writing from time to time for the purpose of and in accordance with this Arrangement throughout the Duration of this Arrangement.
- (ii) The Provider acknowledges that the Executive will be relying on the Provider's knowledge, experience, expertise and competence in the Provider's performance of its obligations under this Arrangement, and on the accuracy of all statements, reports or returns made by the Provider in connection with its obligations pursuant to this Arrangement.

(b) Provision of the Services

The Provider shall, within the limits of the Funding in accordance with Schedule 1 and in accordance with Section 2 (Funding Particulars) of the HPSR:

- (i) make available and provide access to the Services as set out in Section 3 (Service Delivery Specification) of the HPSR for the Duration of this Arrangement;
- (ii) develop and deliver services consistent with the Executive's NSP and Corporate Plan as may be prepared by the Executive;
- (iii) make available to each Service User those Services that are consistent with the individual needs of that Service User;
- (iv) carry out faithfully and diligently all duties and responsibilities which may be required to ensure the provision of the Services in a timely and efficient manner, to a standard which is in all respects to the reasonable satisfaction of the Executive;
- (v) comply with the Executive's policies and objectives as outlined in the NSP which are relevant to the Services, the Funding or this Arrangement;
- (vi) comply with such policies, objectives and directions of the Minister insofar as these affect the provision of the Services or are relevant to the Services, the Funding or this Arrangement and which have been notified to the Provider from time to time by the Executive; and
- (vii) respect the individuality of the Service User and the principle of promotion of the well-being of each Service User in accordance with Clause 6 of this Arrangement.

(c) Other Obligations of the Provider

The Provider shall:

- (i) endeavour to contract and deal with the Executive at all times in accordance with the Code of Governance of the Executive;

- (ii) act to the best of its skill and ability and in a competent and efficient manner so as to give to the Executive the full and complete benefit of the Provider's knowledge, experience, expertise and competence in providing the Services;
- (iii) comply with all applicable laws and regulations and the procedures and requirements of any relevant governmental bodies (including, in relation to the premises from which the Provider operates, all planning and building regulations), and any safety or security requirements of the Executive notified to the Provider from time to time, in providing the Services (including, without limitation, any statutory safety requirements in force for the time being) and ensure that the same are complied with in all respects by all Provider Personnel;
- (iv) comply with the requirements of the Incident Management Framework as may be amended from time to time and any and all other relevant policies and guidelines;
- (v) use NIMS to notify Notifiable Incidents in line with the Patient Safety (Notifiable Incident and Open Disclosure) Act 2023;
- (vi) obtain and maintain all licences, permits and permissions necessary to provide the Services in accordance with applicable laws and regulations and shall notify the Executive immediately in the event that such licences, permits and permissions are not obtained or maintained;
- (vii) respect and comply with the statutory role and regulatory and public accountability responsibilities of the Executive and other relevant statutory bodies and at all times co-operate fully with the Executive, any committees of the Board of the Executive and all other statutory bodies in this regard;
- (viii) comply with all requirements of the Financial Regulations in respect of the sourcing of suppliers for works and related service contracts which are funded more than fifty percent (50%) by the Executive;
- (ix) comply with the provisions of Part 3 of the Disability Act 2005;
- (x) comply, if applicable, with the provisions of S.I. No. 359 of 2008: European Communities (Vehicle Drivers Certificate of Professional Competence) (No. 2) Regulations 2008;
- (xi) immediately or as soon as practicable, and in compliance with Data Protection Laws, notify the Executive in writing of the occurrence of any significant matters which may affect the delivery, provision or level of the Services. In the case of a Category 1 Incident, Serious Reportable Event or a Notifiable Incident, the Chief Executive Officer or equivalent should immediately notify the Executive, and all other applicable parties which may include HIQA and/or the Mental Health Commission;
- (xii) inform the Executive of any changes to its officers, e.g. Treasurer, Chairperson, Directors, Secretary and/ or Key Personnel and inform the Executive of any change of Auditors;
- (xiii) upon request, make available to the Executive copies of any policy, procedure or protocol which the Provider implements, and shall promptly notify the Executive of any material changes to those documents;

- (xiv) comply with applicable provisions of the Health Acts, and any legislation regarding eligibility and any further relevant legislation passed after the date of this Arrangement;
- (xv) have in place an ethics committee or other appropriate process;
- (xvi) act (and ensure that persons providing Services on its behalf act) in accordance with its fiduciary duties where a fiduciary relationship exists between the Provider and a Service User and in accordance with the Codes of Practice and any relevant guidance issued by the Department of Health, the Department of Children, Equality, Disability, Integration and Youth, the Child and Family Agency and/ or the Executive from time to time;
- (xvii) keep itself fully apprised and compliant with all of its responsibilities under the Fire Services Act 1981 (in particular Section 18) and the Safety, Health and Welfare at Work Act 2005;
- (xviii) procure and maintain insurance in accordance with Clause 13 and Schedule 4 (Insurances);
- (xix) comply with any determinations or directions made by the Executive in respect of the rates of fees or charges which the Provider wishes to impose upon Service Users; and
- (xx) comply with all legal requirements and policies and guidelines issued by any Government Department or by the Executive in respect of child protection and protection of adults at risk of abuse and comply with all reporting procedures in including any time limits set by statute in respect of suspected or actual abuse and shall notify the Executive of any reports and report to their insurer;
- (xxi) comply with all applicable laws and regulations and the Codes of Practice as they relate to Infectious Diseases, including any procedures and requirements of the Executive or employees of the Executive designated to perform medical officer of health or chief medical officer functions in accordance with the Infectious Diseases Regulations 1981 and Schedule 5 of the 2004 Act, in providing the Services, including obligations to report cases or outbreaks of Infectious Disease and the general duty to take precautions against infecting others with Infectious Disease, and procure that same are complied with by Provider Personnel;
- (xxii) support and co-operate with the role of the Executive's independent confidential recipient.

4. **FUNDING**

- 4.1 Subject to the terms and conditions of this Arrangement, the funds to be paid by the Executive to the Provider under this Arrangement, inclusive of all duties, taxes, expenses and other costs associated with or incurred in the provision of the Services, shall not exceed the amount specified in paragraph A (Funding Details > Total Payments) of Section 2 (Funding Particulars) of the HPSR (the "**Funding**") which amounts shall be payable by the Executive to an account nominated by the Provider as set out in paragraph C of Section 2 (Funding Particulars) of the HPSR.
- 4.2 In circumstances where the Provider has not met all or some of the key performance indicator targets to the Executive's satisfaction, the amount specified in paragraph A (Funding Details >

Total Payments) of Section 2 (Funding Particulars) of the HPSR may be subject to any deduction applied by the Executive pursuant to Clause 9.3 and paragraph A (Funding Details > Total Payments) of Section 2 (Funding Particulars) of the HPSR and only the reduced amount shall be payable for the provision of the Service.

- 4.3 If the Executive and the Provider agree in advance that any additional services are to be provided by the Provider under the terms and subject to the conditions of this Arrangement, the amount and timing of any payment(s) due in respect of and the specification(s) for such additional service(s) (the “**Additional Services**”) shall be agreed in writing between the Provider and the Executive prior to the commencement of provision of those services as described in Section 3 (Service Delivery Specification) of the HPSR. Once funding has been agreed in respect of any Additional Services, that funding shall be treated as part of the Funding for the purposes of this Arrangement, and the Additional Services shall be treated as part of the Services for the purposes of this Arrangement. The Additional Services shall be agreed via a Contract Change Note utilising the change control process at Clause 34.10 (Variation).
- 4.4 The Funding is payable for the provision of the Services only. Any other services provided by the Provider that have not been authorised in advance in writing by the Executive shall be outside the scope of this Arrangement (“**Non-Scope Services**”) and the costs of the Non-Scope Services and all responsibilities, obligations and liabilities relating to or arising in connection with the Non-Scope Services shall be the sole responsibility of the Provider.
- 4.5 Unless provided for elsewhere by law the Executive and the Provider shall agree and determine, in advance, the rates of any fees which the Provider wishes to impose upon Service Users in respect of the Services.
- 4.6 The Executive may require the Provider to remit any fees collected by the Provider (in accordance with Clause 4.5) to the Executive, and for the avoidance of doubt, the Executive shall be entitled to invoke the provisions of Clause 5 (Set-off) in respect of any sums owing to it.
- 4.7 The Provider will immediately notify the Executive and will ensure that all necessary notifications and actions are undertaken in the event that fraud or misappropriation is suspected or if the Provider becomes aware of circumstances suggesting fraud, theft or misappropriation within the Provider, in respect of the Services or arising out of this Arrangement. This shall include the notification by the Provider of the matter to An Garda Síochána and the provision by the Provider to the Executive of copies of all statements made. The Provider shall co-operate with any directions of the Executive in this regard and shall comply with applicable law, including Data Protection Laws, in such circumstances.
- 4.8 Provision of the Funding to the Provider shall be conditional on the Provider having at all times a current valid tax clearance certificate, a copy of which must be furnished by the Provider to the Executive upon request.

5. **SET-OFF**

The Provider expressly agrees that the Executive, having given not less than fourteen (14) days’ written notice to the Provider, shall be entitled to withhold and set off monies owing to the Provider in accordance with this Arrangement in the event and to the extent that the Provider owes any monies, damages, costs or expenses to the Executive as a result of or in connection with the Provider’s performance or failure to perform its obligations under this Arrangement, or any other arrangements with the Executive.

6. SERVICE USER CENTRED CARE

- 6.1 The organisation, design and delivery of the Services shall be Person Centred with primary focus on the health and wellbeing of Service Users and their families.
- 6.2 The Provider will provide the Services to Service Users without discrimination on account of gender, civil status, family status, age, race, religion, disability, sexual orientation or membership of the Traveller community.
- 6.3 All Service Users shall be treated by the Provider equitably. The co-existence of public and private practice within the public system shall not undermine the principle of equitable access.
- 6.4 The Provider shall be required to demonstrate a high level of consultation with Service Users, their advocates and families, in the development of new services, strategic planning and evaluation of existing services. The Provider shall where required provide verifiable evidence throughout the Duration of this Arrangement that such consultation and resulting actions have been undertaken.
- 6.5 The Executive and the Provider are committed to protecting Service Users, whose safety is of paramount importance. The Provider shall ensure that Service Users are made aware of the right to be free from abuse (mental, physical, emotional, sexual and financial) and neglect. The Executive acknowledges that the degree to which Service Users may be made aware of this right will vary depending upon the capacity of the Service User concerned. The Provider shall also establish and maintain a formal protection from abuse policy and complaints procedure that is accessible to all Service Users, their advocates and carers, and which is consistent with applicable Codes of Practice.
- 6.6 The Provider will establish and maintain appropriate systems, controls and procedures in respect of the private property of Service Users which is in accordance with best practice and all applicable law and Codes of Practice.
- 6.7 The Provider will ensure that it keeps full and complete records in respect of Service Users and, where a Service User is unable to manage his/her affairs due to mental or other incapacity, in respect of persons authorised to act on behalf of the Service User.

7. PROCUREMENT AND VALUE FOR MONEY INITIATIVES

- 7.1 The Provider will undertake the procurement of works, supplies and services in relation to this Arrangement (whether alone or in collaboration with one or more other entities) in compliance with the fundamental principles of European Union law in respect to procurement, namely, transparency, equality of treatment, non-discrimination and proportionality, and shall generally adopt best practices in terms of procurement including, where applicable, in accordance with Public Procurement Law where the activities which are the subject of the procurement are to be funded in whole or in part by the Executive.
- 7.2 The Provider hereby indemnifies the Executive against any costs, expenses or damages arising out of any claim, demand or proceedings made against the Provider and/or the Executive in respect of any award of goods, supplies, services or works made pursuant to or in connection with this Arrangement other than to the extent that, with regard to any such claim, demand or proceedings, the Executive played a material role in the awarding of such supplies, goods, services or works and the costs, expenses or damages arising were not caused or exacerbated in whole or in part by an act or omission of or on behalf of the Provider. The Provider shall reimburse the Executive within three (3) months of the receipt of an invoice by the Provider for all costs,

expenses or damages incurred by the Executive in preparing and defending any indemnified claim, demand or proceedings made in respect of this Clause. The Provider shall co-operate, liaise and keep the Executive informed of any claim demand or proceedings made in respect of this Clause.

7.3 The Executive hereby indemnifies the Provider against any costs, expenses or damages arising out of any claim, demand or proceedings made against the Provider in respect of the process of award of any goods, supplies, services or works contracts awarded by the Executive and availed of by the Provider pursuant to or in connection with this Arrangement.

7.4 The Executive is statutorily required to be accountable for expenditure on health and personal social services. The Provider will use its best endeavours to drive, deliver and report value for money in its use of the Funding and in the delivery of the Services in a manner that maximises effectiveness and outcomes in the use of public funds and will co-operate and collaborate with the Executive in the achievement of value for money.

8. INFORMATION REQUIREMENTS

8.1 Request for Information

The Provider agrees that it will comply with a written request from the Executive for any information that the Executive considers material with regard to the provision of the Services or this Arrangement. The Executive shall specify in any written request under this Clause 8.1 the information required and the reason for the request. All such requests will have due regard to Data Protection Laws as outlined in Clause 26.

8.2 Schedule 3 (Requirements for Information, Performance Monitoring and General Governance)

The Provider will comply with the obligations set out in Schedule 3 (Requirements for Information, Performance Monitoring and General Governance) and with any requirements set out in Section 4 (Further Information and Governance Requirements) of the HPSR.

8.3 Delivery of Services

In the event that issues are anticipated or arise during a Financial Year, which will or are reasonably likely to result in the Provider having difficulties in delivering, or maintaining delivery of, the Services, the Provider shall at the earliest possible time notify the Executive in writing of such issues. This written notice must include the Provider's proposals as to how it will manage the issues to ensure that the Services are provided within that Financial Year.

8.4 Audit and Information

The Provider shall:

- (a) keep detailed records in respect of its performance of its obligations under this Arrangement and at the Executive's request shall make such records available for inspection or shall provide copies to the Executive;
- (b) supply certified copies to the Executive of any authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to deliver the Services and to perform its obligations under the Arrangement;
- (c) separately identify in its financial statements the funding received from the Executive, as distinct from other funding received and activities undertaken during the financial year;

- (d) ensure that such financial statements are audited by a person, who is qualified to be appointed as an auditor pursuant to Chapter 18 of Part 6 of the Companies Act 2014;
- (e) without prejudice to Clause 8.4(c), provide copies of such financial statements to the Executive by 26th November where the financial year end for the prior financial year of the Provider is 31st December or within ten (10) months of the Provider's financial year end where the Provider's financial year end for the previous financial year of the Provider is a date other than 31st December;
- (f) submit additional financial information to the Executive in accordance with Schedule 1 (Funding), Schedule 3 (Requirements for Information, Performance Monitoring and General Governance) and in Section 2 (Funding Particulars) of the HPSR; and
- (g) furnish an annual certificate from the Provider's auditors confirming that the financial statements have been prepared and audited in accordance with generally applicable accounting standards (GAAP) and relevant legal and regulatory requirements in force at the time.

8.5 Employment Monitoring Return (EMR)

The Provider, will comply with its obligations in respect of the Employment Monitoring Return in accordance with Schedule 3 (Requirements for Information, Performance Monitoring and General Governance).

8.6 Other Information Obligations

- (a) The Executive acknowledges the value of information sharing and exchange amongst different providers. The Provider agrees to provide relevant information relating to Services to other providers (subject to Data Protection Laws).
- (b) The Provider will collaborate with the Executive in its monitoring and audit relationships and in the Executive's performance of the Executive's obligations to third parties (including HIQA, the C&AG, etc).
- (c) Subject to Data Protection Laws, the Provider will provide accurate information to relevant statutory bodies and other appropriate and authorised sources (for example, the National Parasuicide Register, Disability Database, HPO). The Provider will also provide the Executive with a copy of the information supplied to such sources if requested.
- (d) Subject to Clause 8.1, the Provider will comply with all requests by the Executive and by any committees of the Board of the Executive to supply information and such requests may include, without limitation, information required by reason of, or relating to or arising out of:
 - (i) Parliamentary Questions;
 - (ii) Responses to complaints from or on behalf of Service Users and/or advocates;
 - (iii) the compilation of statistical data in relation to the Services or Service Users; or
 - (iv) other requests relevant to the Executive function.
- (e) The provisions of this Clause 8 shall continue to apply for the appropriate retention periods specified by law or in such policies as may be specified by the Executive to the Provider

notwithstanding the termination of this Arrangement for any reason and notwithstanding the completion of the performance of the Provider's obligations hereunder.

- (f) The retention periods referred to in Clause 8.6(e) shall include such extended periods for adults at risk of abuse and children as are required for compliance with Data Protection Laws.

8.7 Failure to Provide Information

The Provider acknowledges that:

- (a) in order to achieve accurate forecasting, activity monitoring and prompt and accurate funding and governance of health and personal social services and similar or ancillary services, there needs to be timely, regular exchange of detailed and accurate information; and
- (b) it is obliged to properly account for the expenditure of Funding provided by the Executive.

Accordingly, if any significant information required to which the Executive is entitled pursuant to statute or the provisions of this Arrangement is withheld by the Provider without the prior written consent of the Executive, the Executive may (in its sole and absolute discretion and without prejudice to its other rights pursuant to this Arrangement or otherwise), having given not less than fourteen (14) days' written notice to the Provider, withhold payment of, seek repayment of, or set-off, any part of the Funding until such time as the required information is supplied.

9. MONITORING, REVIEW AND EVALUATION

- 9.1 The Executive shall monitor the standard of performance of Services in accordance with the standards envisaged by Clause 3.2 (Duties of the Provider), in Section 3 (Service Delivery Specification) of the HPSR (including paragraph B (Details of the Services) and paragraph C (Service Outcomes) of such Section 3) and the key performance indicators referenced in Section 4 (Further Information and Governance Requirements) of the HPSR (including paragraph B (Performance Indicators) of such Section 4), generally accepted best practice and by reference to the Performance Monitoring Framework.
- 9.2 At the end of each calendar month the Provider will report to the Executive its performance against each of the key performance indicators set out in in Section 4 (Further Information and Governance Requirements) of the HPSR. If the Executive is of opinion that the Provider's performance against a key performance indicator has not achieved the target set out in in Section 4 (Further Information and Governance Requirements) of the HPSR, the Executive shall inform the Provider in writing and the Provider will submit to the Executive its proposal for improving performance to ensure performance returns to the standards and targets required so as to achieve the key performance indicators.
- 9.3 In the event that the Provider fails to provide the Services in accordance with Section 3 (Service Delivery Specification) of the HPSR or if the Provider's performance against a key performance indicator in such intervals specified in Section 4 (Further Information and Governance Requirements) of the HPSR, fails to reach the minimum target set out in Section 4 (Further Information and Governance Requirements) of the HPSR, in respect of that period, then the Funding shall be reduced by such amount as may be applied in accordance with Clause 4.2 (Funding) or that the Executive considers proportionate to the failure to provide the Services to the required standard. The Executive shall notify the Provider in writing of the amount of the reduction to be applied and/or reimbursed to the Executive (in the event that Funding for a

particular period of the Services has already been paid). Any amount so deducted by the Executive will continue to be deducted from the Funding if the target stated for a key performance indicator is not improved upon or achieved in any subsequent period.

10. ACCESS RIGHTS

10.1 The Executive shall be entitled to audit, inspect and review the performance and provision of the Services and/or this Arrangement by the Provider (which may include the governance, management and/or control systems of the Provider) and may arrange for a third party to audit, inspect and/or review the same on behalf of the Executive throughout the Duration of this Arrangement.

10.2 Any person or persons (whether personnel of the Executive or a third party) duly authorised by the Executive ("**Authorised Person**") for the purposes of either an audit, inspection or review under Clause 10.1 may visit the Provider's premises on reasonable written notice to carry out such audit, inspection and/or review and/or may request the provision of information, documentation or copy documentation by the Provider to the Executive or such Authorised Person. Such audits, inspections or reviews may include, inter alia, some or all of the inspection, monitoring, review and assessment of the Provider's premises, facilities, Provider Personnel, equipment, systems, procedures and records (including, without limitation, Provider Personnel records and information and records on the Service Users). The Provider shall give all such assistance and provide all such facilities as the Authorised Person may reasonably require for such audit, inspection or review.

10.3 The Executive and the Provider acknowledge that such inspections and reviews must be carried out in compliance with law, including, but not limited to, Data Protection Laws.

11. REVIEW PROCESS

11.1 The Provider shall co-operate in a monitoring and review process (the "**Review Process**") to support and monitor the implementation, review and evaluation of this Arrangement.

11.2 Review Meetings shall take place between the Executive (which will be represented by the "**Key Contact Person**" specified at Part A of Section 1 (Contact Details) of the HPSR, or another appropriate person) and the Provider (which will be represented by the "**Key Contact Person**" specified at Part B of Section 1 (Contact Details) of the HPSR or another appropriate person) according to the review frequency detailed at paragraph D (Performance Review Meetings) of Section 4 (Further Information and Governance Requirements) of the HPSR.

11.3 The provisions of the HPSR, and where applicable, the Schedules to this Arrangement, and the performance of the Services and implementation of this Arrangement shall be reviewed at each Review Meeting. In particular, the following shall be considered (without limitation):

- (a) Financial reports and issues arising;
- (b) Human resources and staffing issues;
- (c) Activity data – summary of Services provided;
- (d) The objectives and actions taken by the Provider to deliver the Services as specified in this Arrangement;

- (e) Review of the requirements as set out in Section 3 (Service Delivery Specification) of the HPSR (including paragraph B (Details of the Services) and paragraph C (Service Outcomes) of such Section 3) and the agreed performance indicators and outcomes as set out in Section 4 (Further Information and Governance Requirements) of the HPSR (including paragraph B (Performance Indicators) of such Section 4);
 - (f) Whether the needs of Service Users are being met;
 - (g) Compliance with the Services specifications (including compliance with Schedule 2 (Quality & Safety) and Schedule 6 (Codes of Practice) and compliance with Section 3 (Service Delivery Specification) of the HPSR etc);
 - (h) Evaluation of information provided pursuant to Clauses 8 (Information Requirements) and 9 (Monitoring, Review and Evaluation);
 - (i) Any matters notified in writing to the Executive pursuant to Clause 3.2(c)(xi) (matters which may affect the delivery, provision or level of the Services);
 - (j) Any matters notified in writing to the Executive pursuant to Clause 14.3 (issues of concern in relation to governance);
 - (k) Any matters notified in writing to the Executive pursuant to Clause 8.3 (any issues that are anticipated to result in the Provider not being able to deliver the Services as agreed under this Arrangement);
 - (l) Any reports received by the Executive pursuant to Clause 20.5 (areas of concern, Category 1 Incidents, Serious Reportable Events and/or Notifiable Incidents) of this Arrangement;
 - (m) If relevant, the value of any supplies, services or works contracts awarded by the Executive and availed of by the Provider pursuant to or in connection with this Arrangement;
 - (n) Other issues appropriate to the efficient, effective and safe operation of the Services.
- 11.4 The Provider shall comply with all requirements of the Executive in reviewing the performance and provision of the Services and such requirements may be set out in Schedule 3 (Requirements for Information, Performance Monitoring and General Governance) and/or in Section 4 (Further Information and Governance Requirements) of the HPSR, and revised or amended in writing by the Executive from time to time.
- 11.5 With the exception of requirements specified by the Executive in Schedule 3 (Requirements for Information, Performance Monitoring and General Governance) and/or in Section 4 (Further Information and Governance Requirements) of the HPSR, any amendment to the HPSR (other than amendments arising as a result of the introduction of a new HPSR annually or at such other time as notified by the Executive) shall be agreed in writing between the Executive and the Provider and shall be evidenced by completion of a Contract Change Note within the meaning of Clause 34.10 (Variation) and otherwise in accordance with Clause 34.10.
12. **PERFORMANCE ISSUES**
- 12.1 **First Performance Notice**
- (a) Without prejudice to any other rights the Executive may have under this Arrangement, if, as a result of information received, or inspection undertaken or following a Review Meeting or otherwise, the Executive is of the opinion that there may be a potential Non-

Compliance, the Executive may give notice in writing to the Provider (with a copy of that notice provided to the Board of the Provider) that it is minded to issue a First Performance Notice (the **"First Notification Letter"**) specifying:

- (i) the reasons why the Executive has a reasonable concern that the Provider is in potential Non-Compliance;
 - (ii) the respects in which the Executive considers the Provider is in potential Non-Compliance;
 - (iii) the decision making process which the Executive will follow in determining whether to issue a First Performance Notice pursuant to this Clause 12.1, which decision making process is set out in more detail in Clauses 12.1(b) to 12.1(d) below;
 - (iv) such steps as the Executive may deem necessary for the Provider to take to address the potential Non-Compliance to the satisfaction of the Executive and the time frame for such compliance in the event that a First Performance Notice is issued; and
 - (v) any steps which the Executive may take or may require the Provider to take, whether under Clause 12.3 or otherwise, in the event that a First Performance Notice does issue.
- (b) The Provider will have 14 days (or such other shorter or longer period as the Executive may specify) from the date of the First Notification Letter to make written representations to the Executive in respect thereof and/or to address the matters specified in the First Notification Letter.
- (c) The Executive shall consider the representations received from the Provider and shall meet with the Provider to discuss the matter (unless the Provider refuses to or fails to attend such meeting).
- (d) Following expiry of the period provided for in Clause 12.1(b) and having considered the Provider's representations (if any), the Executive shall make a determination as follows:
- (i) if the Executive determines that the Provider is not in Non-Compliance it shall so inform the Provider in writing; or
 - (ii) if the Executive determines that there has been a Non-Compliance but this has been addressed to the Executive's satisfaction then the Executive reserves the right to issue a First Performance Notice in the terms set out in Clause 12.1(e) below; or
 - (iii) if the Executive determines that the Provider is in Non-Compliance and that Non-Compliance has not been addressed to the Executive's satisfaction, it may issue a First Performance Notice, in the terms set out in Clause 12.1(e) below.
- (e) The First Performance Notice shall specify:
- (i) the determination of the Executive;
 - (ii) the reasons for the Executive's determination;
 - (iii) the steps the Executive requires the Provider to take to address the Non-Compliance to the satisfaction of the Executive and the period within which they should be taken

(both the required steps and the time period shall be reasonable in the circumstances); and

- (iv) the steps which the Executive is to take or requires the Provider to take whether under Clause 9.3, 12.3 or otherwise and the period or other relevant details in respect of same, as appropriate.

12.2 **Second Performance Notice**

- (a) Without prejudice to any other rights the Executive may have under this Arrangement, if, as a result of information received, or inspection undertaken or following a Review Meeting or otherwise the Executive is of the opinion that:

- (i) the Provider may not have complied with the First Performance Notice within the period specified in the notice; or
- (ii) following the issue of a First Performance Notice, there may have been a further or continuing instance(s) of Non-Compliance by the Provider (whether or not arising from issues raised in the First Performance Notice),

the Executive may give notice in writing to the Board of the Provider (the “**Second Notification Letter**”) that it is minded to issue a Second Performance Notice specifying:

- (iii) the reasons why the Executive has a reasonable concern in accordance with Clause 12.2(a)(i) or 12.2(a)(ii);
 - (iv) the respects in which the Executive considers the Provider may not have complied with Clause 12.2(a)(i) or 12.2(a)(ii);
 - (v) the decision making process which the Executive will follow in determining whether to issue a Second Performance Notice pursuant to this Clause 12.2, which decision making process is set out in more detail in Clauses 12.2(b) to 12.2(d) below;
 - (vi) such steps as the Executive may deem necessary for the Provider to take to address the potential Non-Compliance or alleged failure to comply with the First Performance Notice to the satisfaction of the Executive and the time frame for such compliance in the event that a Second Performance Notice does issue; and
 - (vii) any steps which the Executive may take or may require the Provider to take, whether under Clause 9.3, 12.3 or otherwise, in the event that a Second Performance Notice does issue.
- (b) The Provider will have fourteen (14) days (or such other shorter or longer period as the Executive may specify) from the date of Second Notification Letter to make written representations to the Executive in respect thereof and/or to address the matters specified in the Second Notification Letter.
 - (c) The Executive shall consider the representations received from the Provider and shall meet with the Provider to discuss the matter (unless the Provider refuses to or fails to attend such a meeting).
 - (d) Following expiry of the period provided for in Clause 12.2(b) and having considered the Provider’s representations (if any), the Executive shall make a determination as follows:

- (i) if the Executive determines that the Provider is not in non-compliance with the First Performance Notice or is not in Non-Compliance it shall so inform the Provider in writing; or
 - (ii) if the Executive determines that the Provider has been in non-compliance with the First Performance Notice or in Non-Compliance but this has been addressed to the Executive's satisfaction then the Executive reserves the right to issue a Second Performance Notice in the terms set out in Clause 12.2(e) below; or
 - (iii) if the Executive determines that the Provider has been in non-compliance with the First Performance Notice or has been in Non-Compliance and this has not been addressed to the Executive's satisfaction, it may issue the Second Performance Notice in the terms set out in Clause 12.2(e) below.
- (e) The Second Performance Notice shall specify:
- (i) the determination of the Executive;
 - (ii) the reasons for the Executive's determination;
 - (iii) the steps the Executive requires the Provider to take (which may include, without limitation, the Provider preparing and implementing a plan of action) to address the failure to comply with the First Performance Notice or the Non-Compliance to the satisfaction of the Executive and the period within which they should be taken; and
 - (iv) the steps which the Executive is to take or requires the Provider to take whether under Clause 12.3 or otherwise and the period or other relevant details in respect of same, as appropriate (both the required steps and the time period shall be reasonable in the circumstances).

12.3 Possible Actions where Provider has not addressed a Non-Compliance

Where a Provider has failed to address a Non-Compliance to the satisfaction of the Executive, whether as identified in a First Performance Notice or Second Performance Notice, the Executive may do one or more of the following:

- (a) where the Executive reasonably believes that the provision of training may assist the Provider in addressing the Non-Compliance or maintaining compliance, the Executive may require the Provider to ensure that appropriate training is provided to the Board of the Provider and/or Provider Personnel, at the expense of the Provider, as the Executive deems is required to address the Non-Compliance;
- (b) withhold a proportionate percentage of the Funding allocated to the Provider in respect of the Non-Compliance until such time as the Provider becomes compliant with this Arrangement to the satisfaction of the Executive;
- (c) preclude any consideration of any request from the Provider for the provision and funding of Additional Services until such time as the Provider addresses the Non-Compliance to the satisfaction of the Executive;
- (d) state that the Executive itself will provide or procure the provision of one or more of the Services at the expense of the Provider (provided that such expense shall not exceed the amount of Funding made available to the Provider under this Arrangement in respect of

the relevant Services) until the Provider has shown to the reasonable satisfaction of the Executive that the relevant Services will in future be provided by the Provider in accordance with the terms of this Arrangement; or

- (e) terminate this Arrangement in respect of such part of the Services to which the Non-Compliance relates and thereafter withhold the proportionate amount of the Funding relating to those Services.

For the avoidance of doubt, the actions listed above are non-exhaustive and shall not limit in any way whatsoever the possible actions which the Executive may request a Provider to take to address a Non-Compliance.

12.4 Notices

- (a) Without prejudice to Clause 34.3 (and subject to Clause 12.4(d) in respect of notices served under Clause 12.2), any notices served under this Clause 12 shall be authorised by an employee of the Executive of a grade not less than IHA Manager or National Director (or, where applicable, Chief Officer or Hospital Group CEO) or equivalent.
- (b) Any notices served under Clauses 12.1 and 12.2 may be served notwithstanding the exercise by the Executive of its rights pursuant to Clause 12.5.
- (c) Any notices served under this Clause 12 shall not constitute a waiver of any term or condition of this Arrangement and shall be without prejudice to any of the Executive's other rights remedies or powers under this Arrangement, or as provided by law, whether in respect of any Non-Compliance or otherwise.
- (d) In respect of notices served under Clause 12.2, such Second Performance Notices shall be authorised by an REO (or, where applicable, a National Director) who has been authorised by the Chief Executive Officer of the Executive to issue a Second Performance Notice.

12.5 Further Rights of the Executive in cases of Non-Compliance

- (a) As a condition to the provision of the Funding, the Provider agrees that, without prejudice to Clauses 12.1, 12.2 and 12.3, where, either:
 - (i) the Executive is of the opinion that the Provider has failed to comply with a First Performance Notice or a Second Performance Notice and a REO (or, where applicable, a National Director) is of the opinion that a serious risk arises to any of the Services or the Service Users; or
 - (ii) the Executive (through a REO (or, where applicable, a National Director)) is of the opinion that the Provider is in Non-Compliance and is of the opinion that there is a serious and imminent risk to the life, health, safety or welfare of Service Users ("**Exceptional Circumstances**"),

the Executive may exercise its rights pursuant to this Clause 12.5 in order to address, in whole or in part, the Non-Compliance.

- (b) Unless Exceptional Circumstances exist, the Executive shall, before exercising its rights pursuant to this Clause 12.5:
 - (i) issue a written notice to the Provider informing the Provider of its proposed determination in accordance with Clause 12.5(a)(i), the reasons for its proposed

determination and the proposed exercise by the Executive of its rights pursuant to this Clause 12.5 and the anticipated duration of such:

- (A) the written notice will inform the Provider of the decision making process which the Executive will follow in determining whether to exercise its rights pursuant to this Clause 12.5;
 - (B) the written notice will afford the Provider 14 days (or such other shorter or longer period as the Executive may specify) to make written submissions to the Executive on its proposed determination in accordance with Clause 12.5(a)(i) and on the proposed exercise by the Executive of its rights pursuant to this Clause 12.5;
 - (ii) consider any submissions made by the Provider and shall meet with the Provider to discuss the matter (unless the Provider refuses to or fails to attend such a meeting); and
 - (iii) having considered the Provider's representations (if any), if the Executive is satisfied that the circumstances described in Clause 12.5(a)(i) exist, the Executive shall exercise its rights pursuant to this Clause 12.5 and issue a further written notice advising the Provider of such exercise.
- (c) In Exceptional Circumstances, the Executive shall:
- (i) consider the feasibility, having regard to all the circumstances, of complying with the procedures described in Clause 12.5(b) and in its absolute discretion dispense with such procedures, or some of them, and/or may take such steps as it deems appropriate in the particular circumstances but without any obligation whatsoever to do so;
 - (ii) notify the Provider in writing as soon as reasonably practicable of the exercise of its rights pursuant to this Clause 12.5 and the anticipated duration of such; and
 - (iii) afford the Provider an opportunity to make submissions to the Executive on the exercise by the Executive of its rights pursuant to this Clause 12.5 and having considered any submissions made, the Executive will consider the risks arising and the ongoing necessity or desirability for the exercise by the Executive of its rights pursuant to this Clause 12.5 and may cease to exercise such rights if the Executive is satisfied that Service Users and/or the Funding are no longer at risk.
- (d) The Executive has the following rights pursuant to this Clause 12.5:
- (i) the right to require the Provider to take promptly such actions as the Executive may, at its discretion, require in order to address, in whole or in part, the Non-Compliance;
 - (ii) the right to take such direct and binding executive action on behalf of the Provider as the Executive may deem necessary or expedient to rectify the Non-Compliance of the Provider and to ensure the delivery of the Services in accordance with this Arrangement;
 - (iii) the right to engage a third party to assist the Executive with the rectification of the Non-Compliance;

- (iv) the right to issue instructions to the Provider, including the Board of the Provider, to ensure the prompt rectification of the Non-Compliance; and
 - (v) the right to take any such steps or require any such steps to be taken as the Executive may at its discretion consider necessary or expedient to rectify the Non-Compliance.
- (e) In order to comply with Clause 12.5(d)(iv), the Provider shall procure that the Provider Personnel and any agents of the Provider take such steps as are required to ensure compliance with any instructions issued by the Executive to the Provider.
- (f) For the avoidance of doubt, nothing in this Clause 12.5 shall operate to transfer any rights or entitlements to share capital, stock or property, whether tangible or intangible, from the Provider to the Executive and any actions taken pursuant to this Clause 12.5 shall be taken by the Provider or by the Executive on behalf of the Provider.
- (g) The Provider shall take all steps required to ensure that the rights of the Executive pursuant to this Clause 12.5 are given full legal and practical effect.
- (h) The Executive shall endeavour to meet with the Board of the Provider as soon as practicable following the exercise by the Executive of its rights pursuant to this Clause 12.5 to discuss further actions or arrangements (including arrangements to ensure the continued provision of Services to Service Users) which the Executive may consider necessary in the circumstances and the Board of the Provider shall agree with the Executive a plan of action and a timetable in respect of any such actions or arrangements, which may include meetings to monitor and discuss all operational aspects of the Services.
- (i) Without prejudice to Clause 12.5(l), the Provider hereby:
- (i) agrees that the Executive shall be accorded every reasonable facility and co-operation by the Board of the Provider and by the Provider Personnel for the performance of the Executive's rights pursuant to this Clause 12.5;
 - (ii) agrees that the Executive for the purposes of this Clause 12.5 shall have all such powers as the Executive deems necessary or expedient for the purpose of exercising its rights under this Clause 12.5; and
 - (iii) agrees that upon the exercise by the Executive of its rights pursuant to this Clause 12.5, any chief executive officer/ manager director or other person(s) exercising similar executive managerial functions in respect of the Provider may be required by the Executive to report directly to the Executive for the duration of the exercise by the Executive of the rights pursuant to this Clause 12.5.
- (j) Without prejudice to Clause 12.5(l), the Executive shall liaise and consult with the Board of the Provider, as it deems appropriate. For the avoidance of doubt, the Executive shall not have power to exercise generally the functions of the Board of the Provider but may instruct the Provider to do such things and take such actions as the Executive may deem necessary or expedient for the exercise of its rights under this Clause 12.5.
- (k) The Executive shall not incur any liability (either to the Provider or to any other person) by reason of the exercise of its rights pursuant to this Clause 12.5. For the avoidance of doubt, exercise by the Executive of its rights pursuant to this Clause 12.5 shall not discharge the Provider or the Executive from any existing or future liability that the Provider or the Executive has or may have to third parties arising out of or in connection with the provision

of the Services (including, for the purpose of this Clause 12.5, the provision of any services prior to the commencement of this Arrangement).

- (l) Without prejudice to the Executive's rights under this Clause 12.5, the Provider hereby irrevocably appoints, with effect from the exercise by the Executive of its rights pursuant to this Clause 12.4(d), the Executive to be the attorney of the Provider (with full power of substitution and delegation), in the Provider's name or otherwise and on its behalf and as its act and deed to generally carry on, manage and ensure the delivery of the Services to Service Users; and to exercise all rights, powers or entitlements of the Provider in furtherance of those purposes and to do all other acts and things which the Executive may consider desirable or necessary to realise or carry such purposes into effect or incidental or conducive to any of the rights, powers or discretions conferred on the Executive for the exercise of the Executive's rights pursuant to this Clause 12.5 as shall be determined by the Executive under this Clause 12.5. The Executive's powers under paragraphs (a) to (m) of this Clause 12.5 shall be additional to any powers the Executive may have as an attorney pursuant to this Clause 12.5 or by law.
- (m) The Executive may cease to exercise its rights pursuant to this Clause 12.5 at any time and shall issue a written notice to the Provider to confirm the cessation of such.
- (n) The exercise or non-exercise by the Executive of its rights pursuant to this Clause 12.5 shall have no effect on any other right of the Executive pursuant to this Arrangement.
- (o) The Funding provided to the Provider pursuant to this Arrangement may be suspended at the discretion of the Executive in whole, in part or in respect of any Service or part thereof managed by the Executive pursuant to this Clause 12.5 until the Provider resumes full delivery of such Services.
- (p) The reasonable costs of the Executive in exercising its rights under this Clause 12.5 shall, at the option of the Executive, be deducted from the Funding or, at the option of the Executive, recoverable by the Executive as a debt due by the Provider to the Executive.
- (q) All references to the "**Executive**" in this Clause 12.5 shall, for the avoidance of doubt, also refer to a nominee of the Executive.

13. **INSURANCE**

- 13.1 Throughout the Duration of this Arrangement, the Provider shall maintain the insurance, which will include an indemnity in favour of the Executive on the public liability, employer's liability and motor insurance policies, as set out in Schedule 4 (Insurance) on the terms specified and with insurers regulated by, or authorised to operate on a freedom of services basis by, the Central Bank of Ireland or other appropriate regulatory authority.
- 13.2 An endorsement in the Provider's public liability, employer's liability and motor insurance policies in favour of the Executive and in a form reasonably acceptable to the Executive in relation to the relevant aspects of this Clause 13 shall be evidenced to the Executive by a certificate from the relevant insurer(s).
- 13.3 For the avoidance of doubt, the Provider shall maintain the minimum levels of insurance as outlined in Schedule 4 (Insurance).
- 13.4 At the request of the Executive, the Provider shall increase the agreed insurance limits or obtain additional coverage.

- 13.5 The Provider shall, if requested by the Executive, provide the Executive with copies of its certificates of insurance or certified copies of all policies showing that all insurances required by the Provider under this Arrangement are in force for the periods specified. The Provider shall notify the Executive immediately in the event that any of such insurances cease to be available.
- 13.6 The insurance policies required to be obtained by the Provider pursuant to this Clause 13 shall not limit the obligations, liabilities or responsibilities of the Provider under the terms of this Arrangement or otherwise. Any amounts not insured or recovered from the insurers shall be borne by the Provider in accordance with the obligations, liabilities and responsibilities set out under this Arrangement except where and to the extent that, the Executive admits, or is adjudged to be, contributory or vicariously liable. If the Provider fails to effect and keep in force any of the insurance policies required under this Clause 13 and the Executive suffers a loss any monies which should have been recoverable by the Provider and/or Executive for the benefit of the Executive under the insurance shall be paid by the Provider to the Executive.
- 13.7 The Provider shall not permit any Provider Personnel to perform any work in connection with the Services unless the Provider Personnel is and remains insured in accordance with the insurance requirements of this Arrangement or that the Provider's insurances covers the activities of such Provider Personnel. The Provider shall indemnify the Executive for any loss suffered by the Executive for the failure of any Provider Personnel to be so insured.
- 13.8 In the event of termination or expiry, the Provider shall at the expense of the Provider, unless otherwise agreed with the Executive, continue to maintain the insurances required under this Clause 13 (including an indemnity in favour of the Executive and any alternative provider of the Services) on a run-off basis in respect of Services provided up to termination or expiry (and subsequent to termination or expiry where Clause 32.4 applies), to adequately cover any existing and future claims. These insurance policies must contain terms and conditions which allow claims to be made in respect of matters arising during the term of this Arrangement, (and subsequent to termination or expiry where Clause 32.4 applies) after the termination or expiry of this Arrangement.
14. **GOVERNANCE ARRANGEMENTS**
- 14.1 The Provider shall implement suitable policies and procedures to ensure that there is an appropriate governance framework for the Provider's organisation, including, but not limited to, implementing policies to meet such minimum standards as may be set out by the Executive in the HPSR and/or the Schedules.
- 14.2 The Provider shall ensure that it has effective internal codes of governance in place including an adequate system of internal controls to ensure compliance with laws and regulations.
- 14.3 Where an issue of serious concern in relation to governance is identified, it shall be notified in writing to the Executive promptly together with a proposal for dealing with the issue and a timetable within which the issue will be addressed.
15. **PROVIDER PERSONNEL**
- 15.1 For the avoidance of doubt, this Arrangement is a contract for services between the Executive and the Provider and all Provider Personnel, including those involved in the provision of the Services, shall in all respects be the responsibility of the Provider and not of the Executive. The Executive and the Provider hereby agree that, for the Duration of this Arrangement, it remains their intent that all Provider Personnel shall not be, nor deemed to be, employees of the Executive

for any purpose or in any circumstance and the Provider shall indemnify the Executive in respect of all such persons.

- 15.2 The Provider agrees that it shall employ, contract, engage or accept, as part of the provision of the Services, only such persons who:
- (a) are, where an appropriate registration scheme exists, registered, and maintain a current valid registration, with the appropriate statutory registration body;
 - (b) possess the appropriate qualifications, experience and skills to perform the duties required of them; and
 - (c) are covered by appropriate indemnity insurance for the provision of the Services and are members of a professional indemnity defence organisation or equivalent where appropriate.
- 15.3 In relation to the recruitment, promotion and retention of persons with professional qualifications obtained abroad, the Provider shall observe Directive 2005/36/EC as amended by Directive 2013/55/EU (the “**2005 Directive**”), relevant statutory instruments on the recognition of professional qualifications and administrative arrangements in respect of such qualifications outside the scope of the 2005 Directive and shall not engage or promote any individual unless and until the Provider is satisfied that person’s qualifications are recognised by the relevant competent authority for the purposes of, or in connection with, the provision of Services under this Arrangement.
- 15.4 The Provider shall ensure that all Provider Personnel involved with the provision of the Services:
- (a) receive appropriate orientation and induction and proper and sufficient training and instruction in the execution of their duties; and
 - (b) receive full and detailed appraisal and support in terms of performance and on-going education and training in accordance with the standards of their relevant professional body if any.
- 15.5 The Provider will adhere to best industry standards in relation to the recruitment and selection (as the case may be) of Provider Personnel and will keep appropriate records of all applications, selection processes, references and contracts of employment where applicable.
- 15.6 Where the Provider is engaged in relevant work, as that term is defined in National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016, the Provider will agree with the Executive the categories of persons which are to be subject to the vetting process by An Garda Síochána, and/or subject to equivalent and/or additional criminal background checks and/or police clearance checks in respect of persons who have resided outside of Ireland for a period greater than six (6) months. The Provider as the employer must be satisfied with and is responsible for the suitability of all persons employed by it.
- 15.7 (a) The Provider shall promptly and in any event in accordance with any time limits set by statute take all necessary steps to investigate fully any allegation by any person of illegal, wrongful or inappropriate behaviour towards a Service User whether by act or omission by any member of Provider Personnel or any sub-contractor by any individual who is a volunteer in the Provider organisation, or any other individual who is or was a member of an administrative, management or supervisory body of the Provider.

- (b) In the event of any member of Provider Personnel having behaved illegally, wrongfully or inappropriately or in breach of any of the relevant policies or procedures of the Provider, whether by act or omission, in respect of a Service User, or the Provider becoming aware of any allegation or complaint that any such person has behaved in such a manner towards a Service User, the Provider shall take all necessary actions (including disciplinary actions where appropriate) in respect of such persons to ensure safety and protection of the Service User and Service Users generally and shall report the matter to the Executive and all relevant authorities, including the insurer.
- 15.8 The Provider shall endeavour to ensure that the performance of its Provider Personnel complies with:
 - (a) the terms and conditions of this Arrangement;
 - (b) the professional standards current in the health and personal social services sectors; and
 - (c) the standards of performance expected of them,
 and shall monitor compliance and take remedial action promptly where there is any non-compliance.
- 15.9 The Provider shall be responsible for making (or, where applicable, directing the making of) all statutory deductions required to be made by the Provider in respect of its remuneration of its Provider Personnel and remitting such deductions in a timely manner to the relevant authorities. The Provider shall procure that sub-contractors and agents shall be responsible for making all statutory deductions in respect of their employees.
- 15.10 The Provider assumes full responsibility for the actions of its Provider Personnel, including those engaged in the performance of the Services and shall be fully responsible for their acts or omissions, supervision, co-ordination and integration, daily directions and controls, payment and all matters relating to their employment, engagement and work.
- 15.11 The Provider shall fully observe and comply with the provisions of all applicable employment/labour law, both statutory and common law, and regulations as are applicable to its Provider Personnel and/or to the Services including, and without limitation, any Employment Regulation Orders made pursuant to Section 43 of the Industrial Relations Act 1946 or employment agreements registered pursuant to Section 27 of the Industrial Relations Act 1946 or Sectoral Employment Orders in accordance with Section 17 of the Industrial Relations (Amendment) Act 2015. The Provider shall procure that sub-contractors and agents shall similarly comply.
- 15.12 The Provider will indemnify the Executive in respect of all losses, damages, claims, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered whether as a result of any breach of the provisions of this Clause 15, or otherwise, including, without limitation, any claim made or threatened, whether by legal proceedings or otherwise, against the Executive by any third party (including the Revenue Commissioners) on the grounds that any member of the Provider Personnel under or for the purposes of this Arrangement or for the purpose of providing or assisting in the provision of the Services is or was or is deemed to be or have been an employee of the Executive.
- 15.13 The Provider will indemnify the Executive in respect of all losses, damages, claims, costs (including legal costs) and professional and other expenses of any nature whatsoever arising out of or in connection with any application of the European Community (Protection of Employees on

Transfer of Undertakings) Regulations 2003 to any member of the Provider Personnel including without limitation a dismissal by the Executive of any person whose employment transfers to the Executive or to any subsequent supplier of services to the Executive, as a consequence of the European Community (Protection of Employees on Transfer of Undertakings) Regulations 2003 applying by operation of law to such transfer or being asserted to apply, or otherwise upon termination (in whole or in part), expiry, variation, amendment or other alteration of this Arrangement howsoever or whenever arising.

15.14 The Provider will co-operate with programmes/projects in the area of professional education, training and research as may be agreed with the Executive from time to time.

15.15 Unless Key Personnel cease to be employed by or contracted to the Provider, are on maternity, parental or compassionate leave, are absent from work as a result of illness or injury, die or are removed from the provision of the Service with the prior written consent of the Executive, the Provider shall ensure that its Key Personnel continue to perform the applicable role for which they are responsible until the expiry of the Duration of the Arrangement. In all cases where it is proposed that Key Personnel are to be removed (whether with the prior written consent of the Executive, or by reason of any of the other circumstances set out in this Clause 15.15), the Provider shall provide the Executive with as much advance notice as reasonably practicable of any such removal and shall replace such Key Personnel with personnel of equal or higher experience, qualifications and ability who is acceptable to the Executive, acting reasonably.

16. **THIRD PARTY CONTRACTING**

16.1 The Provider must obtain the prior written approval of the Executive if it wishes to engage an agent, sub-contractor or third party to provide any of the Services or part thereof to the extent required at Section 3 of the HPSR.

16.2 The Provider must ensure that any agent, sub-contractor or third party who is engaged to provide any of the Services, or part thereof, is subject to the same obligations to which the Provider is subject under this Arrangement regardless of whether or not Clause 16.1 applies to such engagement.

16.3 The Provider shall be fully responsible for the acts and omissions of any agent, subcontractor or third party who is engaged to provide any of the Services or part thereof (regardless of whether or not Clause 16.1 applies to such engagement) and will indemnify the Executive in respect of all losses, damages, claims, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by the Executive as a result of any acts and omissions of any such agent, sub-contractor or third party.

17. **COMPLAINTS (SEE ALSO SCHEDULE 5 (COMPLAINTS))**

17.1 The Provider will maintain a complaints policy and procedure which will reflect, and (where appropriate) comply with, Part 9 of the 2004 Act, regulations made thereunder (including without limitation the Health Act 2004 (Complaints) Regulations 2006 (S.I. 652 of 2006)) and of a comparable standard to the Executive's policy and procedures on complaints entitled Your Service, Your Say and any amendments or revisions thereto.

17.2 If, at the commencement of this Arrangement, the Provider does not have a complaints policy and procedure in place in accordance with Clause 17.1, the Provider undertakes to establish such a policy and procedure immediately.

- 17.3 The Provider shall submit a copy of its complaints policy and procedure to the Executive for approval. The Executive may direct the Provider to amend its complaints policy and procedure in such manner as the Executive sees fit, or alternatively to adopt the Executive's complaints policy and procedure and the Provider shall so amend or adopt the complaints policy and procedure to meet the Executive's requirements within the timescale as may be specified by the Executive.
- 17.4 The Provider agrees to adhere to the complaints procedure maintained or adopted pursuant to this Clause 17 and to co-operate fully in any review of a recommendation made by a complaints officer (within the meaning of the 2004 Act) following investigation of a complaint against the Provider.
- 17.5 Where the Provider has established a complaints policy and procedure by agreement with the Executive, the Provider shall provide the Executive with a general report in each Year on complaints received by the Provider at a time and in a manner as the Executive may specify, indicating:
- (a) the total number of complaints received;
 - (b) the nature of the complaints;
 - (c) the number of complaints resolved by informal means; and
 - (d) the outcome of any investigation into the complaints.
18. **PROTECTED DISCLOSURE**
- The Provider shall establish and maintain procedures for the making of Protected Disclosures by Provider Personnel and any other individual engaged by the Provider who may satisfy the definition of "worker" for the purposes of the Protected Disclosures Act 2014, and for dealing with such disclosures. The Provider shall procure that all Provider Personnel are made aware of the procedures established and maintained for this purpose.
19. **ACCESS, REFERRALS, ADMISSIONS AND DISCHARGE PROCEDURES**
- The Provider shall maintain policies and protocols in operation for the access, referral, admission and discharge procedures as outlined in Section 3 (Service Delivery Specification) of the HPSR.
20. **RISK MANAGEMENT**
- 20.1 The Provider shall have in place a written risk management policy and demonstrable risk management process to ensure optimum management of all aspects of health care risks compatible, with best practice. This will include having in place policies and procedures for the prevention and management of all Incidents including Category 1 Incidents, Serious Reportable Events and Notifiable Incidents compatible with the Executive's policy.
- 20.2 The Provider will work to enhance Service User safety through systems to identify and learn from all Service User safety and other reportable Incidents, and will make improvements in practice based on information derived from the analysis of Incidents and local and national experience.
- 20.3 The Provider will work to ensure the safety of Provider Personnel, members of the public and other third parties through systems to identify and learn from their safety and other reportable Incidents, and will make improvements in practice based on information derived from the analysis of Incidents and local and national experience.

- 20.4 The Provider will provide such information as is required for the Executive's Risk Register, subject to compliance with Data Protection Laws.
- 20.5 The Provider shall notify the Executive in writing, without delay, of any Incident, including any Category 1 Incident, Serious Reportable Event or Notifiable Incident, arising in connection with the Services or any related matter, giving reasonable details of the incident or event (subject to compliance with Data Protection Laws) and setting out the steps that will be taken to eliminate any risks identified (including timely reports to the NIMS if this is required).
- 20.6 The Provider must ensure that any requirements of the Provider's insurers in relation to risk management are complied with, in particular in relation to timing notifications.
- 20.7 The Provider shall maintain a register of risks facing the Provider and the Provider shall ensure that the top ten most serious risks facing the Provider at any given time are identified as such in the register.
- 20.8 The Provider agrees to co-operate fully in granting the Executive access to the risk register referred to in Clause 20.7 when the Executive, at its own discretion, so requests, subject to compliance with Data Protection Laws.
- 21. QUALITY AND STANDARDS**
- 21.1 The Provider shall develop and deliver the Services to a high quality and standard and in line with national health strategy, including the implementation of "Healthy Ireland - A Framework for Improved Health and Wellbeing 2013-2025".
- 21.2 The Provider shall comply with legislation relating to quality and standards and with such other appropriate requirements as may be stipulated by the Minister, the Executive and/or applicable regulatory authorities or recognised standard setting bodies which are relevant to the Services, the Funding or this Arrangement, including, but not limited to, HIQA and the Mental Health Commission and such standards as HIQA's National Standards for Safer Better Healthcare, or the Quality Framework for Mental Health Services in Ireland.
- 21.3 The Provider shall have in place appropriate mechanisms to assess quality and standards of the delivery of Services in line with best practice, as agreed with the Executive, or as may be stipulated by recognised standard setting bodies, including HIQA and the Mental Health Commission and such standards as HIQA's National Standards for Safer Better Healthcare. The Provider shall place a particular emphasis on quality indicators as they relate to improved health and wellbeing outcomes for Service Users and Provider Personnel.
- 21.4 The Provider will conduct Service User experience surveys or use qualitative methods of obtaining Service User input and have systems in place to provide routine monitoring and evaluation of Services.
- 21.5 The Provider shall comply with its obligations set out in Schedule 2 (Quality and Safety).
- 21.6 The Provider shall establish a Quality and Safety Board Committee which shall comply with the requirements set out in Schedule 2 (Quality and Safety).
- 22. CLINICAL GOVERNANCE AND AUDIT**
- 22.1 The Provider will have in place governance arrangements with defined management processes, organisational roles, responsibilities and reporting relationships which support the provision of

safe and high quality services. The Provider will be accountable for the quality of service provision and the effective use of resources. Specific measures, such as clinical audit, clinical effectiveness, outcome data etc. may be included, if appropriate, within Schedule 2 (Quality and Safety).

- 22.2 The Provider shall develop and implement appropriate clinical governance arrangements for all its Services. These arrangements will be reviewed regularly by the Provider to ensure compliance with best practice.
- 22.3 The Provider shall make arrangements for effective monitoring of clinical care and clinical record keeping.
- 22.4 The Provider shall ensure that all Provider Personnel are made aware of and have access to processes or systems which enable them to raise, in confidence and without prejudice to their position in the organisation, concerns over any aspect of service delivery, treatment or management that they consider to have a detrimental effect on Service User care or the delivery of Services.
- 22.5 The Provider shall comply with all reasonable requests of the Executive for the Executive to participate in or contribute to the Provider's clinical audit plans and arrangements.
- 22.6 The Provider will carry out and act on any recommendation of appropriate clinical audits.

23. INFORMATION AND CONFIDENTIALITY

- 23.1 The Executive shall provide to the Provider such documentation and other information in the possession of the Executive as may be reasonably required to enable the Provider to fulfil its obligations pursuant to this Arrangement but any such documents or information shall remain the property of the Executive. The Provider may retain any such information for the Duration of this Arrangement (unless the Executive requires return of it at an earlier date) at the end of which it shall be returned, together with any copies thereof, to the Executive.
- 23.2 Each party will ensure that any information acquired in or in connection with the performance of its obligations under this Arrangement concerning the other or the other's business, affairs, staff or procedures or relating to the provisions of this Arrangement and any negotiations or disputes between the parties to this Arrangement will be treated as confidential and will not be disclosed to any person, other than a person expressly authorised by either party.
- 23.3 Upon the termination of this Arrangement, the Provider will ensure that it holds, manages and transfers all confidential information it has received or prepared in connection with its obligations under this Arrangement in whatever format it is held in accordance with all legal and regulatory requirements.
- 23.4 Either party may disclose information which would otherwise be confidential notwithstanding anything contained in Clause 23.2:
 - (a) if and to the extent required by law or for the purpose of any judicial inquiry, tribunal or court proceedings;
 - (b) if and to the extent required by any regulatory or governmental authority in Ireland to which that party is subject;
 - (c) if and to the extent necessary or desirable for the conduct of any arbitration pursuant to Clause 30;

- (d) to its professional advisers, auditors, bankers and insurers on a strictly confidential basis;
 - (e) if and to the extent the other party has given prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed;
 - (f) if necessary for the Executive to fulfil its statutory object and functions pursuant to Section 7 of the 2004 Act;
 - (g) or if necessary for the statutory functions of a regulatory authority relating to the Services.
- 23.5 The provisions of this Clause 23 shall continue to apply notwithstanding the termination of this Arrangement for any reason.
- 23.6 The Provider will comply with Part 9A of the 2004 Act (as amended by the Health Act 2007) and with any procedures of the Executive established pursuant to Section 55H of the 2004 Act.
24. **ANNOUNCEMENTS AND COMMUNICATIONS**
- 24.1 The parties each reserves to itself the right to and control of the use of its names, symbols, trademarks, or service marks presently existing or later established, and neither party will use the other party's name(s), symbols, trademarks, or other service marks in any advertising or promotional material without the prior written consent of that party.
- 24.2 The Provider shall, when requested to do so by the Executive, acknowledge the support of the Executive in its relevant public communications.
25. **FREEDOM OF INFORMATION**
- 25.1 The Provider hereby acknowledges that the Freedom of Information Act 2014 (the "FOI Act") applies to the Executive.
- 25.2 In the event that any information or records held or prepared by the Provider are the subject of a request for information or records under the FOI Act the Provider will procure that any such materials are supplied promptly (and in a manner which has regard to and will permit the Executive to comply with the statutory time limits imposed under the FOI Act) to the Executive for consideration and, if appropriate, disclosure. The Provider acknowledges that under Section 11(9) of the FOI Act any record relating to the Services is deemed to be held by the Executive for the purposes of the FOI Act.
- 25.3 The FOI Act exempts from disclosure information and records in certain cases and the Provider hereby agrees to clearly identify any information or records which it considers to be exempt from disclosure under the FOI Act at the time of provision to the Executive, stating the relevant information or records and the reason why it is believed that the document or information is exempt.
- 25.4 Notwithstanding Clause 25.3, the Provider hereby acknowledges that the categorisation of the information or record by the Provider as potentially exempt shall not be final or binding on the Executive and that the Executive may disclose that information or records in accordance with the FOI Act notwithstanding such categorisation.
- 25.5 Unless stated otherwise by the Provider when the relevant record or information is provided to the Executive, it will be presumed that the Provider does not consider any exemption to be applicable to such information or record and without prejudice to any exemption that the Executive may consider to be applicable to such information or record.

25.6 The Executive shall have no liability for any disclosure made by it in accordance with the requirements of the FOI Act and this Clause 25.

26. DATA PROTECTION

26.1 Both the Executive and the Provider shall comply with their statutory obligations under Data Protection Laws. In this regard, in so far as the Provider obtains and processes personal data relating to Service Users or any other persons in the course of the provision of the Services, it shall comply with its obligations as a “data controller” under Data Protection Laws and with all of the rules and policies governing the collection, retention, use, disclosure, security and deletion of information as may be set out in the Codes of Practice from time to time. Where the Executive provides personal data to the Provider, the Provider represents and undertakes to the Executive that it shall use, process and disclose such data only for the purposes permitted under this Arrangement. Where the Provider acts as a data processor of the Executive and there is no existing contractual arrangement (i.e. in the form of the HSE Data Processing Agreement (“DPA”) available on the Executive’s website) in place between the Executive and the Provider governing a relevant processing activity or activities, then the specific Data Sharing Terms available on the Non-Statutory Section of the Executive’s website at www.hse.ie/eng/services/publications/non-statutory-sector/ (the “Terms”) shall apply.

26.2 Without prejudice to the Executive’s rights under Clause 8.4 (Audit and Information) and Clause 10 (Access Rights) and the obligations of the Provider under Clause 8.6 (Other Information Obligations), the Provider acknowledges that the disclosure of personal data to the Executive by the Provider may be required pursuant to an enactment (including but not limited to the Health Acts, Data Protection Laws or pursuant to the laws referred to in Clauses 23.4(f) and 23.6 of this Arrangement). In those circumstances, the Provider will provide such data to the Executive as soon as possible following a written request from the Executive.

26.3 The Provider shall ensure that it has obtained all approvals, authorisations and permissions which are required by law to enable the Provider to access and disclose any personal data which is sought by the Executive other than where such disclosure is required pursuant to an enactment, rule of law or by order of a court.

26.4 Without prejudice to Clause 17 (Complaints) of this Arrangement, the Provider shall inform the Executive if it receives any written communication from the Office of the Data Protection Commissioner or equivalent office in another jurisdiction in connection with any Service User or the Services (including for the avoidance of doubt, if it relates to a personal data breach or complaint concerning the Executive’s patient data or IT system) and, in responding to such communications, the Provider shall have regard to any views or representations provided by the Executive in relation thereto.

26.5 The Provider will promptly (and in any event within twenty-four (24) hours) inform the Executive of any actual or suspected breach of security which would give rise to the actual or potential loss, theft, unauthorised release or disclosure of information (where unauthorised disclosure of information relates to the Executive) or any part thereof (the relevant person in the Executive to be promptly informed is the “**Key Contact Person**” named in paragraph A of Section 1 (Contact Details) of the HPSR. In such an event, the Provider will immediately supply the Executive with all relevant facts surrounding the actual or suspected breach. In the event that the Provider enters into any communication with the Office of the Data Protection Commissioner or equivalent office in another jurisdiction including by way of example, the notification of a breach of the DPA, the DSA or the Terms, as applicable, the Provider will inform the Executive as soon as possible.

- 26.6 The Provider hereby undertakes to comply with its obligations under this Clause 26 and the Terms (as applicable) and to indemnify the Executive against any loss, compensation, damages, expenses and costs which become payable or are incurred by the Executive in respect of or as a result of a breach by the Provider of this Clause 26 and/or the Terms (as applicable).

27. MAJOR INCIDENTS

- 27.1 The Provider shall report, within twenty-four (24) hours of occurrence, any Major Incidents which may impinge on the delivery of Services specified by this Arrangement where such Incidents have significant implications for the contractual and service relationship between the parties.
- 27.2 During the period of the Major Incident, the extent to which it impacts upon the Provider's ability to provide services, including elective activities, under-performance in delivering such activities during a Major Incident will not constitute a matter for which the Executive may issue a First Performance Notice or a Second Performance Notice.
- 27.3 Where a dispute relating to matters which constitute a Major Incident arises it shall be resolved through the dispute resolution procedures outlined in this Arrangement.
- 27.4 During the period of a Major Incident the Provider shall be paid for performance of the Services and under-performance as a result of the Major Incident shall not be penalised.
- 27.5 Promptly following a Major Incident the parties shall discuss the circumstances that gave rise to the Major Incident and whether the action taken by the Provider to deal with the Major Incident ought to be continued. Where the Executive and the Provider do not agree that the actions taken by the Provider to deal with the Major Incident ought to be continued, then the parties shall discuss the appropriate actions to be taken in the circumstances in the best interests of the relevant Service Users and the Provider shall implement the actions recommended/agreed with the Executive.

28. FORCE MAJEURE

- 28.1 "**Force Majeure**" means, in relation to either party, a circumstance beyond the control of that party (the "**Claiming party**") and lock-outs, strikes and other industrial disputes (in each case, whether or not relating to the Claiming party's workforce and whether or not beyond the reasonable control of the Claiming party). For the avoidance of doubt, Force Majeure does not include Major Incidents which shall be dealt with in accordance with Clause 27 of this Arrangement.
- 28.2 The Claiming party will not be in breach of this Arrangement or otherwise liable to the other party (the "**Non-claiming party**") for any delay in performance or any non-performance of any obligations under this Arrangement (and the time for performance will be extended accordingly) if and to the extent that the delay or non-performance is owing to Force Majeure. This Clause 28 only applies if:
- (a) the Claiming party could not have avoided the effect of the Force Majeure by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all relevant factors, it ought reasonably to have taken but did not take; and
 - (b) the Claiming party has used reasonable endeavours to mitigate the effect of the Force Majeure and to carry out its obligations under this Arrangement in any other way that is reasonably practicable.

- 28.3 The Claiming party will promptly notify the Non-claiming party of the nature and extent of the circumstances giving rise to a Force Majeure which results in delay in performance or in non-performance of the Services. The parties shall discuss the appropriate actions to be taken in the circumstances in the best interests of the relevant Service Users and the Provider shall implement the actions recommended by/agreed with the Executive.
- 28.4 If the delay in performance or the non-performance of the Services as a result of the Force Majeure in question prevails for a continuous period in excess of one (1) month after the date on which the Force Majeure begins, the Non-claiming party is then entitled to give notice to the Claiming party to terminate this Arrangement. The notice to terminate must specify the termination date, which must be not less than ten (10) clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Arrangement will terminate on the termination date set out in the notice.
- 28.5 Neither party shall have any liability to the other in respect of termination of this Arrangement due to Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist.
29. **CONTROL OF STRATEGIC CLAIMS**
- 29.1 In the event of any Strategic Claim, or any matter which may give rise to a Strategic Claim, the Provider shall:
- (a) as soon as reasonably practicable, upon the Provider becoming aware of same, give notice in writing to the Executive of the Strategic Claim and provide such particulars in respect thereof as the Executive may request, the relevant person in the Executive to be so informed is the 'Key Contact Person' named in paragraph A of Section 1 (Contact Details) of the HPSR;
 - (b) promptly give such information and access to personnel, premises, chattels, documents and records held or controlled by the Provider to the Executive and/ or its professional advisers as the Executive and/or its professional advisers may request;
 - (c) in circumstances which the Executive regard as exceptional and upon the request of the Executive, allow the Executive to take sole conduct, either in the name of the Provider or the Executive, of the Strategic Claim (or any part thereof) as the Executive may deem appropriate, and the Provider shall:
 - (i) follow such directions, take such action, institute such proceedings and give or cause to be given to the Executive all such information and assistance as the Executive may reasonably require (including in avoiding, disputing, resisting, settling, compromising, defending or appealing any claim, or demand or proceeding arising in relation to or in connection with the matter); and
 - (ii) instruct such solicitors or other professional advisers as the Executive may nominate to act on behalf of the Provider and/or the Executive, and to act in accordance with the Executive's sole instructions provided always that the Executive keeps the Provider reasonably informed as to the progress of the claim, action or proceedings;
 - (d) at any time upon the request of the Executive, in instances where the Executive does not deem it appropriate to take sole conduct of the Strategic Claim (or any part thereof), keep the Executive well informed of the progress of the Strategic Claim, and act in accordance

with all such directions and instructions as the Executive and its professional advisers may require;

- (e) make no admission of liability, agreement, settlement or compromise with any third party in relation to any Strategic Claim the subject of this Clause 29 without the prior written consent of the Executive; and
- (f) use all reasonable endeavours to minimise the amount of any liabilities or losses suffered or incurred by the Provider and any exposure of the Executive.

29.2 Without prejudice to the generality of the foregoing, the Executive shall in circumstances which it regards as exceptional:

- (a) be entitled (without obligation on its part) to determine the conduct, or course of action to be taken, in respect of any Strategic Claim (and any part thereof) the subject of this Clause 29, including, without limitation, pursuing any application(s) to the Court; and
- (b) be entitled (without obligation on its part) at any stage and at its sole discretion to settle any Strategic Claim (or any part thereof) the subject of this Clause 29, provided that the Executive shall, where practicable, notify the Provider in advance of such settlement.

30. **DISPUTE RESOLUTION**

30.1 The parties to this Arrangement shall endeavour to avoid disputes and deal with issues as they arise. It is expected that any disputes in relation to this Arrangement shall be resolved through direct discussion between representative(s) managing this Arrangement on behalf of the Executive and representative(s) of the Provider. Such discussions shall take place at the Review Meetings.

30.2 In the event of any dispute between the Provider and the Executive arising out of or in connection with this Arrangement which shall be evidenced by one party serving on the other a dispute notice, setting out in reasonable detail the matter(s) in dispute (the “**Dispute Notice**”) and in case of a Dispute Notice served by the Executive, shall be authorised by an employee of the Executive of a grade not less than National Director, IHA Manager (or, where applicable, Hospital Group CEO or Chief Officer), the parties hereby agree, subject to Clause 30.4, to resolve any dispute in accordance with the dispute resolution process set out below:

(a) **Stage 1**

In the event of a dispute arising out of or in connection with this Arrangement, a designated representative of the Executive and one representative from the Provider will meet within seven (7) days of the date of the Dispute Notice to endeavour to resolve the issue within a further fourteen (14) day period from the date of the said meeting. In the event that the issue is not resolved, and not confirmed as having been fully and finally resolved by written binding agreement between the parties, within the said fourteen (14) day period (or such other period as is agreed in writing between the parties) then the parties shall immediately progress to Stage 2, as set out below in Clause 30.2(b) PROVIDED THAT if both parties mutually agree in writing (with no obligation to do so) within seven (7) days of the date of the Dispute Notice, the parties may dispense with Stage 1 and proceed to Stage 2 directly from issue of the Dispute Notice. Otherwise, Stage 1 shall apply.

(b) **Stage 2**

A meeting shall take place between the designated representative(s) of the Executive (not being the representative involved in Stage 1) and a senior representative of the Provider, to discuss resolution of the issue within seven (7) days of completion of Stage 1 (or, if the parties have opted to mutually agree to progress straight from the Dispute Notice to Stage 2, within seven (7) days of the date of the Dispute Notice). In the event that the issue is not resolved, and not confirmed as having been fully and finally resolved by written binding agreement between the parties, within thirty (30) days from the commencement of Stage 2 (or such other period as is agreed in writing between the parties) then the parties shall immediately progress to Stage 3, as set out below in Clause 30.2(c) PROVIDED THAT if both parties mutually agree in writing (with no obligation to do so) (i) within seven (7) days of the date of the Dispute Notice, the parties may dispense with Stage 2 as well as Stage 1 and proceed to Stage 3 directly from issue of the Dispute Notice or (ii) within seven (7) days of completion of Stage 1, the parties may dispense with Stage 2 and proceed to Stage 3 directly from completion of Stage 1. Otherwise, Stage 2 shall apply.

(c) **Stage 3**

If the dispute remains unresolved as between the parties after the completion of Stage 2 (or, if the parties have opted to mutually agree to progress (i) straight from the Dispute Notice to Stage 3, after the date of the Dispute Notice or (ii) straight from completion of Stage 1 to Stage 3, after the completion of Stage 1), then the dispute may be referred by either party to mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure. If the matter is so referred, the mediator shall be nominated by agreement in writing between the parties. In the event that agreement on the appointment of a mediator cannot be reached between the parties within fourteen (14) days of the commencement of Stage 3 (or such other period as is agreed in writing between the parties), the parties hereby agree that the mediator shall be appointed by CEDR for the time being:

- (i) The parties should arrange for a copy of the Dispute Notice to be provided to the appointed mediator;
- (ii) The mediation shall be non-binding unless and until a settlement of the dispute is reached and confirmed in writing by the parties;
- (iii) Unless otherwise agreed, the mediation shall take place not later than twenty one (21) days after the appointment of the mediator;
- (iv) If the dispute or difference has not been resolved by mediation within forty five (45) days of the initiation of such procedure, or if either party refuses to participate in the mediation procedure, then the parties shall progress immediately to Stage 4.

PROVIDED THAT if both parties mutually agree in writing (with no obligation to do so) (i) within seven (7) days of completion of Stage 1, the parties may dispense with Stage 3 as well as Stage 2 and proceed to Stage 4 directly from completion of Stage 1 (“**Stage 1 to Stage 4 Option**”) or (ii) within seven (7) days of completion of Stage 2, the parties may dispense with Stage 3 and proceed to Stage 4 directly from completion of Stage 2 (“**Stage 2 to Stage 4 Option**”). Otherwise Stage 3 shall apply.

(d) **Stage 4**

If the dispute remains unresolved as between the parties after completion of Stage 3 (or after completion of Stage 1 if the Stage 1 to Stage 4 Option has been mutually selected or after completion of Stage 2 if the Stage 2 to Stage 4 Option has been mutually selected), then either party may refer the dispute for full and final resolution to arbitration. If the matter is so referred, the arbitrator shall be nominated by agreement in writing between the parties. In the event that agreement on the appointment of an arbitrator cannot be reached between the parties within fourteen (14) days of the commencement of Stage 4 (or such other period as is agreed in writing between the parties), then the parties hereby agree that the arbitrator shall be appointed by the President of the Law Society of Ireland for the time being:

- (i) The arbitration shall be governed by Irish law and by the provisions of the Arbitration Act 2010, and any re-enactment, adaptation, amendment or extension of same for the time-being in force;
- (ii) The award of the arbitrator shall be final and binding on both parties;
- (iii) The arbitrator shall have power to determine all disputes arising out of or in connection with this Arrangement between the parties;
- (iv) The seat of arbitration shall be Dublin, Ireland and the language of the arbitration shall be English.

30.3 Arbitration of any dispute arising out of or in connection with this Arrangement shall not prevent or delay in any way performance of its obligations under this Arrangement by the Provider in accordance with the terms of this Arrangement, unless otherwise agreed between the parties, and should a dispute occur, the Provider must ensure that Services to Service Users will not be affected.

30.4 Nothing in this Arrangement will prevent either party from seeking any urgent, immediate, interim or provisional relief which it deems necessary from any court or prevent the Executive from bringing any proceeding, suit or action arising out of or in connection with this Arrangement ("**Proceedings**") in any court in relation to any death or personal injury arising in connection with provision of the Services. The parties to this Arrangement irrevocably waive any objection to Proceedings in the courts of Ireland on the grounds of venue or on the grounds of forum non conveniens.

30.5 The provisions of this Clause 30 shall be without prejudice to any other rights of the parties pursuant to this Arrangement, including any rights to which the dispute being dealt with by either party under this Clause 30 relates.

30.6 The provisions of this Clause 30 shall be without prejudice to the right of either party to terminate this Arrangement pursuant to any entitlement to terminate held by that party under Clause 31.

31. TERMINATION OR EXPIRY

31.1 The Arrangement may be terminated in its entirety by either party on the giving of Termination Notice to the other party.

31.2 Without prejudice to the right of the Executive to terminate this Arrangement in accordance with Clauses 28.4 or 31.1, in the event of a serious breach of the performance of the Arrangement by

either party, either party may terminate the Arrangement by giving the other party Serious Breach Notice, subject to the provisions of Clause 31.6 in the event of a serious breach by the Provider, specifying the nature of the breach and the date of expiry of the Serious Breach Notice and upon such date, the Arrangement shall be so terminated.

- 31.3 The Arrangement may be terminated by the Executive in accordance with Clause 31.4 if there is a Reorganisation or Restructuring of the Provider to which the Executive reasonably objects on the grounds that it will or may adversely affect the Services and provided that such right of the Executive to terminate this Arrangement shall expire if the steps contained in Clause 31.4 are not exercised within three (3) months from the date of the Provider notifying the Executive of such Reorganisation or Restructuring. The Provider shall provide such notification to the Executive as soon as reasonably practicable following any such Reorganisation or Restructuring.
- 31.4 Where the Executive is minded to terminate this Arrangement as a result of a Reorganisation or Restructuring of the Provider if it is not satisfied that the Reorganisation or Restructuring will not, or may not, adversely affect the Services:
- (a) the Executive shall so inform the Provider in writing specifying the reasons for its proposed determination, the decision making process that the Executive will follow (as set out in Clauses 31.4(b) to 31.4(e)) in determining whether to terminate or not; and
 - (b) specify in writing what steps the Executive requires the Provider to take (which may include without limitation the provision of indemnities, guarantees or assurances to the Executive in respect of the Services) or conditions or requirements to be observed in connection with the Reorganisation or Restructuring in order for the Executive not to terminate;
 - (c) The Provider will have fourteen (14) days (or such other shorter or longer period as the Executive may specify) to make written representations to the Executive in respect of the matters referred to in Clause 31.4(a) and 31.4(b). The Executive shall consider the representations received from the Provider and within fourteen (14) days of receipt of same (or such other shorter or longer period as the Executive may specify) shall, if so requested by the Provider or desired by the Executive, meet with the Provider to discuss the matter;
 - (d) Following expiry of the period provided for in Clause 31.4(c) and allowing for a further 14 day period from the date of a meeting between the parties should a meeting take place, having considered the Provider's representations (if any), the Executive shall make a determination and advise the Provider in writing of its determination and provide Reorganisation or Restructuring Notice in the event that the Executive has determined to terminate the Arrangement on the grounds that the Reorganisation or Restructuring will or may adversely affect the Services;
 - (e) For the avoidance of doubt, any decision by the Executive not to terminate this Arrangement as a result of a Reorganisation or Restructuring of the Provider pursuant to this Clause 31 is limited to the Executive's consideration of the impact of the Reorganisation or Restructuring on the operation of this Arrangement. The Executive accepts no responsibility for any consequences of the Reorganisation or Restructuring undertaken by the Provider, whether the Executive has determined to terminate the Arrangement pursuant to this Clause 31 or not.
- 31.5 For the purposes of Clause 31.2, a “**serious breach**” on the part of the Provider shall include but not be limited to:

- (a) the failure of the Provider to use the Funding in the most beneficial, efficient and effective manner to provide the Services;
 - (b) the failure of the Provider to comply with a First Performance Notice or Second Performance Notice served under Clause 12 of this Arrangement;
 - (c) the repeated failure of the Provider to comply with information requirements pursuant to Clause 8;
 - (d) the failure of the Provider to comply with Clauses 15.6 and/ or 15.7 of this Arrangement,
- and for the purposes of Clause 31.2, a “**serious breach**” on the part of the Executive shall include but not be limited to:
- (e) the repeated failure of the Executive, without demonstrable grounds and following written requests by the Provider to the Executive, to provide the Funding pursuant to this Arrangement.

31.6 If, in accordance with Clause 31.2, the Executive is of the opinion that there may be a serious breach of the performance of this Arrangement by the Provider and as a result the Executive is minded to terminate this Arrangement by giving the Provider Serious Breach Notice:

- (a) The Executive shall give notice in writing to the Board of the Provider specifying:
 - (i) the principal reasons why the Executive is of the opinion that there may be a serious breach of the performance of this Arrangement by the Provider;
 - (ii) the respects in which the Executive considers the Provider is in serious breach of the performance of this Arrangement; and
 - (iii) the decision making process which the Executive will follow in determining whether there is a serious breach which may result in termination of this Arrangement, which decision making process is set out in more detail in Clauses 31.6(b) to 31.6(d) below.
- (b) The Provider will have fourteen (14) days (or such other shorter or longer period as the Executive may specify) from the date of the notification letter to make written representations to the Executive in respect thereof and/or to address the matters specified in the notification letter.
- (c) The Executive shall consider the representations or details of matters addressed received from the Provider and shall meet with the Provider to discuss the matter.
- (d) Following expiry of the period provided for in Clause 31.6(b) and having considered the Provider’s representations or details of matters addressed (if any), the Executive shall make a determination on whether there is a serious breach of the performance of this Arrangement by the Provider which has not been addressed to the Executive’s satisfaction by the Provider and, as a result, the Executive is to terminate this Arrangement by giving the Serious Breach Notice.

31.7 **Termination due to Insolvency, etc of Provider**

- (a) Without prejudice to the rights of the Executive to terminate this Arrangement pursuant to Clause 12.3 and this Clause 31, and subject always to Clause 32 if:

- (i) the Provider enters into any composition, assignment or arrangement with its creditors generally or if a resolution is passed, a petition is presented (save, in the case of petition, where such petition is being contested in good faith by the Provider, as the case may be, and is discharged within ninety (90) days of the date of its presentation or where such petition is in the opinion of the Provider vexatious or frivolous in nature and is discharged within ninety (90) days of the date of its presentation) or if an order is made for the winding up, administration or liquidation of the Provider, (save for an amalgamation or reconstruction, the terms of which shall first have been approved in writing by the Executive, acting reasonably) or if, an administrator, an administrative receiver, a receiver, a liquidator, a manager, a trustee-in-bankruptcy or other similar officer (including, if applicable in any case, a process advisor) is appointed over the whole or the whole or substantially the whole of the assets or undertaking of the Provider;
- (ii) any execution, order or other process in respect of an amount which (in the opinion of the Executive) would or could have a material impact on the Provider and/ or the provision of the Services and which is not discharged within 90 days is levied on the chattels of or the possessions of the Provider;
- (iii) the Provider, stops or threatens to stop payment of its debts generally or ceases to carry on substantially all of its business or admits its inability to pay its debts generally or is for the purposes of Section 570 of the Companies Act (or any statutory modification thereof or under any other analogous law under any other relevant jurisdiction) deemed to be unable to pay its debts;
- (iv) any cross-default of the Provider in excess of an amount which (in the opinion of the Executive) would or could have a material impact on the Provider and/ or the provision of the Services under any other facilities provided by any third party to the Provider and such default has not been cured within any applicable grace period;
- (v) any similar events to the above occurring under any other relevant jurisdiction in which the Provider is incorporated, resident or carries on business; or
- (vi) the Provider (or a key member of the Provider's Personnel) dies or becomes incapacitated or the Provider no longer has a quorate board of directors or governing body and as a consequence the continued provision of the Services by the Provider is delayed, or rendered incapable or substantially more difficult of being performed provided that either party must give notice to the other party at the earliest available opportunity if it forms the opinion that the continued provision of the Services will be delayed, rendered incapable or substantially more difficult of performance as a consequence of death or incapacity or lack of quorum,

then the Executive shall be entitled to terminate this Arrangement immediately, by service of a written notice on the Provider (or on any alternative date determined by the Executive as is specified in such notice) without prejudice to the Executive's rights and remedies.

- (b) The Provider agrees that, due to the nature of the Services and the importance of ensuring the safety and welfare of Service Users, including by uninterrupted service provision to the extent possible, it will notify the Executive as soon as practicable once it becomes aware that an event of the type referenced at Clause 31.7(a)(i) to 31.7(a)(vi) above is likely to occur and will consult and co-operate with the Executive with a view to minimising, as far as possible, any disruption to the Services or any impact on Service Users.

- 31.8 The Executive may, by notice in writing to the Provider, withdraw any notice of termination issued pursuant to this Arrangement and the Executive may, at its discretion, replace such notice of termination with a new notice of termination served in accordance with this Arrangement, which shall supersede all previous notices of termination.
32. **EFFECT OF TERMINATION OR EXPIRY**
- 32.1 If the Executive or the Provider exercises its rights to terminate this Arrangement, the Executive will within a period of forty-five (45) days' pay to the Provider reasonable and agreed costs accrued to the date of termination (or in the event such costs cannot be agreed, such reasonable costs which the Executive believes have fairly accrued to the date of termination), but if this Arrangement is terminated by the Executive on the grounds that the Services provided are unsatisfactory, the Executive shall pay to the Provider only the proportion of the Funding which is in respect of the Services provided prior to termination which meet a standard, which is in all respects to the reasonable satisfaction of the Executive.
- 32.2 Neither party shall be liable to the other party for any loss of profit, contracts, goodwill, business opportunity or anticipated saving arising out of or in connection with the termination of this Arrangement for any reason or any consequential loss or damage that may arise out of termination of this Arrangement.
- 32.3 Termination of this Arrangement for any reason shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other party prior to termination.
- 32.4 Upon termination or expiry of this Arrangement, the Executive and the Provider will endeavour to make interim arrangements in respect of those Service Users who are receiving Services on the effective date of termination or expiry that will minimise disruption or distress to such Service Users. Pending the finalisation of any such arrangements in respect of such Service Users, the Provider will continue to care for, and accommodate, any Service User who is receiving Services on the effective date of termination or expiry until such time as any new arrangements are effective or until the Service User can be discharged or transferred to another facility, whichever is earlier. The terms and conditions of this Arrangement (including funding obligations) will continue to bind each party and remain in effect for Services provided to each such Service User until discharge or transfer or until any new arrangements become effective, whichever is earlier.
- 32.5 In the interests of safeguarding the well-being, welfare and the continuity of Services to Service Users, upon termination or expiry of the whole or any part of this Arrangement, the Provider shall, if required by the Executive on a temporary basis, provide reasonable access to the Executive to any premises or information used in the provision of the Services until such time as the transfer of Service Users to any new premises, or discharge of Service Users, can reasonably occur and until such time, the Provider shall provide all reasonable assistance to the Executive in safeguarding the wellbeing, welfare and continuity of the Services to the Service Users.
- 32.6 Upon termination or expiry of the whole or any part of this Arrangement:
- (a) the Provider shall, subject to Data Protection Laws, co-operate fully with the Executive in providing any data, confidential information and documentation in relation to the Services and/or Service Users as may reasonably be required by the Executive or any replacement provider of services;

- (b) the Provider shall co-operate fully with and provide all reasonable assistance to any replacement provider of services so as to ensure an efficient and expedient transition to the replacement provider without delay or disruption to the provision of the Services; and
 - (c) the Provider shall immediately return, at its own cost, to the Executive or destroy at the Executive's request, any property (including any information in any format) in its possession or under its control that belongs to, or has been predominantly funded by, the Executive.
- 32.7 Without prejudice to the provisions of this Arrangement in respect of liability, the Provider agrees to use reasonable endeavours to mitigate its losses in the event of termination of this Arrangement for any reason.
- 33. **REPRESENTATIONS AND WARRANTIES OF THE PROVIDER**

The Provider represents and warrants to the Executive that:

 - 33.1 it has all necessary power and authority to execute, deliver and perform its obligations under this Arrangement;
 - 33.2 the execution, delivery and performance by it of this Arrangement has been authorised by all necessary action on its part; and
 - 33.3 each of the obligations of the Provider under this Arrangement constitutes a legally binding obligation.
- 34. **GENERAL**
 - 34.1 **Prior Obligations of the Executive**

Nothing in this Arrangement shall prevent or restrict the Executive from performing or omitting any act or thing which it is required to perform or omit pursuant to a statutory right or obligation or an order or written direction (whether general or specific) of the Minister.
 - 34.2 **Existing Rights**

Without prejudice to the statutory rights, obligations and powers of the Executive and any orders or written directions of the Minister, nothing in this Arrangement, with the exception of the rights and/ or obligations specified in this Arrangement, shall add to, alter or reduce, or be construed as adding to, altering or reducing, the existing rights of the parties prior to entering into this Arrangement.
 - 34.3 **Notices**
 - (a) Subject to Clause 34.3(b), any notice or other communication under this Arrangement shall only be effective if it is in writing.
 - (b) Communication by electronic mail or other electronic methods of writing shall be effective under this Arrangement in respect of day-to-day operational communications only.
 - (c) Communication by electronic mail or other electronic methods of writing shall not be effective under this Arrangement in respect of any notices issued pursuant to this Arrangement including those issued under Clause 12 (Performance Issues) and Clause 30 (Dispute Resolution).

- (d) No notice or other communication given or made under this Arrangement may be withdrawn or revoked.
- (e) Any notice or other communication given or made under this Arrangement shall be addressed as provided in Clause 34.3(g) and, if so addressed, shall, in the absence of earlier receipt, be deemed to have been duly given or made as follows:
 - (i) if sent by personal delivery, on delivery at the address of the relevant party;
 - (ii) if sent by pre-paid post, two (2) clear Business Days after the date of posting;
 - (iii) if sent by email, when the email was sent as recorded on the device from which the sender sent the email and unless the sender receives an automated message that the email has not been delivered.
- (f) Any notice or other communication given or made, or deemed to have been given or made, outside Office Working Hours will be deemed not to have been given or made until the start of the next period of Office Working Hours.
- (g) The relevant notice details are:

Title of recipients:	Address:	Email address:
<i>[Insert names of Executive Responsible Contact – there may be several contacts depending on areas covered]</i>	<i>[Insert Address of Executive Responsible Contact]</i>	xxx
<i>[Insert name of Provider Responsible Contact – there may be several contacts depending on areas covered]</i>	<i>[Insert address of the Registered office of the Provider & Responsible Contact if different]</i>	xxx

- (h) A party may notify the other parties of a change to its notice details. That notification shall only be effective on:
 - (i) any effective date specified in the notification; or
 - (ii) if no effective date is specified or the effective date specified is less than five (5) clear Business Days after the date when notice is received, the date falling five (5) clear Business Days after the notification has been received.
- (i) The provisions of this Clause 34.3 shall not apply in relation to the legal service of documents.

34.4 Remedies and Waivers

- (a) No delay or omission by any party to this Arrangement in exercising any right, power or remedy provided by law or under this Arrangement shall:
 - (i) affect that right, power or remedy; or

- (ii) operate as a waiver of it.
- (b) The exercise or partial exercise of any right, power or remedy provided by law or under this Arrangement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- (c) The rights, powers and remedies provided in this Arrangement are cumulative and not exclusive of any rights, powers and remedies provided by law.

34.5 Severability

If at any time any provision of this Arrangement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that shall not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Arrangement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Arrangement.

34.6 Alterations Do Not Affect Standard Terms

- (a) Any alteration, mark-up or strike-through of any of the provisions of this Arrangement by the Provider shall be ineffective and shall not prevent the applicability of the terms and conditions determined by the Executive or affect the enforceability of same against the Provider by the Executive in any way.
- (b) Any amendment to this Arrangement during the Duration of this Arrangement must be confirmed in writing (to include electronic communication) by a Lead REO (or, where applicable, National Director) or equivalent and specifically identified by title as an amendment to this Arrangement in order to be valid, enforceable or binding. This Clause 34.6(b) does not apply to the amendment of a HPSR which is governed by Clause 34.10.
- (c) For administrative purposes, the Provider shall send the Executive a copy of this Arrangement signed by the Provider for the Executive's records.

34.7 No Partnership and No Agency

- (a) Nothing in this Arrangement and no action taken by the parties pursuant to this Arrangement shall constitute, or be deemed to constitute, a partnership, association, joint venture or other co-operative entity between any of the parties.
- (b) Subject to Clause 12.5, nothing in this Arrangement and no action taken by the parties pursuant to this Arrangement shall constitute, or be deemed to constitute, any party as the agent of any other party for any purpose. Neither party has, pursuant to this Arrangement, any authority or power to bind or to contract in the name of the other party to this Arrangement.

34.8 Further Assurance

Either party shall, from time to time on request, do or procure the doing of all acts and/or the execution of all documents in a form satisfactory to the other party which the other party may reasonably consider necessary for giving full effect to this Arrangement and securing to the other

party the full benefit of the rights, powers and remedies conferred upon it in or by this Arrangement.

34.9 **Entire Agreement**

- (a) For the purposes of this Clause 34.9, “**Pre-contractual Statement**” means a draft agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to this Arrangement made or given by a party to this Arrangement or any other person at any time prior to the date of this Arrangement.
- (b) This Arrangement constitutes the whole and only agreement between the parties relating to the provision of the Services.
- (c) Except to the extent repeated in this Arrangement, this Arrangement supersedes and extinguishes any Pre-contractual Statement.
- (d) Each party acknowledges that in entering into this Arrangement it is not relying upon any Pre-contractual Statement which is not set out in this Arrangement.
- (e) No party shall have any right of action against any other party to this Arrangement arising out of or in connection with any Pre-contractual Statement (except in the case of fraud) except to the extent repeated in this Arrangement.

34.10 **Variation**

- (a) The HPSR(s) may be varied in writing (excluding electronic methods of writing) signed by each of the parties. Any request for a change to a HPSR (other than changes to a HPSR arising as a result of the introduction of a new HPSR annually or at such other time as notified by the Executive) shall be accompanied by a contract change note completed via the fully automated change control process available through the Executive’s Service Provider Governance (SPG) online system (“**Contract Change Note**” or “**CCN**”). Until such time as a Contract Change Note has been signed by both parties, the Provider shall, unless otherwise expressly agreed in writing, continue to supply the Services in accordance with the terms of this Arrangement, including the HPSR (or HPSRs if applicable).
- (b) The Executive reserves the right to amend this Arrangement by notice in writing to the Provider should there be a change in legislation or an order of the Minister necessitating such amendment and the Provider shall be bound by such amendment for the Duration of this Arrangement.

34.11 **Costs and Expenses**

Each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution, implementation and interpretation of this Arrangement.

34.12 **Counterparts**

- (a) This Arrangement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- (b) Each counterpart shall constitute an original of this Arrangement, but all the counterparts shall together constitute but one and the same instrument.

34.13 **Governing Law**

This Arrangement shall be governed by and construed in accordance with the laws of Ireland.

IN WITNESS WHEREOF this Arrangement is executed by the parties as follows:

Signed by _____ **Name:**

for and on behalf of the

PROVIDER:

_____ **Print Name:**

Date:

Title:

Signed by _____ **Name:**

for and on behalf of the

HEALTH SERVICE EXECUTIVE:

_____ **Print Name:**

Date:

Title:

SCHEDULES

Schedule 1 – Funding

Schedule 2 – Quality & Safety

Schedule 3 – Requirements for Information, Performance Monitoring and General Governance

Schedule 4 – Insurance

Schedule 5 – Complaints

Schedule 6 – Codes of Practice

SCHEDULE 1

FUNDING

Please refer also to Clauses 4 and 8.4 of this Part I of this Arrangement (Funding) and to Section 2 (Funding Particulars) of the HPSR.

The following requirements apply in respect of the Funding provided to the Provider pursuant to this Arrangement:

ANNUAL FINANCIAL STATEMENTS	DETAILS OF THE FORMAT REQUIRED
<u>Providers which are companies incorporated in the Republic of Ireland:</u> Subject to the final deadline specified in the third paragraph below, the Provider shall provide the Executive with a copy of its annual financial statements (audited other than in the circumstances noted below) for the prior financial year as filed with the Companies Registration Office (“CRO”), at the same time that its signed annual financial statements (audited other than in the circumstances noted below) are submitted to the CRO’s online filing system (“CORE”) as part of the Provider’s annual return filing process. For clarity please note: • Abridged financial statements are acceptable provided the company is entitled to file (and has filed) abridged financial statements with the CRO under the Companies Acts. • Unaudited financial statements are acceptable provided the company is entitled to claim (and has claimed) an audit exemption under the Companies Acts. • Type signed financial statements are acceptable as the CRO annual return submission process ensures that the financial statements are appropriately approved. The annual financial statements of the Provider shall be submitted by the Provider to the HSE at latest by 26th of November where the previous financial year end of the Provider was 31st December or within (10) months of the Provider’s financial year end where the Provider’s financial year end for the previous financial year was a date other than 31st December. Irish unlimited companies which are not deemed to be ‘<i>designated ULC</i>’s pursuant to Section 1274 of the Companies Act 2014 (and, for that reason, are not required to annex annual financial statements to the annual returns which they submit to the CRO) are, nonetheless, required to submit a copy of the balance sheet signed by two directors, together with a confirmation from their auditors that the annual financial statements have been prepared on the going concern basis. For avoidance of doubt, the above obligations with regard to provision of annual financial statements to the Executive does apply to Irish unlimited companies which are deemed to be ‘<i>designated ULCs</i>’ pursuant to Section 1274 of the Companies Act 2014. <u>Providers which are companies incorporated in a jurisdiction other than Ireland:</u> The requirements above which apply to Providers which are companies incorporated in Ireland also apply to Providers incorporated in a jurisdiction other than Ireland subject to the following:	

- such Providers shall be required to comply with applicable law in the jurisdiction applicable to such Provider relating to the preparation, auditing and public filing of their annual financial statements rather than to the requirements applicable to Irish companies;
- references above to the CRO shall be deemed to be references to the central repository of statutory information regarding companies in the jurisdiction applicable to such Provider;
- for avoidance of doubt, regardless of the requirements imposed on such Provider in the jurisdiction applicable to such Provider with regard to the preparation, auditing and public filing of annual financial statements, the requirement on such Providers under this Arrangement to submit their annual financial statements to the Executive shall apply and such annual financial statements shall be submitted by the Provider to the Executive at latest by 26th of November where the previous financial year end of the Provider was 31st December or within (10) months of the Provider's financial year end where the Provider's financial year end for the previous financial year was a date other than 31st December.

Expenses of Audit

For the avoidance of doubt, where applicable, the expenses of the audit of the Provider's annual financial statements shall be payable by the Provider.

AUDITS

All audit recommendations in relation to the Services must be implemented.

SCHEDULE 2

QUALITY AND SAFETY

The following requirements in respect of Quality and Safety apply to the provision of Services by the Provider pursuant to this Arrangement:

CORPORATE AND QUALITY / SOCIAL CARE GOVERNANCE

Quality and Safety Board Committee (*As per clause 21.6 in Part 1 the Provider is required to establish a Quality and Safety Board Committee, the composition and roles of which are outlined below*) – further details available on the Executive's website.

The Provider shall establish a Quality and Safety Board Committee, comprising of non-executive and executive members and Service User representatives (where appropriate), which shall oversee quality and safety on behalf of the Board of the Provider. The Quality and Safety Board Committee shall operate on behalf of, and report directly to, the Board of the Provider. The Quality and Safety Committee shall have approved terms of reference and the following roles and responsibilities:

- (a) Provide a level of assurance to the Board of the Provider on appropriate, governance structures, processes, standards, oversight and controls;
- (b) Oversee the development by the Provider executive management team of a quality improvement plan for the Services in line with agreed Quality Improvement Strategy;
- (c) Recommend to the Board of the Provider a quality and safety programme and a Provider executive management team structure, policies and processes that clearly articulates responsibility, authority and accountability for safety, risk management and improving quality across the Services;
- (d) Secure assurance from the Provider executive management team on the implementation of the quality and safety programme and the application of appropriate governance structure and processes (e.g. risk escalation) including monitored outcomes through quality indicators and outcome measures;
- (e) Secure assurance from the Provider executive management team that the service is conforming with all regulatory and legal requirements to assure quality, safety and risk management;
- (f) Act as advocates for quality and safety issues which cannot be resolved by the Provider executive management team, escalating them to relevant external forums;
- (g) Consider in greater depth matters referred to such committee by the Board of the Provider;
- (h) Referral of issues to the Board for consideration when necessary.

QUALITY ASSURANCE AND MONITORING OF QUALITY AND STANDARDS

The Provider must participate as appropriate in relevant quality assurance programmes to the extent applicable to the Provider and this Arrangement, e.g.:

- (a) HIQA programmes;
- (b) Engage in Healthcare Audits conducted by:
 - the Internal Audit Division Healthcare Audit Function;
 - the National Centre for Clinical Audit (NCCA);
 - National Office of Clinical Audit (NOCA);
- (c) Cooperation with annual visits by the Inspector of Mental Health Services.

SAFEGUARDING VULNERABLE PERSONS AT RISK OF ABUSE NATIONAL POLICY AND PROCEDURES (HSE 2014)

The Executive has undertaken a revision of the Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures (2014). The revised Adult Safeguarding Policy when implemented will have an operation remit for all Executive and Executive-funded Services. Each organisation providing health and personal social services, including the Provider, will be expected to be fully compliant when the revised policy is implemented. The revised Adult Safeguarding Policy will set out the updated reporting process and the requirement in respect of organisations providing funded services that certain Relevant Staff within such organisations carry out safeguarding roles.

“Relevant Staff” in this context means staff that are dealing with adults at risk of abuse, rather than with children exclusively.

Providers will also be required to work with the Executive with regard to requirements to notify “specified information” to the National Vetting Bureau and future employers – such Provider organisations to follow guidance where provided.

INFECTIOUS DISEASES (INCLUDING COVID-19)

The Executive, including the Health Protection Surveillance Centre service of the Executive (**“HPSC”**), the Mental Health Commission, HIQA and the Government through the Department of Health, manage guidance and reporting requirements for Providers in relation to cases and outbreaks of Infectious Diseases, including Covid-19 through publicly available web pages.

Providers must keep themselves informed and up to date on all guidance applicable to Infectious Diseases and comply with their obligations as set out in this Arrangement in relation to the Codes of Practice.

In relation to Covid-19 specifically, Providers must keep themselves informed and up-to-date by accessing the following (or any additional or replacement publicly accessible web pages made available from time to time):

(a) **The Executive**

COVID-19 – Guidance Documentation – for Service Providers. HSE Guidance and Resources for Service Providers for COVID-19 are available on the Executive’s website.

These guidance documents have been developed by the Executive in collaboration with service providers in the voluntary sector. They have been approved by the Executive’s Vulnerable Person’s Group.

(b) **HPSC**

The Executive recommends that Providers access the National Public Health Guidance for COVID-19 on [hpsc.ie](https://www.hpsc.ie) for the most up to date information on infection prevention and control.

FLU VACCINE

WHO recommendations and the European Council target that 75% of all Health Care Workers receive the flu vaccine annually.

Accordingly, it is expected that Providers will promote the uptake of the flu vaccine among Provider personnel.

SCHEDULE 3

REQUIREMENTS FOR INFORMATION, PERFORMANCE MONITORING AND GENERAL GOVERNANCE

The following requirements apply in respect of Information, Performance Monitoring and General Governance regarding Services provided by the Provider pursuant to this Arrangement:

A. The Provider confirms the following documents will be completed and submitted to the Executive Key Contact Person as appropriate in the highest Funding IHA, national office of the Executive or Funding Health Region (or, where applicable, highest Funding CHO or Hospital Group) (as confirmed by the Executive):					
Document Name	Submitted to:	Annual	Bi-annual	Quarterly	Monthly
Audited Annual Financial Statements ("AFS") <i>(May require draft prior to final AFS submission due to timing)</i> <i>Where the previous financial year's reports/ financial statements are not yet available, the latest available should be provided with a date agreed for receipt of the previous financial years.</i>	CMSU	✓			
Financial Report / Management Accounts	Executive Financial Contact	✓ < €1m	✓ €1m - €5m	✓ €5m - €20m	✓ > €20m
Financial Governance Report – if required					
Activity Data will be submitted as required					
B. The Provider confirms the following documents are in place and will be made available to the Executive's highest Funding IHA, national office of the Executive or Funding Health Region (or, where applicable, Funding CHO or Hospital Group) (as confirmed by the Executive) where required:					
Document Name					
Annual Financial Statements*					
Code of Governance					
Clinical Governance Policy					
Organisational Chart					
Complaints Procedures to be submitted to relevant office in the Health Region (Mandatory Requirement)					
Constitution or other governing document					

Policy for obtaining feedback from Service Users and Staff
Policy/Procedure for Patient Private Property <i>(Where an organisation has charge of a Service User's private property, then an appropriate system of administration and control needs to be in place to ensure compliance with regulations.)</i>
Safety Statements.
Staff levels for return as required (Employment Monitoring Return)
Provider Structure (Organogram)

* these documents should be published on Provider's website

C.	The Provider confirms the following processes and procedures are in place:
(a)	Provider Personnel (i) General Requirements • The Provider's statement should refer to HR policy on the recruitment, selection, clearance/ vetting and contracting processes of staff with appropriate recognised qualifications for relevant positions and the validation process engaged in with the relevant professional bodies. • The organisation will only appoint staff who meet the relevant Executive-declared qualifications and experience appropriate to the position being filled. Furthermore, qualifications must be validated by the relevant competent authority. • Staff induction programmes, training, on-going education, personal or professional development are in place. • Structures and processes are in place to support staff in improving individual and organisational performance. • A system is in place which records that those staff that are required by legislation to maintain a valid registration, with the appropriate professional organisation, are adhering to this requirement. (ii) Children First • It is a requirement for each Provider to be in full compliance with Children First Act 2015 and Children First National Guidance for the Protection and Welfare of Children 2017. • "An Introduction to Children First" eLearning Module which has been developed by the Executive is available through HSELand - www.hseland.ie. • All Provider Personnel, including those involved in service provision and/or in contact with service users (and including where the Services involve supporting adults), must complete the HSE "An Introduction to Children First" elearning Module, which is available through HSELand – www.hseland.ie.

	- Volunteers involved in service provision and/or in contact with service users, must also complete the An Introduction to Children First’ elearning Module. Volunteers can access the eLearning module through – www.hseland.ie. - New Provider Personnel (including, for avoidance of doubt, relevant volunteers) must complete the above online module prior to commencement of work or as soon as practicable on commencement. - The training must be completed every three (3) years. (iii) Code of Conduct for Provider Personnel - The Provider shall have a code of conduct in place, with notification of same to all Provider Personnel, that reflects the DOH Code of Practice for Personnel Health Providers: “Supporting a Culture of Safety, Quality and Kindness: A Code of Conduct for Health and Social Service Providers” May 2018.
(b)	Cyber Security Awareness The National Cyber Security Centre (NCSC), in conjunction with the Office of the Government Chief Information Officer (OGCIO), have developed a Cyber Security Baseline Standards for Government ICT. The Baseline Standards are intended to create an acceptable security standard and form a broad framework for a set of measures which can be revised over time. The Standards model follows a holistic and comprehensive approach to the issues related to Cyber Security, which combines the best of various standards to address the needs of key stakeholders. It is expected that all Provider organisations will be aware of these standards as set out in the Department of the Environment, Climate and Communications’ document, Public Sector Cyber Security Baseline Standards.
(c)	Complaints Please refer to Schedule 5.
(d)	Incident Management The Provider’s senior accountable officer is required to ensure that all Incidents are appropriately reported to the Executive’s Senior Accountable Officer of the IHA (or, where applicable, CHO and Hospital Group).
(e)	Safeguarding Concerns In addition to the obligations for reporting Incidents as set out in this Arrangement, issues, concerns or allegations of abuse that are Incidents (including Category 1 Incidents, Serious Reportable Events and Notifiable Incidents) should be notified by the Provider in accordance with the Codes of Practice and recorded by the Provider in the appropriate manner.

	The Provider's senior accountable officer, in the context of the management of an Incident, is the person who has ultimate accountability and responsibility for the Services within the area where the Incident occurred.
(f)	Category 1 Incidents, Serious Reportable Events and Notifiable Incidents The Provider's senior accountable officer is also required to immediately notify Category 1 Incidents, Serious Reportable Events and Notifiable Incidents to the relevant Executive Key Contact Person and to the Executive's Senior Accountable Officer of the IHA (or, where applicable, CHO and Hospital Group).
(g)	HIQA, Child and Family Agency or Mental Health Commission Registration As applicable to Provider.
(h)	Data Protection With regard to Data Protection, Data Sharing and Data Protection Laws, the Provider shall comply with all relevant legislative provisions and obligations thereunder, in particular, but not limited to Data Processing Agreements, Data Sharing Agreements and Data Protection Impact Assessments where applicable and/or as required by the Executive.
(i)	Garda Vetting All requirements of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 are complied with.

SCHEDULE 4 INSURANCE

The following are the minimum insurance requirements in respect of the Funding paid to the Provider pursuant to this Arrangement:

This Schedule 4 sets out the mandatory minimum requirement that the Provider must have in relation to insurance and liability cover, in addition to the indemnities referenced under Clause 13 of Part 1 of this Arrangement:

1. Public Liability insurance with a limit of indemnity of €6,500,000 (€6.5 million) for any one claim or series of claims arising out of a single occurrence. The insurance policy must contain an indemnity to principal clause.
2. Employers Liability insurance with a limit of indemnity of €13,000,000 (€13 million) for any one claim or series of claims arising out of a single occurrence. The insurance policy must contain an indemnity to principal clause.
3. Motor Insurance (if Services involve use of motor vehicle by Provider) with a third party property damage limit of:
 - (a) €2,600,000 (€2.6million) where Provider turnover is under €40 Million;
 - (b) €6,500,000 (€6.5million) where Provider turnover is €40 Million or over,any one occurrence.
4. Professional Indemnity

To the extent that Professional Medical Services are provided by the Provider, the Provider must ensure that it has professional indemnity and/or Professional Medical Services indemnity insurance in accordance with the following thresholds or such other thresholds as may be specified by the Executive from time to time:

 - (a) Low risk: €1 million up to €4 million any one occurrence and in the aggregate;
 - (b) Medium risk: €4 million up to €6.4 million any one occurrence and in the aggregate;
 - (c) High risk: Minimum €6.4 million up to €10 million any one occurrence and in the aggregate. *(Significant risk may require higher indemnity).*
5. Other Insurances

The Provider is responsible for ensuring that all appropriate insurances are in place. Insurance other than those outlined in this Schedule 4 may be required.
6. Notes:
 - Territorial and jurisdictional limits for all insurances must include the Republic of Ireland (ROI).
 - Insurances should be placed with an insurer or insurers authorised to operate in Ireland by the Central Bank of Ireland (or within the EU under the Services Directive (Directive 2006/123/EC)).

SCHEDULE 5

COMPLAINTS

The following are requirements in respect of the handling of complaints:

This Schedule specifies the requirement for Providers to have in place a complaints policy in compliance with Part 9 of the 2004 Act and the Health Act 2004 (Complaints) Regulations 2006 (S.I. 652 of 2006). The Provider's performance in complaints handling and resolution will be monitored as set out in this Schedule.

The National Complaints Governance and Learning Team has developed systems with the Non-Statutory sector for the submission of policy and procedure documents and reporting schedules.

TIMETABLE FOR SUBMISSION OF POLICY & PROCEDURES DOCUMENT

The Provider shall submit a copy of their complaints policy to the relevant office in the Health Region. The relevant office in the Health Region shall link in directly with the Provider if any changes/ amendments are required for approval and will validate the policy. The relevant office in the Health Region contact will advise the Provider and the IHA when the policy has been approved.

In the case of a national Provider, a copy of the complaints policy must be submitted to the National Complaints Governance and Learning Team.

Date to be Submitted by Provider	Date to be Reviewed by Executive	Amendments	Comments
<i>The Executive Key Contact Person will agree the date by which the policy should be submitted (or confirm if already received).</i>	<i>The policy should be submitted to the relevant office in the Health Region / National Complaints Governance and Learning Team as appropriate.</i>	<i>Any amendments will be communicated to the Provider by the relevant office in the Health Region / National Complaints Governance and Learning Team contact as appropriate.</i>	<i>Any comments will be communicated to the Provider by the relevant office in the Health Region/ National Complaints Governance and Learning Team contact as appropriate.</i>

General Report on Complaints Received by the Provider in accordance with Section 55(2) of the 2004 Act. Report to be submitted to the National Complaints Governance and Learning Team and the Executive Key Contact Person as set out at paragraph A of Section 1 (Contact Details) of the HPSR. Standard Template must be utilised.

The Provider will submit returns on an agreed template to the National Complaints Governance and Learning Team on a quarterly basis for the periods of January-March, April-June, July-September, October-December. The deadline for the return of these templates shall be 20th of the month following each

quarter respectively. Any queries arising from the templates will be followed up by National Complaints Governance and Learning Team.

The National Complaints Governance and Learning Team will liaise directly with the Provider to ensure that statistics are submitted on time and a reminder will issue one month prior to the deadline for submission.

General Report on Reviews assigned to the Provider by the Executive under Section 49(4) of the 2004 Act. A Provider must report on the number, nature and outcome of any reviews it undertakes.

CONTACT – NATIONAL COMPLAINTS GOVERNANCE AND LEARNING TEAM

Contact Details:

Roselawn House
University Business Complex
National Technology Park
Limerick
V94 6K65

SCHEDULE 6

CODES OF PRACTICE

The Non-Statutory Section of the Executive's website contains a list of Codes of Practice (as defined at Clause 1.1 of Part 1 of this Arrangement) relevant to the Services and divided into (i) a Generic Listing which applies to all providers of health and personal social services under For Profit service arrangements (including the Provider under this Arrangement) and (ii) applicable Care-Group Specific Listing in respect of which the nature of the Services will determinate the care-group listing specific to this Arrangement for information of and reference by Providers.

For avoidance of doubt, the Provider is required to comply with its obligations as set out in Part 1 of this Arrangement in respect of all applicable Codes of Practice, including both the Generic Listing and the applicable Care-Group Specific Listing of Codes of Practice on the Executive's website.

For avoidance of doubt, the Code of Practice listing on the Executive's website and any periodic updates to such listing by the Executive does not purport to be exhaustive and is solely for information and reference purposes. While it is the Executive's intention to use reasonable endeavours to review and update the Codes of Practice listings on its website periodically (with the exception of any policy of the Executive with which the Executive requires the Provider to comply or have regard (as applicable) under this Arrangement and which is not otherwise available to the Provider), the Executive has no obligation to inform the Provider of the legal, regulatory or professional obligations applicable to the Provider, Services or this Arrangement, including Codes of Practice, and all liability of the Executive to the Provider or any other person in this regard is hereby excluded in its entirety, including in respect of any errors or omissions in the Codes of Practice listing on the Executive's website or any delay or failure in updating same.

It is solely the obligation of the Provider to identify, inform itself as to, understand, monitor changes to and ensure compliance with its obligations under this Arrangement (and pursuant to applicable law and/or the requirements of any applicable regulatory or supervisory body) in respect of all applicable Codes of Practice during the Duration of this Arrangement and to ensure that it has adequate structures and systems in place for this purpose.