

SERVICE ARRANGEMENT

Please complete the following sections highlighted in pink

Cover Page		Provider name
Arrangement Details	Page 2	Date of Arrangement Provider name & address
Recipient of Notices	Page 42	Contact details of Recipient of Notices
Sign Off	Page 46	Sign off details



HEALTH SERVICE EXECUTIVE

And

[THE PROVIDER]

SERVICE ARRANGEMENT

ARRANGEMENT STRUCTURE

THIS ARRANGEMENT CONSISTS OF TWO PARTS:

PART 1 CONSISTS OF 33 STANDARD CLAUSES

PART 2 CONSISTS OF 10 SCHEDULES

Note: See also Clause 33.12 (Counterparts)

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SERVICE ARRANGEMENT – PART 1

This **SERVICE ARRANGEMENT** is made on ● for a period commencing on 01/01/2022 (the “**Commencement Date**”) and continuing until 31/12/2022 (the “**Expiration Date**”).

BETWEEN

1. **HEALTH SERVICE EXECUTIVE**, 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 Schedule 1 (Contact Details), or any successor body, (the “**Executive**”);

AND

2. **[NAME OF PROVIDER]**, of *[address]*, details in respect of which are set out in Part B of Schedule 1 (Contact Details), (the “**Provider**”)

BACKGROUND

- (A) The Executive is required by Irish 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 such services.
- (C) Now therefore the Executive and the Provider enter into this Arrangement for the provision of Services to Service Users on the terms and conditions specified below, as hereinafter defined, and in relation to the Service Users which may be defined.

Definitions and Interpretation

1.1 In this Arrangement

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

“**Additional Services Addendum**” means the addendum which may be included in Schedule 3 (Service Delivery Specification);

“**Arrangement**” means this contract and the Schedules hereto, together with any amendments thereto agreed in writing between the parties;

“**Authorised Person**” has the meaning given in Clause 10.2;

“**Board of the Provider**” means the board 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 Irish Comptroller and Auditor General;

“**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);

“**Claiming party**” has the meaning given in Clause 27 (Force Majeure);

“**Contract Change Note (CCN)**” means the contract change note referred to in Clause 33.10 (Variation) and as included in Schedule 10 (Change Control);

“**Code of Governance**” means the *Framework for the Corporate and Financial Governance of the Health Service Executive* prepared by the Executive pursuant to Section 35 of the Health Act 2004;

“**Codes of Practice**” means the codes of practice for the provision of the Services as the same may be amended from time to time, and any other guidance, circulars, policies, directions, protocols, standards and any document of a similar nature that has issued or may be issued by the Executive and/or the Child and Family Agency to the Provider from time to time, and any clinical guidance provided by the professional colleges; as may be included in Schedule 2 (Quality & Safety);

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

“**Companies Act**” means the companies legislation applicable to the Provider;

“Corporate Strategy” means the corporate plan prepared by the Executive under section 29 of the Health Act 2004;

“DPA” refers to the applicable data protection legislation;

“Duration of this Arrangement” means a period commencing on the Commencement Date and continuing until the date specified, unless terminated in accordance with Clause 30 (Termination) provided always that the details of the Schedules shall be agreed annually by the parties or at such other time as notified by the Executive;

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

“Executive” means the Irish Health Service Executive; **“Financial Year”** has the meaning given in Schedule 6 (Funding);

“First Notification Letter” has the meaning given in Clause 12.1;

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

“FOI Act” has the meaning given in Clause 23.1;

“Force Majeure” has the meaning given in Clause 26 (Force Majeure);

“Funding” means all forms of financial assistance particularised in Clause 4 (Funding) given to the Provider to support the provision of the Services and the term “funded” shall be construed accordingly;

“Health Acts” means the Irish Health Acts 1947 to 2013 (as amended from time to time);

“HIPE” refers to the Executive’s Hospital Inpatient Enquiry system;

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

“Incident” means, as defined by the HSE Safety Incident Management Policy, 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:

- patients, service users, staff and visitors
- the attainment of HSE objectives
- ICT systems
- data security e.g. data protection breaches
- the environment

“Key Personnel” means such persons as may be identified by the Provider and the Executive in Schedule 9 (Staffing) as key personnel;

“Minister” means the Irish Minister for Health;

“Major Incident” means an occurrence

- (i) causing an unexpected surge in demand for the Services; or
- (ii) 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;

“Non-claiming party” has the meaning given in Clause 26 (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;

“National Service Plan (NSP)” means the national service plan of the Executive approved by the Minister pursuant to section 31 of the Health Act 2004 from time to time;

“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 32.9 (Entire Agreement);

“Provider Personnel” means all officers, employees, volunteers, agents and contractors employed, engaged, supplied or utilised by the Provider or by any subcontractor 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:

- (i) Council Directive 2014/24/EU, co-ordinating the procurement procedures for the award of public works contracts, public supply contracts and public service contracts, the EC (Award of Public Authorities’ Contracts Regulations), 2006, (S.I. 329 of 2006),
- (ii) Council Directive 2007/66/EC (and as implemented by S.I. 130 of 2010) (where applicable) concerning the review procedures in respect of the award of public contracts,
- (iii) any other legislation in relation to public procurement law having the force of law in Ireland from time to time,

- (iv) 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,
- (v) all the public procurement guidelines issued by the Department of Finance, the Department of Public Expenditure and Reform or other Government Department authorised to issue public procurement law guidance,
- (vi) all other legally binding duties and obligations in relation to public procurement arising under European Union law or national law;

“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 a court;
- (b) the acquisition of all or any part of the Provider’s undertaking by any other 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 11.1;

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

“Second Notification Letter” has the meaning given in Clause 12.2;

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

“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 a serious, largely preventable patient safety *incident* that should not occur if the available preventative measures have been implemented by healthcare providers;

“Services” means the services as set out in Schedule 3 (Service Delivery Specification) and to be provided by the Provider in accordance with the terms of this Arrangement to the extent as is set out in Schedule 3 (Service Delivery Specification);

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

“State Claims Agency” is part of the Irish National Treasury Management Agency and pursuant to the Irish National Treasury Management Agency (Amendment) Act 2000 manages certain claims on behalf of the Irish State (to include personal injury and third party property claims) and provides risk management advices and assistance to Irish State authorities.;

“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 1st January to 31st December, save that in the first year of this Arrangement, it shall be the period from the Commencement Date to 31st 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 statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
 - (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 32 (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) 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 1 of this Arrangement and the Schedules to this Arrangement, Part 1 of this Arrangement shall prevail, unless explicitly stated otherwise.

2. Principles of Arrangement

- 2.1 The Executive hereby agrees to give 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 Schedule 3 (Service Delivery Specification). The Provider shall apply the Funding exclusively for the provision of the Services.

- 2.2 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;
 - (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) as may be required by the Executive;
 - (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, recognise and acknowledge any proprietary interest of the Executive, the Irish State or any other Irish 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.
- 2.3 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.
- 2.4 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 Schedules to this Arrangement, 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 Irish 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 the DPA and any obligations of confidentiality (including in respect of the "in camera rule") imposed on the Executive, provide the Provider with any information, that the Executive has, which is considered necessary by the Executive 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 Schedule 3 (Service Delivery Specification), the Codes of Practice as outlined in Schedule 2 (Quality and Safety), and with such instructions as may be issued by the Executive in writing from time to time throughout the Duration of this Arrangement.
- (ii) The Provider acknowledges that the Executive will rely 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 payable set out in Schedule 6 (Funding):

- (i) make available and provide access to the Services as set out in Schedule 3 (Service Delivery Specification) 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, and other documents issued by the Executive;
- (vi) 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 HSE Safety Incident Management Policy as may be amended from time to time and any and all other relevant policies and guidelines;

- (v) obtain and maintain all licences, permits and permissions necessary to provide the Services in accordance with the applicable laws and regulations and shall notify the Executive immediately in the event that such licences, permits and permissions are not obtained or maintained;
- (vi) 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 Directorate of the Executive and all other statutory bodies in this regard;
- (vii) comply with the provisions of applicable disability legislation;
- (viii) comply, if applicable, with the provisions of applicable legislation relating to vehicle drivers' certificates of professional competence;
- (ix) immediately or as soon as practicable, and in compliance with the DPA, 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 serious incident which is categorised as a Serious Reportable Event, the Chief Executive Officer or equivalent should immediately notify the Executive, and all other applicable parties;
- (x) 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;
- (xi) 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;
- (xii) 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;
- (xiii) have in place an ethics committee or other appropriate process;
- (xiv) 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 relevant Code of Practice and any relevant guidance issued by the Executive from time to time;
- (xv) keep itself fully appraised and compliant with all of its responsibilities under applicable legislation relating to fire services and safety, health and welfare at work;
- (xvi) procure and maintain insurance in accordance with Clause 12 and Schedule 7 (Insurances);

- (xvii) 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
- (xviii) in the event of any member of Provider Personnel having behaved illegally, wrongfully, inappropriately or in breach of relevant policies and procedures of the Provider and/or the Executive, 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 in respect of a Service User, take all necessary actions in respect of such persons to ensure safety and protection of the Service User and Service Users generally and report the matter to the Executive and all relevant authorities.
- (xix) support and cooperate with the role of the Executive's independent confidential recipient.

4. Funding

- 4.1 Subject to the terms and conditions of this Arrangement and the Provider having at all times current valid tax clearance (Evidence of which must be furnished to the Executive upon request), the funds to be paid by the Executive to the Provider 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 Schedule 6 (Funding). Any amounts payable by the Executive shall be transferred to an account nominated by the Provider as set out in Schedule 6 (Funding).
- 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 Schedule 6 (Funding) may be subject to any deduction applied by the Executive pursuant to Clause 8.4 and Schedule 6 (Funding) 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 Schedule 3 (Service Delivery Specification). 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 through the change control process in Schedule 10 (Change Control).
- 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 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 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 the relevant police authority and the provision by the Provider to the Executive of copies of all statements made. The Provider shall cooperate with any directions of the Executive in this regard and shall comply with applicable law, including the DPA, in such circumstances.

5. Set-off

The Provider expressly agrees that the Executive, having given not less than 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 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.
- 6.4 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 aware of the right to be free from abuse (mental, physical, emotional, sexual and financial). 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.
- 6.5 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.
- 6.6 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 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 and holds harmless 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 supplies, services or works, made pursuant to or in connection with this Arrangement. 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 defeding any 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 and holds harmless 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 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 the use of its Funding and in the delivery of 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 to the provision of the Services. 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 as outlined in Clause 25.

8.2 Schedule 5 (Information requirements)

The Provider will comply with the obligations set out in Schedule 5 (Information Requirements).

8.3 Integrated Management Report

- (a) The Provider will comply with the obligations set out in Schedule 6 (Funding).
- (b) In addition to its obligations under Clause 8.3(a), in the event that issues are anticipated or arise during the Duration of this Arrangement, which 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 in the period agreed under this Arrangement.

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 accounts the funding received from the Executive, as distinct from other funding received and activities undertaken during the financial year;
- (d) ensure that such accounts are audited annually and not later than nine months after the end of the relevant financial year by a person, who is qualified to be appointed as an auditor pursuant to applicable legislation;
- (e) without prejudice to Clause 8.4(c), within 10 months of the end of the financial year provide copies of its annual audited accounts (in the form in which such accounts are required, pursuant to the Companies Act or other applicable legislation, to be filed in a public register) for each financial year to the Executive;
- (f) submit additional financial information to the Executive in accordance with Schedules 4 (Performance Monitoring) and 5 (Information Requirements); and
- (g) furnish an annual certificate from the Provider's auditors confirming that the accounts have been prepared and audited in accordance with GAAP and relevant legal and regulatory requirements in force at the time.

8.5 **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 the DPA).
- (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) The Provider will provide information to appropriate and authorised sources (for example, the State Claims Agency, National Parasuicide Register, Disability Database, HIPE data etc). The Provider will also provide the Executive with a copy of the information supplied to such sources.
- (d) Subject to Clause 8.1 the Provider will comply with all requests by the Executive and by any committees of the Directorate 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. Freedom of Information Requests;

- iii. Responses to complaints from Service Users and/or advocates; or
 - iv. the compilation of statistical data in relation to the Services or Service Users.
- (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 8.5(e) shall include such extended periods for vulnerable persons as are required for compliance with the DPA.

8.6 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 pursuant to statute (whether applicable to the Executive or the Provider) 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 14 days' written notice to the Provider, withhold payment, seek repayment of, or set-off, any part of the Funding unless and until 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) and Schedules 2 Quality and Safety and 4 (Performance Monitoring) by generally accepted best practice and by reference to the Performance Monitoring Framework.
- 9.2 The Executive will provide guidance regarding requirements for establishing a Performance Monitoring Framework. The framework will assist both parties in providing a comprehensive set of performance measurements.
- 9.3 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 Schedule 4 (Performance Monitoring). If the Executive is of opinion that the Provider's performance against a key performance indicator has not achieved the target set out in Schedule 4 (Performance Monitoring), 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.
- 9.4 In the event that the Provider fails to provide the Services in accordance with Schedule 3 (Service Delivery Specifications) or if the Service Provider's performance against a

key performance indicator in such intervals specified in Schedule 4 (Performance Monitoring), fails to reach the minimum target set out in Schedule 4 (Performance Monitoring), in respect of that period, then the Funding shall be reduced by an amount which may be specified in Schedule 6 (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 inspect and review the performance and provision of the Services by the Provider and may arrange for an independent party to inspect and review the same throughout the Duration of this Arrangement.
- 10.2 Any person duly authorised by the Executive (“**Authorised Person**”) for the purposes of either an inspection or review under Clause 10.1 may visit the Provider’s premises on reasonable written notice to carry out an audit and/or inspection of the provision of the Services and/or may request the provision of documentation or copy documentation by the Provider to the Executive. Such audits, inspections and requests for documentation shall include, inter alia, the inspection, monitoring and assessment of the Provider’s premises, facilities, Provider Personnel, equipment, procedures and records (including, without limitation, Provider Personnel records and information and records on the Service Users) relating to the Services. The Provider shall give all such assistance and provide all such facilities as the Authorised Person may reasonably require for such audit or inspection.

11. Review Process

- 11.1 The Provider shall cooperate 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 and the Provider (which will be represented by the “Main contact person” specified in Part B of Schedule 1 (Contact Details), or another appropriate person) according to the review frequency detailed within Schedule 4 (Performance Monitoring).
- 11.3 The provisions of 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 agreed performance indicators and outcomes as set out in Schedule 3 (Service Delivery Specification);

- (f) whether the needs of Service Users are being met;
- (g) compliance with Services specifications (including Codes of Practice, Schedule 2 (Quality & Safety), etc.);
- (h) evaluation of information provided pursuant to Clauses 8 (Information Requirements) and 8 (Monitoring, Review and Evaluation);
- (i) any matters notified in writing to the Executive pursuant to Clause 3.2(c)(ix) (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 (b) (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 19.5 (areas of concern, or serious untoward incidents) of this Arrangement;
- (m) 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 4 (Performance Monitoring) 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 4 (Performance Monitoring), any amendment to the Schedules to this Arrangement (other than amendments arising as a result of the introduction of a new set of Schedules 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 CCN as included within Schedule 10 (Change Control) and in accordance with Clause 33.10.

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 may (in its absolute discretion) meet with the Provider to discuss the matter.
 - (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 9.4, 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) there may have been a further or continuing instance(s) of Non-Compliance by the Provider;
- 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 (whether or not arising from issues raised in the First 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 9.4, 12.3 or otherwise, in the event that a Second 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 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 may (in its absolute discretion) meet with the Provider to discuss the matter.
- (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 12.1(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 9.4, 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 Any notices served under Clauses 12.1 and 12.2 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.

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 insurances and motor insurance policies, as set out in Schedule 7 (Insurance) on the terms specified and with insurers regulated by, or authorised to operate on a freedom of services basis by, an 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 7 (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 12 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. If the Provider fails to effect and keep in force any of the insurance policies required under this Clause 13 any monies which should have been recoverable 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 Agreement 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.

- 13.1 The provisions of this Clause 13 shall survive termination and expiry of this Arrangement. 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, 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 31.4 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 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 any Provider Personnel 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 hold the Executive harmless 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 or any other relevant and applicable legislation on the recognition of professional

qualifications (as further detailed in Schedules 2 Quality and Safety, and 3 Service specification)) and administrative arrangements in respect of such qualifications 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 in 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 practice standards in relation to the recruitment and selection of Provider Personnel and will keep appropriate records of all applications, selection processes, references and contracts of employment.

15.6 Where the Provider is engaged in activity with access to children and vulnerable people, the Provider will agree with the Executive the categories of persons which are to be subject to the vetting process by relevant authorities, and/or subject to equivalent criminal background checks. 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 take all necessary steps to fully investigate 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.

(b) In the event of any member of Provider Personnel having behaved illegally, wrongfully or inappropriately, whether by act or omission or any allegation or complaint being made to the Provider 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 and/or insurer.

(c) The Provider will 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 vulnerable adults and shall comply with all reporting procedures in respect of suspected or actual abuse and shall notify the Executive of any reports and report to the State Claims Agency and/or their 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 & 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 all statutory deductions 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 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. 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 14, or otherwise, including, without limitation, any claim made or threatened, whether by legal proceedings or otherwise, against the Executive by any third party (including a taxation authority) 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 (or equivalent legislation) 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 (or equivalent legislation) 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, subcontractor or third party to provide any or all of the Services or part of any service thereof.
- 16.2 The Provider must ensure that any such agent, subcontractor 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.
- 16.3 The Provider shall be fully responsible for the acts and omissions of any such third party 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, subcontractor or third party.

17. Complaints (see also Schedule 8 (Complaints))

- 17.1 The Provider will maintain a complaints policy and procedure which will reflect, and (where appropriate) comply with, relevant legislation and the Health Service Executive 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 Health Act 2004) 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. 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 Schedule 3 (Service Delivery Specification).

19. Risk Management

- 19.1 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 serious incidents compatible with the Executive's policy.
- 19.2 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.
- 19.3 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.
- 19.4 The Provider will provide such information as is required for the Executive's Risk Register, subject to compliance with the DPA.
- 19.5 Should the Provider identify any Incident arising in connection with the Services or any related matter, it will notify the Executive in writing, giving reasonable details of the issue (subject to compliance with the DPA) and setting out the steps that will be taken to eliminate the risks identified.
- 19.6 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.
- 19.7 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.
- 19.8 The Provider agrees to cooperate fully in granting the Executive access to the risk register referred to in Clause 19.7 when the Executive, at its own discretion, so requests, subject to compliance with the DPA.
- 19.9 The Provider shall establish and maintain procedures for the making of protected disclosures (as defined by applicable legislation) or equivalent, as required by the Executive, by Provider Personnel and for dealing with such disclosures. The Provider shall endeavour to ensure that all Provider Personnel are made aware of the procedures established and maintained for this purpose.

20. Quality and Standards

- 20.1 The Provider shall develop and deliver the Services to a high quality and standard.

- 20.2 The Provider shall comply with relevant legislation relating to quality and standards and such other appropriate requirements as may be stipulated as applicable to the Services by the Executive and/or recognised standard setting bodies.
- 20.3 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 as applicable to the Services by relevant standard setting bodies. 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.
- 20.4 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.
- 20.5 The Provider shall comply with its obligations set out in Schedule 2 (Quality and Safety).
- 20.6 The Provider shall establish a Quality and Safety Board Committee which shall comply with the requirements set out in Schedule 2 (Quality and Safety).

21. Clinical Governance and Audit

- 21.1 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)).
- 21.2 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.
- 21.3 The Provider shall make arrangements for effective monitoring of clinical care and clinical record keeping.
- 21.4 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.
- 21.5 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.
- 21.6 The Provider will carry out and act on any recommendation of appropriate clinical audits.

22. Information and Confidentiality

- 22.1 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.

- 22.2 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.
- 22.3 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.
- 22.4 Either party may disclose information which would otherwise be confidential notwithstanding anything contained in Clause 22.2:
- (a) if and to the extent required by law or for the purpose of any judicial inquiry or proceedings;
 - (b) if and to the extent required by any regulatory or governmental authority to which that party is subject;
 - (c) if and to the extent necessary or desirable for the conduct of any arbitration pursuant to Clause 29;
 - (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; or
 - (f) if necessary for the Executive to fulfil its statutory object and functions pursuant to Section 7 of the Health Act 2004.
- 22.5 Any information to be disclosed pursuant to Clause 22.4(a) to (f) shall be disclosed only after notice to the other party.
- 22.6 The provisions of this Clause 22 shall continue to apply notwithstanding the termination of this Arrangement for any reason.
- 22.7 The Provider will comply with Part 9A of the Health Act 2004 (as amended by the Health Act 2007) and with any procedures of the Executive established pursuant to Section 55H of that Act.

23. Announcements and Communications

- 23.1 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.

- 23.2 The Provider shall, when requested to do so by the Executive, acknowledge the support of the Executive in its relevant public communications.

24. Freedom of Information

- 24.1 The Provider hereby acknowledges that the Freedom of Information Act 2014 (“**FOI Act**”) applies to the Executive.
- 24.2 In the event that any information or materials held or prepared by the Provider are the subject of a request for information under the FOI Act the Provider will procure that any such materials are supplied promptly to the Executive for consideration and, if appropriate, disclosure.
- 24.3 The FOI Act offers certain procedural protection for some categories of information and the Provider hereby agrees to clearly identify any information or records which it considers to fall within such categories at the time of provision to the Executive, stating the relevant category and the reason why it is believed that the document or information falls within that category.
- 24.4 Notwithstanding Clause 24.3, the Provider hereby acknowledges that the categorisation of the information by the Provider shall not be final or binding on the Executive and that disclosure may be permitted by law notwithstanding such categorisation.
- 24.5 Unless stated otherwise by the Provider when the relevant document or information is provided to the Executive, it will be assumed that such document or information is eligible for disclosure under the FOI Act.
- 24.6 The Executive shall have no liability for any disclosure made by it in accordance with the requirements of the FOI Act and this Clause 24.

25. Data Protection

- 25.1 Both the Executive and the Provider shall have regard to their statutory obligations under the DPA. 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 the DPA and with all of the rules and policies governing the obtaining, 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.
- 25.2 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, under the DPA or pursuant to the laws referred to in Clauses 22.4(f) and 22.7 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.
- 25.3 The Provider shall ensure that it has obtained all consents, 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.

- 25.4 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 and, in responding to such communications, the Provider shall have regard to any views or representations provided by the Executive in relation thereto.
- 25.5 The Provider will promptly 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 or any part thereof (the relevant person in the Executive to be promptly informed is the "main contact person" named in Schedule 1 of this Arrangement). 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 Provider will inform the Executive as soon as possible.
- 25.6 The Provider hereby undertakes to comply with its obligations under this Clause 25.5 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 25.

26. Major Incidents

- 26.1 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.
- 26.2 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 Performance Notice.
- 26.3 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.
- 26.4 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.
- 26.5 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.

27. Force Majeure

- 27.1 “**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 26 of this Arrangement.
- 27.2 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 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.
- 27.3 The Claiming party will promptly notify the Non-claiming party of the nature and extent of the circumstances giving rise to Force Majeure. 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.
- 27.4 If 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.
- 27.5 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.

28. Control of Strategic Claims

- 28.1 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;
 - (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 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.

28.2 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, 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, provided that the Executive shall, where practicable, notify the Provider in advance of such settlement.

29. Dispute Resolution

29.1 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.

29.2 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**”) the parties hereby agree subject to Clause 29.4 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 29.2(b).

(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. 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 twenty (20) Business 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 29.2(c).

(c) **Stage 3**

If the dispute remains unresolved as between the parties after the completion of Stage 2, then the dispute may be referred, with the consent of the Executive, to mediation in accordance with the Centre for Effective Dispute Resolution (“**CEDR**”) Model Mediation Procedure. If the Executive agrees to refer the matter, 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 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 21 days after the appointment of the Mediator.
- (iv) If the dispute or difference has not been resolved by mediation within 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.

(d) **Stage 4**

If the dispute remains unresolved as between the parties after the completion of Stage 3 then the Provider may request the Executive to refer the dispute for full and final resolution to arbitration. If the Executive agrees to refer the matter, 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.

29.3 Arbitration of any dispute arising out of or in connection with the 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 the 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.

29.4 The Executive may refuse to proceed with the dispute resolution process set out at 29.2 in any case where the Executive deems the matter to be frivolous, vexatious, without substance, an abuse of process or adequately dealt with and the Executive shall notify the Provider in writing accordingly.

29.5 The provisions of this Clause shall be without prejudice to the Executive's right, in exceptional circumstances, to withdraw from and terminate the dispute resolution process (including any arbitration) at any stage.

29.6 The provisions of this Clause 29 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 29 relates.

29.7 The provisions of this Clause shall be without prejudice to the Executive's right to terminate the Arrangement pursuant to Clause 30.

30. Termination

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

30.2 Without prejudice to the right of the Executive to terminate this Arrangement in accordance with Clauses 27.4 or 30.1, 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 30.9 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.

- 30.3 The Arrangement may be terminated by the Executive in accordance with Clauses 30.4 to 30.7 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 30.4 are not exercised within 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.
- 30.4 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 Clause 30.4(b), 30.5 and 30.6) 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.
- 30.5 The Provider will have 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 30.4. The Executive shall consider the representations received from the Provider and within 14 days of receipt of same may (in its absolute discretion) meet with the Provider to discuss the matter.
- 30.6 Following expiry of the period provided for in Clause 30.5 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.
- 30.7 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 30 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 30 or not.
- 30.8 For the purposes of Clause 30.2, 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 30.2, 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.

30.9 If, in accordance with Clause 30.2, 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 then the Executive shall give notice in writing to the Board of the Provider specifying:

- (a) 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;
- (b) the respects in which the Executive considers the Provider is in serious breach of the performance of this Arrangement;
- (c) 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 30.9(d) to 30.9(f) below.
- (d) The Provider will have 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.
- (e) The Executive shall consider the representations received from the Provider and may (in its absolute discretion) meet with the Provider to discuss the matter.
- (f) Following expiry of the period provided for in Clause 30.9(d) and having considered the Provider’s representations (if any), the Executive shall make a determination on whether there is a serious breach of the performance of this Arrangement by the Provider and as a result the Executive is to terminate this Arrangement by giving the Serious Breach Notice.

30.10 Termination due to Insolvency, etc of Provider

Without prejudice to the rights of the Executive to terminate this Arrangement pursuant to Clause 12.3 and this Clause 30, and subject always to Clause 31 if

- (a) 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 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 90 days of the date of its presentation) or if an order is made for the winding up, administration or liquidation (or any equivalent of the foregoing) 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 is appointed over the whole or the whole or substantially the whole of the assets or undertaking of the Provider;
- (b) 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;
- (c) 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 any applicable law deemed to be unable to pay its debts;
- (d) 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;
- (e) any similar events to the above occurring under any other relevant jurisdiction in which the Provider is incorporated, resident or carries on business); or
- (f) the Provider (or a key member of the Provider's Personnel) dies or becomes incapacitated 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,

then this Arrangement shall terminate immediately, without prejudice to the Executive's rights and remedies.

30.11 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.

31. Effect of Termination or Expiry

31.1 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.

- 31.2 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.
- 31.3 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.
- 31.4 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.
- 31.5 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 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.
- 31.6 Upon termination or expiry of the whole or any part of this Arrangement:
 - (a) the Provider shall, subject to the DPA, 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 in its possession or under its control that belongs to, or has been predominantly funded by, the Executive.
- 31.7 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.

32. Representations and Warranties of the Provider

The Provider represents and warrants to the Executive that:

- 32.1 it has all necessary power and authority to execute, deliver and perform its obligations under this Arrangement;
- 32.2 the execution, delivery and performance by it of this Arrangement has been authorised by all necessary action on its part; and
- 32.3 each of the obligations of the Provider under this Arrangement constitutes a legally binding obligation.

33. General

33.1 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.

33.2 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.

33.3 Notices

- (a) Subject to Clause 33.3(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 Notice) and Clause 29 (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 33.3(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 facsimile, when the sender receives a completed transmission sheet or otherwise receives a mechanical confirmation of transmission.
- (f) Any notice or other communication given or made, or deemed to have been given or made, outside Working Hours will be deemed not to have been given or made until the start of the next period of Working Hours.
- (g) The relevant notice details are:

Title of recipients:	Address:	Facsimile number:
<i>[Insert names of HSE Responsible Contact- there may be several contacts depending on areas covered]</i>	<i>[Insert Address of HSE Responsible Contact]</i>	<i>xxx</i>
<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>	<i>xxx</i>

- (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 shall not apply in relation to the legal service of documents.

33.4 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.

33.5 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.

33.6 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 an employee of the Executive of a grade not less than National Director and specifically identified by title as an amendment to this Arrangement in order to be valid, enforceable or binding. This Clause 33.6(b) does not apply to the amendment of the Schedules to this Arrangement which is governed by Clause 33.10.
- (c) For administrative purposes, the Provider shall send the Executive a copy of this Arrangement signed by the Provider for the Executive's records.

33.7 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) 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.

33.8 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.

33.9 **Entire Agreement**

- (a) For the purposes of this Clause, “**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.

33.10 **Variation**

- (a) The Schedules to this Arrangement may be varied in writing (excluding electronic methods of writing) signed by each of the parties. Any request for a change to the Schedules (other than changes to the Schedules arising as a result of the introduction of a new set of Schedules annually or at such other time as notified by the Executive) shall be accompanied by a completed Contract Change Note (CCN), as included within Schedule 10 (Change Control). Until such time as a Contract Change Note (CCN) has been signed by both parties, the Service Provider shall, unless otherwise expressly agreed in writing, continue to supply the Services in accordance with the Schedules to this Arrangement.
- (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 the Arrangement.

33.11 **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.

33.12 **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.

33.13 **Governing Law and Jurisdiction**

- (a) This Arrangement shall be governed by and construed in accordance with the laws of Ireland.
- (b) The parties to this Arrangement irrevocably agree that the courts of Ireland are to have exclusive jurisdiction to settle any dispute arising out of or in connection with this Arrangement and, for such purposes, irrevocably submits to the exclusive jurisdiction of such courts. Any proceeding, suit or action arising out of or in connection with this Arrangement (the “**Proceedings**”) shall therefore be brought in the courts of Ireland.
- (c) The parties to this Arrangement irrevocably waives any objection to Proceedings in the courts referred to in Clause 33.13(b) on the grounds of venue or on the grounds of forum non conveniens.

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

Signed by _____ *Name:*
for and on behalf of **[PROVIDER]:** _____

_____ *Print Name:*
Date _____
.....

Title:

Signed by _____ *Name:*
for and on behalf of the _____
HEALTH SERVICE EXECUTIVE: _____

Print Name:

Date _____
..... *Title:*