



HEALTH SERVICE EXECUTIVE

And

[THE PROVIDER]

SERVICE ARRANGEMENT
Section 39 Health Act 2004

ARRANGEMENT STRUCTURE

This Arrangement consists of two parts:

- Part 1 which comprises 38 clauses and incorporates Schedules 1 to 6; and
- Part 2 which comprises all HPSRs entered into with all Funding Health Regions, Funding IHAs or national offices of the Executive (or, where applicable, each Funding CHO or Hospital Group) in respect of this Arrangement.

Note 1- Part 1:-

- The clauses set out in Part 1 are standard for all Arrangements under Section 39 of the 2004 Act with Providers in the same care group as the Provider.
- The Schedules attached to (and which form part of) Part 1 are standard for all Providers in the same care group as the Provider.
- Part 1 shall be executed by the parties at the commencement of the Duration of this Arrangement.
- With regard to signing of Part 1:
 - In the case of a Provider funded by a single Health Region, Part 1 shall be executed by or on behalf of the REO for the Funding Health Region at the commencement of the Duration of this Arrangement.
 - In the case of a Multi-Funded Provider, execution of Part 1 shall be arranged by the Lead Health Region and executed by or on behalf of the Lead REO for the HSE, at the commencement of the Duration of this Arrangement. This signed Part 1 shall be the only Part 1 which shall be executed by the parties in respect of an Arrangement with a Multi-Funded Provider and it shall apply to the entire Arrangement with all Funding Health Regions.
 - Where a Provider is funded by a national office of the Executive and that national office of the Executive is the lead funder, execution of Part 1 shall be arranged by and Part 1 shall be executed by the National Director in respect of the applicable national office at the commencement of the Duration of this Arrangement.

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

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

HPSRs for each Funding Health Region, Funding IHA or national office of the Executive (or, where applicable, each Funding CHO or Hospital Group) will together comprise the Arrangement for a Multi-Funded Provider.

Note 3 - With regard to execution of the Arrangement - See also Clause 38.12 (Counterparts)

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PART 2 OF SERVICE ARRANGEMENT

Healthcare Provider Specific Requirements (HPSR)

Section 1 – Contact Details

Section 2 – Funding Particulars

Section 3 – Service Delivery Specification

Section 4 – Further Information and Governance Requirements

SERVICE ARRANGEMENT – PART 1

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

BETWEEN

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

AND

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

BACKGROUND

- (A) The Executive is required by statute to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. The Health Acts empower the Executive, on such terms and conditions as it sees fit to impose, to give assistance to the Provider in respect of a service provided by the Provider which is similar or ancillary to a service that the Executive may provide. This Arrangement sets out the conditions to the provision of the Funding from the Executive to the Provider for the Services.
- (B) The Executive wishes to support the provision of the Services and the Provider wishes to provide the Services.
- (C) Now, therefore, the Executive and the Provider enter into this Arrangement for the provision of Funding to the Provider to facilitate the performance of the Services for the Service Users on the terms and conditions specified below and in relation to the applicable Catchment Area.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Arrangement (including the Background):

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

“**Additional Services**” has the meaning given in Clause 4.2;

“**Adverse Incident**” has the meaning ascribed to such term in the National Treasury Management Agency (Amendment) Act 2000;

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

“**Authorised Person**” has the meaning given in Clause 12.2;

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

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

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

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

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

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

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

“Claiming party” has the meaning given in Clause 33.1;

“Clinical Indemnity Scheme” means the scheme operated by the State Claims Agency which manages clinical negligence claims associated with the provision of, or failure to provide professional medical services taken against healthcare enterprises, hospitals and clinical, nursing and allied healthcare practitioners covered by the scheme;

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

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

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

“Community Connect” means a patient and process management system for the purpose of supporting the delivery of services/care within and across Community Healthcare settings;

“Contract Change Note” or **“CCN”** has the meaning ascribed to such term in Clause 38.10 (Variation);

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

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

“Direct Provider Personnel” means all officers, employees and volunteers employed or engaged (on any basis) directly by the Provider;

“Duration of this Arrangement” means a period commencing on the Commencement Date and continuing until the Expiration Date unless terminated in accordance with Clause 35 (Termination or Expiry) provided always that the details of the HPSRs shall be agreed annually by the parties or at such other time as notified by the Executive;

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

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

“Finance Reform Programme” means the strategic transformation programme of the Executive, a key element of which is the implementation of IFMS based on a set of national standard finance and procurement processes, a single national chart of accounts and national enterprise structure and a new national shared services model;

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

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

“First Notification Letter” has the meaning given in Clause 14.1;

“First Performance Notice” means a notice given in accordance with Clause 14.1(d);

“FOI Act” has the meaning given in Clause 29.1;

“Force Majeure” has the meaning given in Clause 33.1;

“Funding” means all forms of 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;

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

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

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

“Governance Framework for the funding of non-statutory organisations” means the Executive’s formal management framework covering the funding provided to non-statutory organisations for the provision of health and personal social services;

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

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

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

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

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

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

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

“HPO” means the Healthcare Pricing Office;

“HPSR” means the Healthcare Provider Specific Requirements;

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

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

“ICT” means information and communication technology;

“ICT National Solution” means any ICT system or service, including any Shared Service, made available by the Executive to the Provider at any time for utilisation by the Provider as part of national solutions to support integration across the publicly funded health and social care sector to drive efficiency, standardisation, consolidation, reduction in duplication and control cost, in the area of corporate, clinical and administrative solutions, including as examples but not limited to IFMS, Community Connect and National EHR;

“IFMS” means the single national integrated financial management and procurement system to be made available by the Executive to the Provider as part of government policy in respect of Shared Services, including the Finance Reform Programme, and under which certain Shared Services, including with regard to financial management, procurement and related support services, will be provided by the Executive to end users and which will be hosted and administered by the Executive on a shared national platform;

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

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

“IMR” has the meaning given to such term at Clause 10.3 (Integrated Management Report);

“Incident” means, as defined by the Incident Management Framework, an event or circumstance which could have, or did lead to unintended and/or unnecessary harm. Incidents include adverse

events which result in harm, near misses which could have resulted in harm, but did not cause harm, either by chance or timely intervention and staff or service user complaints which are associated with harm. Incidents can be clinical or non-clinical and include Incidents associated with harm to:

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

"Incident Management Framework" means the Executive's Incident Management Framework and Guidance 2020 as same may be amended from time to time;

"Indirect Provider Personnel" means all agents and contractors engaged (on any basis) by the Provider or by any sub-contractor or agent of the Provider but excluding for the avoidance of doubt anyone who is classified as Direct Provider Personnel;

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

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

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

"Major Incident" means an occurrence:

- (a) causing an unexpected surge in demand for the Services; or
- (b) materially impacting on any aspect of the Services (where, for the purposes of this definition, "materially impacting" means an occurrence causing an unexpected surge in demand which results in an increase of 5 % or greater in demand for the resources of the Provider),

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;

"Major Provider" means a Provider who is in receipt of Funding of €10 million or greater per annum or receives 50% or more of its gross receipts from the Executive (or a State or Government body);

“Minister” means the Minister for Health;

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

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

“National EHR” means national electronic health record;

“NIMS” means The National Incident Management System (NIMS). The primary legislation governing the NIMS is the National Treasury Management Agency (Amendment) Act, 2000 and Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023. It is a confidential and secure web based system risk management tool that allows health enterprises to manage Incidents throughout the Incident lifecycle which includes:

- (a) Reporting of Incidents (including Serious Reportable Events and Notifiable Incidents);
- (b) Management of investigations and reviews;
- (c) Recording and tracking open disclosure;
- (d) Recording of investigation and review conclusions;
- (e) Recording of recommendations;
- (f) Tracking recommendations to closure; and
- (g) Analysis of Incident, investigation and recommendations data and other functionality.

“Non-claiming party” has the meaning given in Clause 33 (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 4.3;

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

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

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

“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 38.9 (Entire Agreement);

“Procurement Group”, for the purpose of a collective procurement process of the type referenced at Clause 8.7, may include any of the voluntary hospitals and such other providers who receive funding from the Executive pursuant to section 38 and/or 39 of the 2004 Act as the Executive may notify to the Provider from time to time;

“Professional Medical Services” means:

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

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

“Provider Personnel” means all Direct Provider Personnel and Indirect Provider Personnel;

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

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

“Reorganisation or Restructuring” means:

- (a) any significant reconstruction, reorganisation or change in the constitution of the Provider or its associated undertakings, including without limitation in the case of a company, any significant variation in the share capital of the company, a capitalisation issue, rights issue, sub division, consolidation or reduction in the capital of the company, compromise or arrangement sanctioned by the court under Chapter 1 of Part 9 of the Companies Act 2014;
- (b) acquisition of all or part of the Provider's undertaking associated with the Services by any person; or
- (c) any merger, de-merger, amalgamation or sub-division, howsoever effected, relating to the Provider;

"Review Meetings" means the meetings held pursuant to Clause 13.2;

"Review Process" has the meaning given in Clause 13.1;

"Second Notification Letter" has the meaning given in Clause 14.2;

"Second Performance Notice" means a notice given in accordance with Clause 14.2(d);

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

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

"Services" in respect of this Arrangement, means the services as set out in Section 3 (Service Delivery Specification) of all HPSRs forming part of the Arrangement and, in respect of a particular Funding Health Region (or, where applicable, a particular Funding IHA, Funding CHO, Hospital Group or national office of the Executive) means the services as set out in the applicable HPSR in respect of such particular Funding Health Region (or, where applicable, a particular Funding IHA, Funding CHO, Hospital Group or national office of the Executive), in either case, such Services to be provided by the Provider in accordance with the terms of this Arrangement;

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

"Shared Services" means any centralised services which are made available by or on behalf of the Executive to the Provider, including in connection with any ICT National Solution from time to time;

"State Claims Agency" is part of the National Treasury Management Agency and pursuant to the National Treasury Management Agency (Amendment) Act 2000 manages certain claims on behalf of the State (to include personal injury and third party property claims), provides risk management advices and assistance to State authorities and manages clinical risk management and the management of clinical negligence claims referred to as the Clinical Indemnity Scheme;

"Strategic Claim" means any claim, action, demand or proceedings (each a **"Claim"**) other than a claim within the meaning of Section 7 of the National Treasury Management Agency

(Amendment) Act 2000 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;

“Transfer Regulations” means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003; and

“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 legislative provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, re-enacted or consolidated;
- (e) any reference to a **“day”** or a **“Business Day”** shall mean a period of twenty-four (24) hours running from midnight to midnight except in Clause 38.3(Notices) where it means a weekday (excluding a Saturday, Sunday or any public or bank holiday);
- (f) references to times are to times in Ireland;
- (g) references to a **“month”** shall mean a calendar month;
- (h) a reference to any other document referred to in this Arrangement is a reference to that other document as amended, varied, novated or supplemented at any time;
- (i) any phrase introduced by the terms **“including”**, **“include”**, **“in particular”** or other similar expression shall be construed as illustrative and shall not limit the sense or meaning of the words preceding those terms;
- (j) references to the singular include the plural and vice versa;

- (k) references to the masculine include the feminine and vice versa; and
 - (l) save as otherwise provided in this Arrangement, the Interpretation Act 2005 applies to this Arrangement in the same way as it applies to an enactment.
- 1.3 All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Arrangement.
- 1.4 In the event of any conflict between Part I of this Arrangement and the HPSR, Part I of this Arrangement shall prevail, unless explicitly stated otherwise.
- 1.5 The parties acknowledge that implementation of the HSE Restructuring will occur in the course of the Duration of this Arrangement on a phased implementation basis with various changes to occur at various times throughout the transition period for the purpose of establishing the Health Regions and Health Region Executive Management Teams and transferring certain rights, responsibilities and accountabilities relating to this Arrangement from the current holders to the transferees of such rights, responsibilities and accountabilities under the HSE Restructuring (not least the transfer of certain rights, responsibilities and accountabilities from National Directors to REOs or, in certain cases, to the Lead REO by virtue of the HSE Restructuring) as envisaged by the HSE Health Regions Implementation Plan. The parties further acknowledge and agree that this Arrangement shall be subject to and implemented in a manner which gives effect to the HSE Restructuring. Following the replacement of CHOs and Hospital Groups by Health Regions and IHAs as part of the HSE Restructuring, overall responsibility for the Arrangement on the part of the Executive will be held by the Lead REO (or, where applicable, National Director) but, where appropriate, certain responsibilities may be assumed by REOs (or, for example, other members of the Health Region Executive Management Team) of other Funding Health Regions or to units/divisions within the HSE Centre (as referred to in the HSE Health Regions Implementation Plan).
- 1.6 Wherever it is provided in the Arrangement that, following and as a result of implementation of the HSE Restructuring, a responsibility is held, a determination must be made, an action approved or a consent provided by an REO or Lead REO or by an employee of the HSE of a grade no lower than REO or Lead REO, in circumstances where a HPSR is entered into with a national office of the Executive, the foregoing references to REO shall be deemed to be references to the National Director of the applicable national office of the Executive (and, where that national office is the lead funder, the foregoing references to Lead REO shall be deemed to be references to the National Director) and the foregoing references to an employee of the Executive of a grade no lower than REO or Lead REO shall be deemed, for this purpose, to include a National Director.

2. PRINCIPLES OF ARRANGEMENT

- 2.1 The Executive hereby agrees to 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 Section 3 (Service Delivery Specification) of the HPSR. The Provider shall apply the Funding exclusively for the provision of the Services.
- 2.2 As a condition to the provision of the Funding, the Provider hereby commits to support, implement and advance any such change and modernisation of health and personal social services, as required by the Executive, in line with Government policy over the course of the Duration of this Arrangement.

2.3 As a condition to the provision of the Funding and in accordance with the terms of this Arrangement, the parties agree that in carrying out their respective obligations under this Arrangement, they shall endeavour, within the agreed Funding and without prejudice to any statutory rights or obligations of the Executive, to:

- (a) develop and deliver the Services to a high quality and standard and in line with national health strategy, in particular Slainte Care, and/or any other applicable national framework for action to improve the health and wellbeing of people living in Ireland;
- (b) seek to respond to the assessed needs of Service Users and to improve accessibility to the Services;
- (c) pursue, where possible, a collaborative approach with other voluntary, community and statutory service providers and agencies;
- (d) pursue the development of processes that enable local communities and Service Users to be involved in decision-making in the planning and delivery of the Services;
- (e) demonstrate their commitment to the principle of accountability, as set out in this Arrangement, 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) comply with the government decision in relation to procurement which mandates “Health” to act as one voice to the market, and recognise and cooperate with the Executive’s shared Services in this regard;
- (j) protect, preserve, recognise and acknowledge any proprietary interest of the Executive, the State or any other statutory body in all property, whether real or personal, used in relation to or in connection with the Services; and
- (k) 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 both parties’ interests.

2.4 The parties agree that, unless the context otherwise requires, the requirements, requests and obligations arising from this Arrangement are limited to and applicable only in respect of the Services and Funding provided pursuant to this Arrangement.

2.5

- (a) The Executive reserves all of its statutory powers, discretion and rights in respect of the management and delivery of health and personal social services and may carry out

strategic reviews of the provision of such services from time to time. For the avoidance of doubt and except as specifically agreed in writing from time to time in accordance with the HPSR, the Executive makes no commitment, provides no warranty, representation, or guarantee to the Provider as to:

- (i) the nature, continuation or amount (if any) of Services to be provided under this Arrangement; nor
- (ii) the proportion or mix of Services which may be required from time to time; nor
- (iii) the number of providers which may be engaged from time to time to provide Services to the Executive; nor
- (iv) 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.

(b) In the event that:

- (i) the services to be provided under this Arrangement are curtailed or varied; or
- (ii) the Provider is not retained as a provider for the provision of the services to the Executive;

with the result that the Provider ceases to function, or continues to function in a significantly reduced manner, the Executive agrees, in circumstances where the Transfer Regulations apply, to arrange the redeployment to the Executive or any replacement provider of such of the Direct Provider Personnel as are the Provider's employees.

3. ROLES AND RESPONSIBILITIES

3.1 Duties of the Executive

- (a) Subject to the Executive's statutory responsibilities and obligations, with respect to the provision of the Services generally and to the Executive's responsibilities in relation to public funds, and having regard to the level of funding made available to it by the Exchequer, the Executive will agree the Funding to be made available to the Provider in respect of the delivery of the Services in accordance with the NSP.
- (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) accept the independent identity and operational autonomy of the Provider in the provision of the Services under this Arrangement (subject to the terms and conditions contained in this Arrangement);

- (iii) where the Executive, in its sole discretion, considers it appropriate, take such steps as the Executive thinks fit to assist the Provider in its compliance with all applicable legal obligations directly related to the provision of the Services but, for the avoidance of doubt, the Provider acknowledges that the Executive shall in no way be liable under this Arrangement or otherwise for the failure of the Provider to comply with its legal obligations, compliance with which shall remain solely and entirely the responsibility of the Provider;
- (iv) subject to any obligations of confidentiality (including obligations in respect of the “in camera” rule) imposed on the Executive, provide the Provider with any information, that the Executive has which, in the reasonable opinion of the Executive, is necessary for the performance by the Provider of its obligations under this Arrangement;
- (v) put in place an agreed payments arrangement in respect of the Funding to be given under this Arrangement; and
- (vi) meet at reasonable intervals with representatives of the voluntary sector of which the Provider forms part to discuss matters of relevance to service arrangements with that sector, in the context of the Governance Framework for the funding of non-statutory organisations or under the auspices of the Dialogue Forum with Voluntary Organisations (or any successor) or otherwise.

3.2 Duties of the Provider

(a) **General**

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

(b) **Provision of the Services**

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

- (i) make available and provide access to the Services as set out in Section 3 (Service Delivery Specification) of the HPSR for the Duration of this Arrangement;
- (ii) develop and deliver services consistent with the Executive’s NSP and Corporate Plan as may be prepared by the Executive;
- (iii) make available to each Service User those Services that are consistent with the individual needs of that Service User having regard to available resources and the Services;

- (iv) carry out faithfully and diligently all duties and responsibilities which may be required to ensure the provision of the Services in a timely and efficient manner, to a standard which is in all respects to the reasonable satisfaction of the Executive;
- (v) comply with the Executive's policies and objectives as outlined in the NSP which are relevant to the Services, the Funding, governance matters and the Arrangement;
- (vi) comply with such policies, objectives and directions of the Minister which are relevant to the Services, the Funding, governance matters or the Arrangement as may be issued or otherwise communicated to the Provider from time to time; and
- (vii) respect the individuality of the Service User and the principle of promotion of the well-being of each Service User in accordance with Clause 7 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 procure that the same are complied with in all respects by all Provider Personnel;
- (iv) where delegated to the State Claims Agency (who operate the Clinical Indemnity Scheme) comply with the requirements of the National Treasury Management Agency (Amendment Act) 2000 and any and all ancillary and related legislation in relation to Adverse Incident reporting, risk management and claims management;
- (v) comply with the requirements of the Incident Management Framework as may be amended from time to time and any and all other relevant policies and guidelines;
- (vi) if indemnified by the State Claims Agency, use NIMS if required as the primary ICT system to report and manage Incidents;
- (vii) not pay nor subsidise salaries, expenses or other perquisites (including, but not limited to, bonus payments and benefits in kind) which exceed those normally paid within the public sector and to have regard to the Department of Health Circular 11/2013, as may be updated, amended or replaced from time to time and all requirements of Government pay policy as may be notified to the Provider from time to time in respect of remuneration of senior employees and officers of the Provider;

- (viii) obtain and maintain all licences, permits and permissions necessary to provide the Services in accordance with applicable laws and regulations and shall notify the Executive immediately in the event that such licences, permits and permissions are not obtained or maintained;
- (ix) respect and comply with the statutory role and regulatory and public accountability responsibilities of the Executive and other relevant statutory bodies and at all times co-operate fully with the Executive, any committees of the Board of the Executive and all other statutory bodies in this regard;
- (x) comply with all requirements of the Financial Regulations in respect of the sourcing of suppliers for works and related service contracts which are funded more than fifty percent (50%) by the Executive;
- (xi) comply with the provisions of Part 3 of the Disability Act 2005;
- (xii) comply, if applicable, with the provisions of S.I. No. 359 of 2008: European Communities (Vehicle Drivers Certificate of Professional Competence) (No. 2) Regulations 2008;
- (xiii) immediately or as soon as practicable, and in compliance with Data Protection Laws, notify the Executive in writing of the occurrence of any significant matters which may affect the delivery, provision or level of the Services. In the case of a Category 1 Incident, Serious Reportable Event or a Notifiable Incident, the Chief Executive Officer or equivalent should immediately notify the Executive, and all other applicable parties which may include HIQA and/or the Mental Health Commission and/or the State Claims Agency;
- (xiv) inform the Executive of any changes to its officers, e.g. Treasurer, Chairperson, Directors or Secretary and inform the Executive of any change of Auditors;
- (xv) 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;
- (xvi) comply with the provisions of the Health Acts and any legislation regarding eligibility and any further relevant legislation passed after the date of this Arrangement;
- (xvii) have in place an ethics committee or other appropriate process;
- (xviii) act (and ensure that persons providing Services on its behalf act) in accordance with its fiduciary duties where a fiduciary relationship exists between the Provider and a Service User and in accordance with the Codes of Practice and any relevant guidance issued by the Department of Health, the Department of Children, Equality, Disability, Integration and Youth, the Child and Family Agency and/or the Executive from time to time;
- (xix) keep itself fully apprised and compliant with all of its responsibilities under the Fire Services Act 1981 (in particular Section 18) and the Safety, Health and Welfare at Work Act 2005;

- (xx) procure and maintain insurance in accordance with Clause 15 and Schedule 4 (Insurance);
- (xxi) 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;
- (xxii) in respect of any Provider which is a charitable organisation, comply with relevant legislation applicable to charitable organisations;
- (xxiii) comply with all legal requirements and national guidelines issued by any Government Department or the Executive in respect of child protection and protection of adults at risk of abuse and comply with all reporting procedures including any time limits set by statute in respect of suspected or actual abuse and shall notify the Executive of any reports and report to their insurer and/or State Claims Agency in the case of Providers indemnified under the Clinical Indemnity Scheme;
- (xxiv) comply with all applicable laws and regulations and the Codes of Practice as they relate to Infectious Diseases, including any procedures and requirements of the Executive or employees of the Executive designated to perform medical officer of health or chief medical officer functions in accordance with the Infectious Diseases Regulations 1981 and Schedule 5 of the 2004 Act, in providing the Services, including obligations to report cases or outbreaks of Infectious Disease and the general duty to take precautions against infecting others with Infectious Disease, and procure that same are complied with by Provider Personnel;
- (xxv) comply with the provisions of the Official Languages Act 2003 and regulations made pursuant to that act, including S.I. No. 391 of 2008;
- (xxvi) comply in full with the provisions of the Department of Public Expenditure and Reform Circular 13/2014 Management of and Accountability for Grants from Exchequer Funds, such as the “Statement of Principles for Grantees”; and
- (xxvii) support and co-operate with the role of the Executive’s independent confidential recipient;

4. FUNDING

- 4.1 Subject to the terms and conditions of this Arrangement, the funds to be paid by the Executive to the Provider inclusive of all duties, taxes, expenses and other costs associated with or incurred in the provision of the Services shall not exceed the amount specified in paragraph A (Funding Details > Total Payments) of Section 2 (Funding Particulars) of the HPSR, which amount shall be payable to an account nominated by the Provider as set out in paragraph C of Section 2 (Funding Particulars) of the HPSR.
- 4.2 If the Executive and the Provider agree in advance that any additional services are to be provided by the Provider under the terms and subject to the conditions of this Arrangement, the amount and timing of any payment(s) due in respect of and the specification(s) for such additional service(s) (the “**Additional Services**”) shall be agreed in writing between the Provider and the Executive prior to the commencement of provision of those services as described in Section 3 (Service Delivery Specification) of the HPSR. Once funding has been agreed in respect of any

Additional Services, that funding shall be treated as part of the Funding for the purposes of this Arrangement, and the Additional Services shall be treated as part of the Services for the purposes of this Arrangement. The Additional Services shall be agreed via a Contract Change Note utilising the change control process at Clause 38.10 (Change Control).

- 4.3 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.
- 4.4 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.
- 4.5 The Executive may require the Provider to remit any fees collected by the Provider (in accordance with Clause 4.4) to the Executive, and for the avoidance of doubt, the Executive shall be entitled to invoke the provisions of Clause 6 (Set-off) in respect of any sums owing to it.
- 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, theft or misappropriation within the Provider, in respect of the Services or arising out of this Arrangement. This shall include the notification by the Provider of the matter to An Garda Síochána and the provision by the Provider to the Executive of copies of all statements made. The Provider shall cooperate with any directions of the Executive in this regard and shall comply with applicable law, including Data Protection Laws, in such circumstances.
- 4.7 Provision of the Funding to the Provider shall be conditional on the Provider having at all times a current valid tax clearance certificate, a copy of which must be furnished by the Provider to the Executive upon request.

5. CAPITAL FUNDING

- 5.1 The funds to be paid by the Executive to the Provider solely for the purpose of capital expenditure shall be managed under a separate process, that is, the Executive's Capital Programme, and do not form part of this Arrangement.
- 5.2 The undertaking by the Provider of any project involving capital expenditure (whether or not wholly or partly funded under the Executive's Capital Programme) that will or may at any time require assistance (including financial assistance) of a revenue nature or otherwise will not result in any obligation being imposed on the Executive to provide any such assistance at any time.
- 5.3 All capital expenditures associated with ICT are subject to the Financial Regulations, DPER Circular 14/2021 on "*Arrangements for Oversight of Digital and ICT related Initiatives in the Civil and Public Service*" and Clause 9 of this Arrangement.

6. SET-OFF

The Provider expressly agrees that the Executive, having given not less than fourteen (14) days' written notice to the Provider, shall be entitled to withhold and set off monies owing to the Provider in accordance with this Arrangement in the event and to the extent that the Provider

owes any monies, damages, costs or expenses to the Executive as a result of or in connection with the Provider's performance or failure to perform its obligations under this Arrangement.

7. SERVICE USER CENTRED CARE

- 7.1 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.
- 7.2 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;
- 7.3 All Service Users shall be treated by the Provider equitably. The co-existence of public and private practice within the public system shall not undermine the principle of equitable access.
- 7.4 The Provider shall be required to demonstrate a high level of consultation with Service Users, their advocates and families, in the development of new services, strategic planning and evaluation of existing services. The Provider shall provide verifiable evidence throughout the Duration of this Arrangement that such consultation and resulting actions have been undertaken.
- 7.5 The Executive and the Provider are committed to protecting Service Users, whose safety is of paramount importance. The Provider shall ensure that Service Users are made aware of the right to be free from abuse (mental, physical, emotional, sexual and financial) and neglect. The Executive acknowledges that the degree to which Service Users may be made aware of this right will vary depending upon the capacity of the Service User concerned. The Provider shall also establish and maintain a formal protection from abuse policy and complaints procedure that is accessible to all Service Users, their advocates and carers, and which is consistent with applicable Codes of Practice.
- 7.6 The Provider will establish and maintain appropriate systems, controls and procedures in respect of the private property of Service Users which is in accordance with best practice and all applicable law and Codes of Practice.
- 7.7 The Provider will ensure that it keeps full and complete records in respect of Service Users and, where a Service User is unable to manage his/her affairs due to mental or other incapacity, in respect of persons authorised to act on behalf of the Service User.

8. PROCUREMENT AND VALUE FOR MONEY INITIATIVES

- 8.1 While this Arrangement is not a "**public service contract**", as such term is defined under the Procurement Regulations, the Executive is statutorily required to be accountable for expenditure on health and personal social services and the Provider acknowledges that value for money in service delivery must be ensured. The Executive is making the Funding available for the Services, as outlined in Section 3 (Service Delivery Specification) of the HPSR.
- 8.2 The Provider will undertake the procurement of works, supplies and services in relation to this Arrangement (whether alone or in collaboration with one or more other entities) in compliance with the fundamental principles of European Union law in respect to procurement, namely, transparency, equality of treatment, non-discrimination and proportionality, and shall generally adopt best practices in terms of procurement including, where applicable, in accordance with Public Procurement Law. The Provider shall obtain the prior consent of the Executive to undertake such procurement if the procurement is to be part of a joint arrangement.

- 8.3 The Provider hereby indemnifies the Executive against any costs, expenses or damages arising out of any claim, demand or proceedings made against the Provider and/or the Executive in respect of any award of supplies, goods, services or works made pursuant to or in connection with this Arrangement other than to the extent that, with regard to any such claim, demand or proceedings, the Executive played a material role in the awarding of such supplies, goods, services or works and the costs, expenses or damages arising were not caused or exacerbated in whole or in part by an act or omission by or on behalf of the Provider. The Provider shall reimburse the Executive within three (3) months of the receipt of an invoice by the Provider for all costs, expenses or damages incurred by the Executive in preparing and defending any indemnified claim, demand or proceedings made in respect of this Clause. The Provider shall co-operate, liaise and keep the Executive informed of any claim demand or proceedings made in respect of this Clause.
- 8.4 The Executive hereby indemnifies the Provider against any costs, expenses or damages arising out of any claim, demand or proceedings made against the Provider in respect of the process of award of any supplies, goods, services or works contracts awarded by the Executive and availed of by the Provider pursuant to or in connection with this Arrangement.
- 8.5 The Provider will use its best endeavours to drive, deliver and report value for money in its use of the Funding and in the delivery of the Services in a manner that maximises effectiveness and outcomes in the use of public funds and will co-operate and collaborate with the Executive in the achievement of value for money.
- 8.6 In collaborating with the Executive in achieving value for money the Provider will comply with applicable procurement initiatives of the Executive (as determined by the Executive). To the extent applicable or appropriate, the Executive will be entitled to avail of the Provider's procurement initiatives having regard to this Arrangement.
- 8.7 Subject to Clause 8.1, the Executive, in consultation with the Provider, may request the Provider to procure, on behalf of the Executive, such additional services or supplies as may be notified by the Executive in advance in writing to the Provider. Such additional services or supplies may be for the benefit of the Executive or any member of a Procurement Group. In this regard the Provider undertakes to do all such things as may be necessary to give effect to procuring such supplies/service for the benefit of the Executive or a member of a Procurement Group.
- 8.8 Without prejudice to Clause 4, the Executive may, in consultation with the Provider and following consideration of the likely impact on the Services, offset savings associated with value for money initiatives against the Funding and only the reduced sum shall be payable as Funding by the Executive.
- 9. ICT**
- 9.1 In recognition of the Executive's obligations under relevant circulars issued by the Department of Finance and/or the Department of Public Expenditure, NDP Delivery and Reform, the Provider shall obtain prior sanction from the Executive for all of its ICT spend which is not Business as Usual ("**BAU**") spend. The Provider shall obtain formal written approval from the Executive's Technology and Transformation function in advance of procurement competitions being initiated for all ICT spend which is not BAU spend. The Provider shall not enter into procurement commitments in respect of any ICT spend which is not BAU spend unless and until the proposed expenditure has been approved by the Executive's Technology and Transformation function. DPER Circular 14/2021 on "*Arrangements for Oversight of Digital and ICT related Initiatives in the*

Civil and Public Service” shall apply in this regard, including with regard to any minimum threshold requiring such prior sanction and the term BAU.

9.2 The Provider will engage and co-operate with the Executive with regard to ICT National Solutions and will implement and use any ICT National Solution which is made available to the Provider by the Executive from time to time for the purpose of or in connection with this Arrangement (including with regard to applicable Shared Services). The purpose of provision of any ICT National Solution by the Executive is to effect implementation of national policy to support integration across the publicly funded health and social care sector in order to drive efficiency, standardisation, consolidation, reduction in duplication and cost control and, subject to the Executive’s statutory responsibilities and obligations with respect to the relationship of the Executive and the Provider and having regard to the Executive’s responsibilities in relation to public funds and the provisions of this Arrangement, is without prejudice to the independent identity and operational autonomy of the Provider. The following apply:

- (a) Without prejudice to Clause 30, each of the Parties shall comply with Data Protection Laws in its use of the ICT National Solution and with applicable Terms (as defined at Clause 30.1) in respect of each such ICT National Solution.
- (b) Nothing arising from the implementation of any ICT National Solution (including the provision of a Shared Service) shall alter the nature of employment relations as stated at Clause 17 of this Arrangement (including Clause 17.13).
- (c) The Provider hereby acknowledges that the ICT National Solutions are provided as part of national policy to support integration across the publicly funded health and social care sector in order to drive efficiency, standardisation, consolidation, reduction in duplication and control cost to the mutual benefit of the Executive and Provider and that the ICT capital cost of implementation of the ICT National Solutions is borne by the Executive and, accordingly, agrees to consult, co-operate and collaborate with the Executive in good faith with regard to all matters arising in connection with ICT National Solutions, including endeavouring to avoid disputes, and to deal with issues as they arise through direct engagement between the Parties.

10. INFORMATION REQUIREMENTS

10.1 Request for Information

The Provider agrees that it will comply with a written request from the Executive for any information that the Executive considers material with regard to the provision of the Services or this Arrangement. The Executive shall specify in any written request under this Clause 10.1 the information required and the reason for the request. All such requests will have due regard to Data Protection Laws as outlined in Clause 30.

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

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

10.3 Integrated Management Report

- (a) The Provider will comply with the obligations set out in Schedule 1 (Funding) and in Section 2 (Funding Particulars) of the HPSR, including in respect of provision of an

Integrated Management Report (“IMR”) as referenced at Part A of Schedule 3 (Requirements for Information, Performance Monitoring and General Governance) where applicable.

- (b) In addition to its obligations under Clause 10.3(a), in the event that issues are anticipated or arise during a Financial Year, 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 within that Financial Year.

10.4 **Audit and Information**

The Provider shall:

- (a) ensure that its system of internal audit shall comply with the following principles:
 - (i) the internal audit function should have a formal charter which has been approved by the Board of the Provider;
 - (ii) the internal audit function should be conducted within professional guidelines for internal auditing and financial and management accounting;
 - (iii) the head of (or person responsible for) the internal audit function should report directly, where applicable, to the Audit Committee of the Board of the Provider and otherwise to the Board of the Provider;
 - (iv) the internal audit function should evaluate and improve in a systematic and disciplined manner, the effectiveness of risk management, control and governance processes in the Provider;
 - (v) the internal audit function should have the necessary skills, including skills to deal with non-financial aspects;
 - (vi) the internal audit function should liaise with the external auditors of the Provider frequently;
 - (vii) in planning, executing and reporting its work, the internal audit function should ensure that proper account is taken of value-for-money;
- (b) notify the Executive as soon as practicable of any matter of significant concern identified by the internal audit function and inform the Executive of how the Provider plans to deal with the matter;
- (c) evaluate the effectiveness, efficiency and value for money of the provision of its Services on a regular basis;
- (d) 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;
- (e) maintain annual audited financial statements for each financial year of the Provider and provide copies of such financial statements to the Executive and, on request, to the C&AG

by 31st May where the financial year end for the prior financial year of the Provider is 31st December or, within five (5) months of the Provider's financial year end where the financial year end for the previous financial year of the Provider is a date other than 31st December;

- (f) provide the Executive with a copy of the management letter received from the Provider's external auditors;
- (g) notify the Executive as soon as practicable of any matter of significant concern notified to the Provider by the Provider's external auditor;
- (h) ensure that the annual financial statements are audited by a person who is qualified to be appointed as an auditor pursuant to Chapter 18 of Part 6 of the Companies Act 2014;
- (i) publish the annual audited financial statements for each financial year of the Provider on the website of the Provider (or in such other manner as agreed with the Executive);
- (j) ensure that the published annual audited financial statements comply in all respects with the disclosure requirements in respect of the Funding set out in the Department of Public Expenditure and Reform Circular 13/2014 Management of and Accountability for Grants from Exchequer Funds (including any interpretations or clarifications of such requirements issued by the Department of Finance, Department of Public Expenditure, NDP Delivery and Reform, Department of Health, Department of Children, Equality, Disability, Integration and Youth and/or the Executive) and as set out in that circular that the annual audited financial statements include the information outlined below in respect of the Funding and expenditure related thereto (as distinct from other funding or monies received by the Provider during the relevant financial year of the Provider) and in respect of funding or monies from all other State bodies (for the purposes of this clause, a "**Grant**");

(i) **Name of Grantor**

The name of the grantor, specifying the exact title to be used in the report (e.g. Department of Environment, Community & Local Government, Health Service Executive etc.). Where the Grant making agency is not a Government Department e.g. Pobal, the sponsoring Government Department must also be recorded.

(ii) **Name of Grant**

The actual name of the Grant programme e.g. Rural Water Development Programme.

(iii) **Purpose of Grant**

The purpose for which the funds are applied under the following headings:

- (A) Pay and general administration
- (B) Service provision / charitable activity
- (C) specified others, including such expenditure as advertising, consultancy

(iv) **Accounting for Grants**

- (A) The amount and term of the total Grant awarded;

- (B) The amount of the Grant taken to income in the current financial statements;
- (C) Where (B) above differs from the cash received in the relevant financial period, a table showing:
 - (i) The Grant taken to income in the period
 - (ii) The cash received in the period, and
 - (iii) Any Grant amounts deferred or due at the period end.
- (k) ensure that the published annual audited financial statements separately identify:
 - (i) fundraising, and the proceeds thereof, received by the Provider; and
 - (ii) monies generated from commercial or other activities of the Provider, and specifying such activities.
- (l) submit an annual report and additional financial information to the Executive in accordance with Schedule 1 (Funding), Schedule 3 (Requirements For Information, Performance Monitoring And General Governance) and in Section 2 (Funding Particulars) of the HPSR;
- (m) furnish an annual certificate from the Provider's auditors confirming that the financial statements have been prepared and audited in accordance with generally applicable accounting standards (GAAP) and relevant legal and regulatory requirements in force at the time.

10.5 **Employment Monitoring Return**

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

10.6 **Other Information Obligations**

- (a) The Executive acknowledges the value of information sharing and exchange amongst different providers. The Provider agrees to provide relevant information relating to Services to other providers (subject to Data Protection Laws).
- (b) The Provider will collaborate with the Executive in its monitoring and audit relationships and in the Executive's performance of the Executive's obligations to third parties (including HIQA, the C&AG, etc).
- (c) Subject to Data Protection Laws, the Provider will provide accurate information to relevant statutory bodies and other appropriate and authorised sources (for example, the State Claims Agency, National Parasuicide Register, Disability Database, HPO). The Provider will also provide the Executive with a copy of the information supplied to such sources if requested.
- (d) Subject to Clause 10.1, the Provider will comply with all requests by the Executive and by any committees of the Board of the Executive to supply information and such requests may include without limitation information required by reason of, or relating to or arising out of:

- (i) Parliamentary Questions;
 - (ii) Responses to complaints from or on behalf Service Users and/or advocates;
 - (iii) the compilation of statistical data in relation to the Services or Service Users; or
 - (iv) other requests relevant to the Executive function.
- (e) The provisions of this Clause 10 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 10.6(e) shall include such extended periods for adults at risk of abuse and children as are required for compliance with Data Protection Laws.

10.7 Failure to Provide Information

The Provider acknowledges that:

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

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

11. MONITORING, REVIEW AND EVALUATION

- 11.1 The Executive shall monitor the standard of performance of Services in accordance with the standards envisaged by Clause 3.2 (Duties of the Provider), in Section 3 (Service Delivery Specification) of the HPSR (including paragraph B (Details of the Services) and paragraph C (Service Outcomes) of such Section 3) and the key performance indicators referenced in Section 4 (Further Information and Governance Requirements) of the HPSR (including paragraph B (Performance Indicators) of such Section 4), generally accepted best practice and by reference to the Performance Monitoring Framework.
- 11.2 The Provider shall maintain systems, procedures and controls which reflect the best practices of accountability in expending public funds, and will fully co-operate with the Executive in any reviews of such practices required by the Executive.

12. ACCESS RIGHTS

- 12.1 The Executive shall be entitled to audit, inspect and review the performance and provision of the Services and/or this Arrangement by the Provider (which may include the governance, management and/or control systems of the Provider) and may arrange for a third party to audit, inspect or review the same on behalf of the Executive throughout the Duration of this Arrangement.
- 12.2 Any person or persons (whether personnel of the Executive or a third party) duly authorised by the Executive (“Authorised Person”) for the purposes of either an audit, inspection or review under Clause 12.1 may visit the Provider’s premises on reasonable written notice to carry out such audit, inspection and/or review and/or may request the provision of information, documentation or copy documentation by the Provider to the Executive. Such audits, inspections or reviews may include, inter alia, some or all of the inspection, monitoring, review and assessment of the Provider’s premises, facilities, Provider Personnel, equipment, systems, procedures and records (including, without limitation, Provider Personnel records and information and records on the Service Users). The Provider shall give all such assistance and provide all such facilities as the Authorised Person may reasonably require for such audit, inspection or review.
- 12.3 In the event of any identified or suspected governance or performance issue, which in the view of the Lead REO (or, where applicable, a National Director), gives rise to a risk to the life, health, safety or welfare of the Service Users or a significant risk to the Funding or the Services or a serious breach of governance, an individual may be appointed by the Lead REO (or, where applicable, by the National Director) for such period as the Executive may determine to assist and provide guidance to the Board of the Provider to facilitate the prompt resolution of any such governance or performance issue in a manner satisfactory to the Executive. The Provider shall provide any individual appointed pursuant to this Clause 12.3 with such access and assistance as he/she may specify in performing his/her functions under this Clause 12.3.
- 12.4 The Executive and the Provider acknowledge that such inspections and reviews must be carried out in compliance with law, including, but not limited to, Data Protection Laws.

13. REVIEW PROCESS

- 13.1 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.
- 13.2 Review Meetings shall take place between the Executive (which will be represented by the “Key Contact Person” specified at Part A of Section 1 (Contact Details) of the HPSR or another appropriate person) and the Provider (which will be represented by the “Key Contact Person” specified at Part B of Section 1 (Contact Details) of the HPSR or another appropriate person) according to the review frequency detailed at paragraph D (Performance Review Meetings) of Section 4 (Further Information and Governance Requirements) of the HPSR.
- 13.3 The provisions of the HPSR and, where applicable, the Schedules to this Arrangement and the performance of the Services and implementation of this Arrangement shall be reviewed at each Review Meeting. In particular, the following shall be considered (without limitation):
- (a) Financial reports and issues arising.
 - (b) Human resources and staffing issues.
 - (c) Activity data – summary of Services provided.

- (d) The objectives and actions taken by the Provider to deliver the Services as specified in this Arrangement.
 - (e) Review of the requirements as set out in Section 3 (Service Delivery Specification) of the HPSR (including paragraph B (Details of the Services) and paragraph C (Service Outcomes) of such Section 3) and the agreed performance indicators and outcomes as set out in Section 4 (Further Information and Governance Requirements) of the HPSR (including paragraph B (Performance Indicators) of such Section 4).
 - (f) Whether the needs of Service Users are being met.
 - (g) Compliance with the Services specifications (including compliance with Schedule 2 (Quality & Safety) and Schedule 6 (Codes of Practice) and compliance with Section 3 (Service Delivery Specification) of the HPSR etc.)
 - (h) Evaluation of information provided pursuant to Clauses 10 and 11.
 - (i) Any matters notified in writing to the Executive pursuant to Clause 3.2(c)(xiii) (matters which may affect the delivery, provision or level of the Services).
 - (j) Any matters notified in writing to the Executive pursuant to Clause 10.3(b) (any issues that are anticipated to result in the Provider exceeding the Funding for the applicable Financial Year).
 - (k) Any matters notified in writing to the Executive pursuant to Clause 16.7 (**issues of concern in relation to governance**).
 - (l) Any reports received by the Executive pursuant to Clause 24.6 (areas of concern, Category 1 Incidents, Serious Reportable Events and/or Notifiable Incidents) of this Arrangement.
 - (m) The value of any supplies, services or works contracts awarded by the Executive and availed of by the Provider pursuant to or in connection with this Arrangement.
 - (n) Other issues appropriate to the efficient, effective and safe operation of the Services.
 - (o) Compliance by the Provider with corporate governance standards.
- 13.4 The Provider shall comply with all requirements of the Executive in reviewing the performance and provision of the Services and such requirements may be set out in Schedule 3 (Requirements for Information, Performance Monitoring and General Governance) and/or in Section 4 (Further Information and Governance Requirements) of the HPSR and revised or amended in writing by the Executive from time to time.
- 13.5 With the exception of requirements specified by the Executive in Schedule 3 (Requirements for Information, Performance Monitoring and General Governance) and/or in Section 4 (Further Information and Governance Requirements) of the HPSR, any amendment to the HPSR (other than amendments arising as a result of the introduction of a new HPSR annually or at such other time as notified by the Executive) shall be agreed in writing between the Executive and the Provider and shall be evidenced by completion of a Contract Change Note within the meaning of Clause 38.10 (Change Control) and otherwise in accordance with Clause 38.10.

14. PERFORMANCE ISSUES

14.1 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 14.1, which decision making process is set out in more detail in Clauses 14.1(b) to 14.1(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 14.3 or otherwise, in the event that a First Performance Notice does issue.
- (b) The Provider will have 14 days (or such other shorter or longer period as the Executive may specify) from the date of the First Notification Letter to make written representations to the Executive in respect thereof and/or to address the matters specified in the First Notification Letter.
- (c) The Executive shall consider the representations received from the Provider and shall meet with the Provider to discuss the matter (unless the Provider refuses to or fails to attend such a meeting).
- (d) Following expiry of the period provided for in Clause 14.1(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 14.1(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 14.1(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 14.3 or otherwise and the period or other relevant details in respect of same, as appropriate.

14.2 **Second Performance Notice**

- (a) Without prejudice to any other rights the Executive may have under this Arrangement, if, as a result of information received, or inspection undertaken or following a Review Meeting or otherwise the Executive is of the opinion that:
 - (i) the Provider may not have complied with the First Performance Notice within the period specified in the notice; or
 - (ii) following issue of a First Performance Notice, there may have been a further or continuing instance(s) of Non-Compliance by the Provider (whether or not arising from issues raised in the First Performance Notice);

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

 - (iii) the reasons why the Executive has a reasonable concern in accordance with Clause 14.2(a)(i) or 14.2(a)(ii);
 - (iv) the respects in which the Executive considers the Provider may not have complied with Clause 14.2(a)(i) or 14.2(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 14.2, which decision making process is set out in more detail in Clauses 14.2(b) to 14.2(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 14.3 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 shall meet with the Provider to discuss the matter (unless the Provider refuses to or fails to attend such a meeting).
- (d) Following expiry of the period provided for in Clause 14.2(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 14.2(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 14.2(e) below.
- (e) **The Second Performance Notice shall specify:**
 - (i) the determination of the Executive;
 - (ii) the reasons for the Executive's determination;
 - (iii) the steps the Executive requires the Provider to take (which may include, without limitation, the Provider preparing and implementing a plan of action) to address the failure to comply with the First Performance Notice or the Non-Compliance to the satisfaction of the Executive and the period within which they should be taken; and
 - (iv) the steps which the Executive is to take or requires the Provider to take whether under Clause 14.3 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).

14.3 **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) where, in the opinion of the Executive, the Provider has failed to observe restrictions imposed on the payment of remuneration to Provider Personnel, the Executive may:
 - (i) require any amount up to the amount paid to Provider Personnel which is in excess of the relevant public sector consolidated pay scales to be paid to the Executive (the “**Excess Amount**”); or
 - (ii) reduce the Funding provided to the Provider by an amount up to the Excess Amount;
- (d) 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;
- (e) preclude any consideration of any request from the Provider for the provision of any capital funding until such time as the Provider addresses the Non-Compliance to the satisfaction of the Executive;
- (f) 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
- (g) determine 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.

14.4 **Notices**

- (a) Without prejudice to Clause 38.3 (and subject to Clause 14.4(d) in respect of notices served under Clause 14.2), any notices served under this Clause 14 shall be authorised by an employee of the Executive of a grade not less than IHA Manager or National Director (or, where applicable, Chief Officer or Hospital Group CEO) or equivalent.
- (b) Any notices served under Clauses 14.1 and 14.2 may be served notwithstanding the exercise by the Executive of its rights pursuant to Clause 14.5.
- (c) Any notices served under this Clause 14 shall not constitute a waiver of any term or condition of this Arrangement and shall be without prejudice to any of the Executive’s other rights remedies or powers under this Arrangement, or as provided by law, whether in respect of any Non-Compliance or otherwise.
- (d) In respect of notices served under Clause 14.2, such Second Performance Notices shall be authorised by an REO (or, where applicable, a National Director) who has been authorised by the Chief Executive Officer of the Executive to issue a Second Performance Notice.

14.5 **Further Rights of the Executive in cases of Non-Compliance**

- (a) As a condition to the provision of the Funding, the Provider agrees that, without prejudice to Clauses 14.1, 14.2 and 14.3, where, either:
 - (i) the Executive is of the opinion that the Provider has failed to comply with a First Performance Notice or a Second Performance Notice and an REO (or, where applicable, a National Director) is of the opinion that a serious risk arises to any of the Services, the Service Users, the costs of the Services or the Funding provided pursuant to this Arrangement; or
 - (ii) the Executive (through an REO (or, where applicable a National Director)) is of the opinion that the Provider is in Non-Compliance and is of the opinion that there is a serious and imminent risk to the life, health, safety or welfare of Service Users or a serious and imminent risk to the Funding provided pursuant to this Arrangement (“**Exceptional Circumstances**”)

the Executive may exercise its rights pursuant to this Clause 14.5 in order to address, in whole or in part, the Non-Compliance.

- (b) Unless Exceptional Circumstances exist, the Executive shall, before exercising its rights pursuant to this Clause 14.5:
 - (i) issue a written notice to the Provider informing the Provider of its proposed determination in accordance with Clause 14.5(a)(i), the reasons for its proposed determination and the proposed exercise by the Executive of its rights pursuant to this Clause 14.5 and the anticipated duration of such;
 - (A) the written notice will inform the Provider of the decision making process which the Executive will follow in determining whether to exercise its rights pursuant to this Clause 14.5;
 - (B) the written notice will afford the Provider fourteen (14) days (or such other shorter or longer period as the Executive may specify) to make written submissions to the Executive on its proposed determination in accordance with Clause 14.5(a)(i) and on the proposed exercise by the Executive of its rights pursuant to this Clause 14.5;
 - (ii) consider any submissions made by the Provider and shall meet with the Provider to discuss the matter (unless the Provider refuses to or fails to attend such a meeting); and
 - (iii) having considered the Provider’s representations (if any), if the Executive is satisfied that the circumstances described in Clause 14.5(a)(i) exist, the Executive shall exercise its rights pursuant to this Clause 14.5 and issue a further written notice advising the Provider of such exercise.
- (c) **In Exceptional Circumstances, the Executive shall:**
 - (i) consider the feasibility, having regard to all the circumstances, of complying with the procedures described in Clause 14.5(b) and in its absolute discretion dispense with such procedures, or some of them, and/or may take such steps as it deems appropriate in the particular circumstances but without any obligation whatsoever to do so;

- (ii) notify the Provider in writing as soon as reasonably practicable of the exercise of its rights pursuant to this Clause 14.5 and the anticipated duration of such; and
 - (iii) afford the Provider an opportunity to make submissions to the Executive on the exercise by the Executive of its rights pursuant to this Clause 14.5 and having considered any submissions made, the Executive will consider the risks arising and the ongoing necessity or desirability for the exercise by the Executive of its rights pursuant to this Clause 14.5 and may cease to exercise such rights if the Executive is satisfied that Service Users and/or the Funding are no longer at risk.
- (d) **The Executive has the following rights pursuant to this Clause 14.5:**
- (i) the right to require the Provider to take promptly such actions as the Executive may, at its discretion, require in order to address, in whole or in part, the Non-Compliance;
 - (ii) the right to take such direct and binding executive action on behalf of the Provider as the Executive may deem necessary or expedient to rectify the Non-Compliance of the Provider and to ensure the delivery of the Services in accordance with this Arrangement;
 - (iii) the right to engage a third party to assist the Executive with the rectification of the Non-Compliance;
 - (iv) the right to issue instructions to the Provider, including the Board of the Provider, to ensure the prompt rectification of the Non-Compliance; and
 - (v) the right to take any such steps or require any such steps to be taken as the Executive may at its discretion consider necessary or expedient to rectify the Non-Compliance.
- (e) In order to comply with Clause 14.5(d)(iv), the Provider shall procure that the Provider Personnel and any agents of the Provider take such steps as are required to ensure compliance with any instructions issued by the Executive to the Provider;
- (f) For the avoidance of doubt, nothing in this Clause 14.5 shall operate to transfer any rights or entitlements to share capital, stock or property, whether tangible or intangible, from the Provider to the Executive and any actions taken pursuant to this Clause 14.5 shall be taken by the Provider or by the Executive on behalf of the Provider.
- (g) The Provider shall take all steps required to ensure that the rights of the Executive pursuant to this Clause 14.5 are given full legal and practical effect.
- (h) The Executive shall endeavour to meet with the Board of the Provider as soon as practicable following the exercise by the Executive of its rights pursuant to this Clause 14.5 to discuss further actions or arrangements (including arrangements to ensure the continued provision of Services to Service Users) which the Executive may consider necessary in the circumstances and the Board of the Provider shall agree with the Executive a plan of action and a timetable in respect of any such actions or arrangements, which may include meetings to monitor and discuss all operational aspects of the Services.
- (i) Without prejudice to Clause 14.5(l), the Provider hereby:

- (i) agrees that the Executive shall be accorded every reasonable facility and co-operation by the Board of the Provider and by the Direct Provider Personnel for the performance of the Executive's rights pursuant to this Clause 14.5;
 - (ii) agrees that the Executive for the purposes of this Clause 14.5 shall have all such powers as the Executive deems necessary or expedient for the purpose of exercising its rights under this Clause 14.5; and
 - (iii) agrees that upon the exercise by the Executive of its rights pursuant to this Clause 14.5, any chief executive officer/ manager director or other person(s) exercising similar executive managerial functions in respect of the Provider may be required by the Executive to report directly to the Executive for the duration of the exercise by the Executive of the rights pursuant to this Clause 14.5.
- (j) Without prejudice to Clause 14.5(l), the Executive shall liaise and consult with the Board of the Provider, as it deems appropriate. For the avoidance of doubt, the Executive shall not have power to exercise generally the functions of the Board of the Provider but may instruct the Provider to do such things and take such actions as the Executive may deem necessary or expedient for the exercise of its rights under this Clause 14.5.
- (k) The Executive shall not incur any liability (either to the Provider or to any other person) by reason of the exercise of its rights pursuant to this Clause 14.5. For the avoidance of doubt, exercise by the Executive of its rights pursuant to this Clause 14.5 shall not discharge the Provider or the Executive from any existing or future liability that the Provider or the Executive has or may have to third parties arising out of or in connection with the provision of the Services (including, for the purpose of this Clause 14.5, the provision of any services prior to the commencement of this Arrangement).
- (l) Without prejudice to the Executive's rights under this Clause 14.5, the Provider hereby irrevocably appoints, with effect from the exercise by the Executive of its rights pursuant to this Clause 14.5, the Executive to be the attorney of the Provider (with full power of substitution and delegation), in the Provider's name or otherwise and on its behalf and as its act and deed to generally carry on, manage and ensure the delivery of the Services to Service Users; to manage the Funding and to exercise all rights, powers of entitlements of the Provider in furtherance of those purposes and to do all other acts and things which the Executive may consider desirable or necessary to realise or carry such purposes into effect or incidental or conducive to any of the rights, powers or discretions conferred on the Executive for the exercise of the Executive's rights pursuant to this Clause 14.5 as shall be determined by the Executive under this Clause 14.5. The Executive's powers under paragraphs (a) to (m) of this Clause 14.5 shall be additional to any powers the Executive may have as an attorney pursuant to this Clause 14.5 or by law.
- (m) The Executive may cease to exercise its rights pursuant to this Clause 14.5 at any time and shall issue a written notice to the Provider to confirm the cessation of such.
- (n) The exercise or non-exercise by the Executive of its rights pursuant to this Clause 14.5 shall have no effect on any other right of the Executive pursuant to this Arrangement.
- (o) The Funding provided to the Provider pursuant to this Arrangement may be suspended at the discretion of the Executive in whole, in part or in respect of any Service or part thereof managed by the Executive pursuant to this Clause 14.5 until the Provider resumes full delivery of such Services.

- (p) The reasonable costs of the Executive in exercising its rights under this Clause 14.5 shall, at the option of the Executive, be deducted from the Funding or, at the option of the Executive, recoverable by the Executive as a debt due by the Provider to the Executive.
- (q) All references to the “**Executive**” in this Clause 14.5 shall, for the avoidance of doubt, also refer to a nominee of the Executive.

15. INSURANCE

- 15.1 Throughout the Duration of this Arrangement, the Provider shall maintain the insurance, which will include an indemnity in favour of the Executive on the public liability, employer’s liability and motor insurance policies, as set out in Schedule 4 (Insurance) on the terms specified and with insurers regulated by, or authorised to operate on a freedom of services basis by, the Central Bank of Ireland or other appropriate regulatory authority.
- 15.2 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 15 shall be evidenced to the Executive by a certificate from the relevant insurer(s).
- 15.3 This Clause 15 shall be without prejudice to the operation of the Clinical Indemnity Scheme.
- 15.4 For the avoidance of doubt, the Provider shall maintain the minimum levels of insurance as outlined in Schedule 4 (Insurance).
- 15.5 At the request of the Executive, the Provider shall increase the agreed insurance limits or obtain additional coverage and the parties agree to discuss whether any alteration or adjustment to the amount of Funding is warranted thereby. Where the Executive agrees to alter or adjust the amount of Funding, any such alteration or adjustment shall be set out in a Contract Change Note in accordance with Clause 38.10 (Change Control).
- 15.6 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.
- 15.7 If the Provider fails to provide the insurance cover specified in this Arrangement, (for reasons other than those caused or attributed to unforeseen and materially adverse circumstances beyond the Provider’s control which are then prevailing in the insurance market), the Executive may do so for the whole or part of the period for which such cover is required, without being under any obligation so to do, and may deduct any costs and/or expenses it incurs in obtaining such cover from any sums due to the Provider under this Arrangement, or otherwise recover such sums from the Provider.
- 15.8 The insurance policies required to be obtained by the Provider pursuant to this Clause 15 shall not limit the obligations, liabilities or responsibilities of the Provider under the terms of this Arrangement or otherwise. Any amounts not insured or recovered from the insurers shall be borne by the Provider in accordance with the obligations, liabilities and responsibilities set out under this Arrangement, except where and to the extent that, the Executive admits, or is adjudged to be, contributory or vicariously liable. If the Provider fails to effect and keep in force any of the insurance policies required under this Clause 15 and the Executive suffers a loss any

monies which should have been recoverable by the Provider and/or Executive for the benefit of the Executive under the insurance shall be paid by the Provider to the Executive.

- 15.9 The Provider shall not permit any Provider Personnel to perform any work in connection with the Services unless the Provider Personnel is and remains insured in accordance with the insurance requirements of this Arrangement or that the Provider's insurances covers the activities of such Provider Personnel. The Provider shall indemnify the Executive for any loss suffered by the Executive for the failure of any Provider Personnel to be so insured.
- 15.10 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 15 (including an indemnity in favour of the Executive and any alternative provider of the Services) on a run-off basis in respect of Services provided up to termination or expiry (and subsequent to termination or expiry where Clause 36.4 applies), to adequately cover any existing and future claims. These insurance policies must contain terms and conditions which allow claims to be made in respect of matters arising during the term of this Arrangement (and subsequent to termination or expiry where Clause 36.4 applies) after the termination or expiry of this Arrangement.

16. GOVERNANCE ARRANGEMENTS

- 16.1 The Provider shall co-operate fully with the Executive by implementing policies and procedures consistent with the Code of Governance in areas which include internal audits, risk management, public procurement, financial reporting, quality of service and other matters which may be reasonably deemed appropriate by the Executive and to meet the standards of behaviour as set out in the Code of Standards of Behaviour within the Code of Governance.
- 16.2 Without prejudice to Clause 16.1, the Provider shall ensure that its internal audit function complies with the principles set out in Clause 10.4(a).
- 16.3 Without prejudice to Clause 16.1, the Provider shall co-operate fully with the Executive by implementing, and ensuring compliance with, the following list of governance principles and such other governance standards as the Executive may notify to the Provider from time to time. The Board of the Provider is responsible for:
- (a) leading, directing and setting the strategy for the Provider's activities;
 - (b) compliance by the Provider with all statutory obligations of the Provider;
 - (c) establishing an appropriate structure of board committees to include the functions of an audit, remuneration, risk, quality and safety and, if appropriate, a nomination committee;
 - (d) ensuring that an adequate system for identifying, monitoring and managing risk is in place;
 - (e) establishing and monitoring the effectiveness of the Provider's internal controls;
 - (f) clearly documenting procedures for the appointment and disqualification of members of the Board of the Provider (if not already set out in the Provider's constitutional documentation);
 - (g) ensuring the financial statements present a balanced, true, transparent and complete assessment of the Provider's financial position;

- (h) annually reviewing the performance of the Board of the Provider to identify ways to improve its effectiveness; and
 - (i) maintaining an appropriate code of conduct applicable to all directors and staff of the Provider setting out standards of integrity, conduct, business ethics and concern for the public interest.
- 16.4 Where required by the Executive, a Major Provider shall furnish a compliance statement in such form, manner and intervals as directed by the Executive, confirming compliance with any such corporate governance requirements to the Executive.
- 16.5 Where the Provider is a registered charity, comply with applicable codes and/or guidelines issued by the Charities Regulatory Authority;
- 16.6 The Provider shall ensure that it has effective internal codes of governance in place, which comply with the principles in Clause 16.3, including an adequate system of internal controls to ensure compliance with laws and regulations and the Provider shall use (among other relevant publications) the Code of Practice for the Governance of State Bodies publication as a guide in drawing up such codes of governance.
- 16.7 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.
- 16.8 The Provider will co-operate with reviews of governance arrangements.
- 17. PROVIDER PERSONNEL**
- 17.1 For the avoidance of doubt, all Provider Personnel, including those involved in the provision of the Services, shall in all respects be the responsibility of the Provider and not of the Executive. The Executive and the Provider hereby agree that, for the Duration of this Arrangement, it remains their intent that neither Direct Provider Personnel nor Indirect Provider Personnel shall be, nor deemed to be, employees of the Executive for any purpose or in any circumstance and the Provider shall indemnify the Executive in respect of all such persons.
- 17.2 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/or are members of a professional indemnity defence organisation or equivalent where appropriate.
- 17.3 In relation to the recruitment, promotion and retention of persons with professional qualifications obtained abroad, the Provider shall observe Directive 2005/36/EC as amended by Directive 2013/55/EU (the “**2005 Directive**”), relevant statutory instruments on the recognition of professional qualifications and administrative arrangements in respect of such qualifications outside the scope of the 2005 Directive and shall not engage or promote any individual unless

and until the Provider is satisfied that person's qualifications are recognised by the relevant competent authority for the purposes of, or in connection with, the provision of Services under this Arrangement.

17.4 The Provider shall ensure that all Provider Personnel involved with the provision of the Services:

- (a) receive appropriate orientation and induction and proper and sufficient training and instruction in the execution of their duties; and
- (b) receive full and detailed appraisal and support in terms of performance and on-going education and training in accordance with the standards of their relevant professional body if any.

17.5 The Provider will adhere to best industry standards in relation to the recruitment and selection (as the case may be) of Provider Personnel and will keep appropriate records of all applications, selection processes references and contracts of employment where applicable.

17.6 Where the Provider is engaged in relevant work, as that term is defined in National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016, the Provider will agree with the Executive the categories of persons which are to be subject to the vetting process by An Garda Síochána, and/or subject to equivalent and/or additional criminal background checks and/or police clearance checks in respect of persons who have resided outside of Ireland for a period greater than six months. The Provider as the employer must be satisfied with and is responsible for the suitability of all persons employed by it.

17.7

- (a) The Provider shall promptly and in any event in accordance with any time limits set by statute take all necessary steps to investigate fully any allegation by any person of illegal, wrongful or inappropriate behaviour towards a Service User, whether by act or omission, by any member of Provider Personnel or any sub-contractor, by any individual who is a volunteer in the Provider organisation, or any other individual who is or was a member of an administrative, management or supervisory body of the Provider.
- (b) In the event of any member of Provider Personnel having behaved illegally, wrongfully or inappropriately or in breach of any of the relevant policies or procedures of the Provider, whether by act or omission, in respect of a Service User, or the Provider becoming aware of any allegation or complaint that any such person has behaved in such a manner towards a Service User, the Provider shall take all necessary actions (including disciplinary actions where appropriate) in respect of such persons to ensure safety and protection of the Service User and Service Users generally and shall report the matter to the Executive and all relevant authorities, including the State Claims Agency and/or their insurer.

17.8 The Provider shall endeavour to ensure that the performance of its Provider Personnel complies with:

- (a) the terms and conditions of this Arrangement;
- (b) the professional standards current in the health and personal social services sectors; and
- (c) the standards of performance expected of them;

- (d) and shall monitor compliance and take remedial action promptly where there is any non-compliance.
- 17.9 The Provider shall be responsible for making all statutory deductions (or, where applicable, directing the making of) in respect of its remuneration of its Direct 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.
- 17.10 The Provider assumes full responsibility for the actions of its Provider Personnel, including those engaged in the performance of the Services, and shall be fully responsible for their acts or omissions, supervision, co-ordination and integration, daily directions and controls, payment and all matters relating to their employment, engagement and work.
- 17.11 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 Direct Provider Personnel or to the Services including, and without limitation, any Employment Regulation Orders made pursuant to Section 43 of the Industrial Relations Act 1946 or employment agreements registered pursuant to Section 27 of the Industrial Relations Act 1946 or Sectoral Employment Orders in accordance with Section 17 of the Industrial Relations (Amendment) Act 2015. The Provider shall procure that sub-contractors and agents shall similarly comply.
- 17.12 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 as a result of any breach of the provisions of this Clause 17 including, without limitation any claim made or threatened, whether by legal proceedings or otherwise, against the Executive by any third party (including the Revenue Commissioners) on the grounds that any member of the Provider Personnel under or for the purposes of this Arrangement or for the purpose of providing or assisting in the provision of the Services is or was or is deemed to be or have been an employee of the Executive.
- 17.13 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.
- 17.14 The Provider shall have regard to the Department of Health Circular 11/2013, as may be updated, amended or replaced from time to time and all requirements of Government pay policy as may be notified to the Provider from time to time in respect of remuneration of senior employees and officers of the Provider.
- 17.15 The Provider will consult with the Executive in the appointment and related remuneration package of the Chief Executive Officer and Senior Management Team or equivalent.

18. TRANSPARENCY REQUIREMENTS

- 18.1 A Major Provider shall publish an annual report (including its financial statements), in respect of the Funding and the Services on the Major Provider's website (or in such other manner as agreed with the Executive), which shall include a statement of whether or not any member of Provider Personnel is in receipt of aggregate remuneration which is equal to, or exceeds, the amount of salary payable at the first point of Grade VIII of the Department of Health's consolidated salary scale and setting out, the number of Provider Personnel in receipt of remuneration packages for

the reporting period that fall within each band of €10,000 from the first point of Grade VIII of the Department of Health's consolidated salary scale upwards.

- 18.2 The Provider shall provide details to the Executive on an anonymised basis for each individual member of the Provider Personnel who is in receipt of aggregate remuneration which is equal to, or exceeds, the amount of salary payable at the first point of Grade VIII of the Department of Health's consolidated salary scale, in accordance with the requirements set out in Schedule 3 (Requirements for Information, Performance Monitoring and General Governance) and Section 4 (Further Information and Governance Requirements) of the HPSR.

19. THIRD PARTY CONTRACTING

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

- 19.2 The Provider must ensure that any agent, sub-contractor or third party who is engaged to provide any of the Services or part thereof is subject to the same obligations to which the Provider is subject under this Arrangement regardless of whether or not Clause 19.1 applies to such engagement.

- 19.3 The Provider shall be fully responsible for the acts and omissions of any agent, subcontractor or third party who is engaged to provide any of the Services or part thereof (regardless of whether or not Clause 19.1 applies to such engagement) and will indemnify the Executive in respect of all losses, damages, claims, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by the Executive as a result of any acts and omissions of any such agent, sub-contractor or third party.

20. REORGANISATION OR RESTRUCTURING

- 20.1 Where the Provider proposes to undertake or participate in any Reorganisation or Restructuring, the Provider shall:

- (a) inform the Executive, providing such information in relation thereto as the Executive may require; and
- (b) request the Executive's consent to the Reorganisation or Restructuring, which consent shall not be unreasonably withheld and shall be granted by the Lead REO (or, where applicable, by a National Director) provided he/she is satisfied that the Reorganisation or Restructuring will not adversely affect (in the opinion of the Executive) the Services, the costs of the Services, the Funding and/or the governance of the Provider.

- 20.2 The consent required pursuant to Clause 20.1 shall be sought at least 6 months' (or such shorter or longer period as may be agreed) prior to the commencement of the Reorganisation or Restructuring.

- 20.3 Where the Executive is satisfied that the Reorganisation or Restructuring will not adversely affect (in the opinion of the Executive) the Services, the costs of the Services, the Funding and/or the governance of the Provider consents to the Reorganisation or Restructuring, the Executive shall consent to the Reorganisation or Restructuring and the Executive shall communicate this in writing to the Provider.

- 20.4 Where the Executive is minded not to consent to the Reorganisation or Restructuring as it is not satisfied that the Reorganisation or Restructuring will not or may not adversely affect the Services, the costs of the Services, the Funding and/or the governance of the Provider:
- (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 20.4(b), 20.5 and 20.6) in determining whether to consent or not and outlining that if the Executive determines that it will not consent to the Reorganisation or Restructuring of the Provider and the Provider proceeds to undertake or participate in the Reorganisation or Restructuring that the Executive reserves the right to terminate this Arrangement in accordance with Clause 35.4; 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, the Funding or the governance of the Provider) or conditions or requirements to be observed in connection with the Reorganisation or Restructuring in order for the Executive's consent to be granted.
- 20.5 The Provider will have fourteen (14) days (or such other shorter or longer period as the Executive may specify) to make written representations to the Executive in respect of the matters referred to in Clause 20.4. The Executive shall consider the representations received from the Provider and, within fourteen (14) days of receipt of same (or such other shorter or longer period as the Executive may specify) shall, if so requested by the Provider or desired by the Executive, meet with the Provider to discuss the matter.
- 20.6 Following expiry of the period provided for in Clause 20.5 and allowing for a further fourteen (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.
- 20.7 Where the Provider:
- (a) fails to inform or seek the consent of the Executive to a Reorganisation or Restructuring in accordance with Clause 20.1; or
 - (b) undertakes or participates in the Reorganisation or Restructuring in the absence of the Executive's consent or despite the Executive's refusal to provide its consent in accordance with Clause 20.6;
- then the Executive reserves the right to terminate this Arrangement in accordance with Clause 35.4.
- 20.8 For the avoidance of doubt, any consent granted by the Executive pursuant to this Clause 20 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 consent has been provided by the Executive pursuant to this Clause 20 or not.

21. COMPLAINTS (SEE ALSO SCHEDULE 5 (COMPLAINTS))

- 21.1 The Provider will maintain a complaints policy and procedure which will reflect, and (where appropriate) comply with, Part 9 of the 2004 Act, regulations made thereunder (including without limitation the Health Act 2004 (Complaints) Regulations 2006 (S.I. 652 of 2006)) and of

a comparable standard to the Executive's policy and procedures on complaints entitled Your Service, Your Say and any amendments or revisions thereto.

- 21.2 If, at the commencement of this Arrangement, the Provider does not have a complaints policy and procedure in place in accordance with Clause 21.1, the Provider undertakes to establish such a policy and procedure immediately.
- 21.3 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.
- 21.4 The Provider must use the NIMS as the primary ICT system to report and manage Incidents in accordance with the Incident Management Framework.
- 21.5 The Provider agrees to adhere to the complaints procedure maintained or adopted pursuant to this Clause 21 and to co-operate fully in any review of a recommendation made by a complaints officer (within the meaning of the 2004 Act) following investigation of a complaint against the Provider.
- 21.6 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.

22. PROTECTED DISCLOSURE

The Provider shall establish and maintain procedures for the making of Protected Disclosures by Provider Personnel and any other individual engaged by the Provider who may satisfy the definition of "worker" for the purposes of the Protected Disclosures Act 2014, and for dealing with such disclosures. The Provider shall procure that all Provider Personnel are made aware of the procedures established and maintained for this purpose.

23. ACCESS, REFERRALS, ADMISSIONS AND DISCHARGE PROCEDURES

The Provider shall maintain policies and protocols in operation for the access, referral, admission and discharge procedures as outlined in Section 3 (Service Delivery Specification) of the HPSR.

24. RISK MANAGEMENT

- 24.1 The Provider shall have in place a written risk management policy and demonstrable risk management process to ensure optimum management of all aspects of health care risks compatible, with best practice. This will include having in place policies and procedures for the

prevention and management of all Incidents, including Category 1 Incidents, Serious Reportable Events and Notifiable Incidents, compatible with the Executive's policy.

- 24.2 Providers delegated under the Clinical Indemnity Scheme operated by the State Claims Agency are obliged to co-operate to allow the agency to comply with Section 8 of the National Treasury Management Agency (Amendment) Act 2000.
- 24.3 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.
- 24.4 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.
- 24.5 The Provider will provide such information as is required for the Executive's Risk Register, subject to compliance with Data Protection Laws.
- 24.6 The Provider shall notify the Executive in writing, without delay, of any Incident, including any Category 1 Incident, Serious Reportable Event or Notifiable Incident, arising in connection with the Services or any related matter, giving reasonable details of the incident or event (subject to compliance with Data Protection Laws) and setting out the steps that will be taken to eliminate any risks identified (including timely reports to the NIMS if required).
- 24.7 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.
- 24.8 Providers delegated under the Clinical Indemnity Scheme operated by the State Claims Agency must ensure that any requirements of the State Claims Agency in relation to risk management are complied with in particular notification of Adverse Incidents to the NIMS.
- 24.9 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.
- 24.10 The Provider agrees to cooperate fully in granting the Executive access to the risk register referred to in Clause 24.9 when the Executive, at its own discretion, so requests, subject to compliance with Data Protection Laws.
- 24.11 The Provider shall comply with the HSE Enterprise Risk Management Policy and Procedures (2023) and Incident Management Framework.

25. QUALITY AND STANDARDS

- 25.1 The Provider shall develop and deliver the Services to a high quality and standard and in line with national health strategy, including the implementation of "Healthy Ireland - A Framework for Improved Health and Wellbeing 2013-2025".
- 25.2 The Provider shall comply with legislation relating to quality and standards and such other appropriate requirements as may be stipulated by the Minister, the Executive and/or recognised standard setting bodies which are relevant to the Services, the Funding, governance matters or the Arrangement, including, but not limited to, HIQA and the Mental Health Commission and

such standards as HIQA's National Standards for Safer Better Healthcare, or the Quality Framework for Mental Health Services in Ireland.

- 25.3 The Provider shall have in place appropriate mechanisms to assess quality and standards of the delivery of Services in line with best practice, as agreed with the Executive, or as may be stipulated by recognised standard setting bodies, including HIQA and the Mental Health Commission and such standards as HIQA's National Standards for Safer Better Healthcare. The Provider shall place a particular emphasis on quality indicators as they relate to improved health and wellbeing outcomes for Service Users and Provider Personnel.
- 25.4 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.
- 25.5 The Provider shall comply with its obligations set out in Schedule 2 (Quality and Safety).
- 25.6 The Provider shall establish a Quality and Safety Board Committee which shall comply with the requirements set out in Schedule 2 (Quality and Safety).

26. CLINICAL GOVERNANCE AND AUDIT

- 26.1 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).
- 26.2 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.
- 26.3 The Provider shall make arrangements for effective monitoring of clinical care and clinical record keeping.
- 26.4 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.
- 26.5 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.
- 26.6 The Provider will carry out and act on any recommendation of appropriate clinical audits.

27. INFORMATION AND CONFIDENTIALITY

- 27.1 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.

- 27.2 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.
- 27.3 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.
- 27.4 Either party may disclose information which would otherwise be confidential notwithstanding anything contained in Clause 27.2:
- (a) if and to the extent required by law or for the purpose of any judicial inquiry, tribunal or court proceedings;
 - (b) if and to the extent required by any regulatory or governmental authority in Ireland to which that party is subject;
 - (c) if and to the extent necessary or desirable for the conduct of any arbitration pursuant to Clause 34;
 - (d) to its professional advisers, auditors, bankers and insurers on a strictly confidential basis;
 - (e) if and to the extent the other party has given prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed;
 - (f) if necessary for the Executive to fulfil its statutory object and functions pursuant to Section 7 of the 2004 Act; or
 - (g) if necessary for the statutory functions of a regulatory authority relating to the Services.
- 27.5 The provisions of this Clause 27 shall continue to apply notwithstanding the termination of this Arrangement for any reason.
- 27.6 The Provider will comply with Part 9A of the 2004 Act (as amended by Health Act 2007) and with any procedures of the Executive established pursuant to Section 55H of that Act.

28. ANNOUNCEMENTS AND COMMUNICATIONS

- 28.1 The Provider will acknowledge the support of the Executive in all public announcements and advertising, where appropriate.
- 28.2 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.

29. FREEDOM OF INFORMATION

- 29.1 The Provider hereby acknowledges that the Freedom of Information Act 2014 (the “**FOI Act**”) applies to the Executive.
- 29.2 In the event that any information or records held or prepared by the Provider are the subject of a request for information or records under the FOI Act the Provider will procure that any such materials are supplied promptly (and in a manner which has regard to and will permit the Executive to comply with the statutory time limits imposed under the FOI Act) to the Executive for consideration and, if appropriate, disclosure. The Provider acknowledges that under Section 11(9) of the FOI Act any record relating to the Services is deemed to be held by the Executive for the purposes of the FOI Act.
- 29.3 The FOI Act exempts from disclosure information and records in certain cases and the Provider hereby agrees to clearly identify any information or records which it considers to be exempt from disclosure under the FOI Act at the time of provision to the Executive, stating the relevant information or records and the reason why it is believed that the document or information is exempt.
- 29.4 Notwithstanding Clause 29.3, the Provider hereby acknowledges that the categorisation of the information or record by the Provider as potentially exempt shall not be final or binding on the Executive and that the Executive may disclose that information or records in accordance with the FOI Act notwithstanding such categorisation.
- 29.5 Unless stated otherwise by the Provider when the relevant record or information is provided to the Executive, it will be presumed that the Provider does not consider any exemption to be applicable to such information or record and without prejudice to any exemption that the Executive may consider to be applicable to such information or record.
- 29.6 The Executive shall have no liability for any disclosure made by it in accordance with the requirements of the FOI Act and this Clause 29.
30. **DATA PROTECTION**
- 30.1 Both the Executive and the Provider shall comply with their statutory obligations under Data Protection Laws. In this regard, in so far as the Provider obtains and processes personal data relating to Service Users or any other persons in the course of the provision of the Services, it shall comply with its obligations as a “data controller” under Data Protection Laws and with all of the rules and policies governing the collection, retention, use, disclosure, security and deletion of information as may be set out in the Codes of Practice from time to time. Where the Executive provides personal data to the Provider, the Provider represents and undertakes to the Executive that it shall use, process and disclose such data only for the purposes permitted under this Arrangement. Where there is no existing contractual arrangement (i.e. in the form of the HSE Data Processing Agreement (“**DPA**”) and/or Data Sharing Agreement (“**DSA**”) available on the Executive’s website) in place between the Executive and the Provider governing a relevant processing activity or activities in each case, then (i) where the Provider acts as a data processor of the Executive for any such processing activity or activities and/or (ii) where the Executive acts as a data processor of the Provider for any such processing activity or activities and/or (iii) where the Executive and the Provider act as joint controllers for any such processing activity or activities, the specific Data Sharing Terms available on the Non-Statutory Section of the Executive’s website at www.hse.ie/eng/services/publications/non-statutory-sector/ shall apply (the “**Terms**”).

- 30.2 The Provider shall ensure that it has obtained all approvals, authorisations and permissions which are required by law to enable the Provider to access and disclose any personal data which is sought by the Executive other than where such disclosure is required pursuant to an enactment, rule of law or by order of a court.
- 30.3 Without prejudice to Clause 21 (Complaints) of this Arrangement, the Provider shall inform the Executive if it receives any written communication from the Office of the Data Protection Commissioner in connection with any Service User or the Services (including for the avoidance of doubt, if it relates to a personal data breach or complaint concerning the Executive's patient data or IT system) and, in responding to such communications, the Provider shall have regard to any views or representations provided by the Executive in relation thereto.
- 30.4 The Provider will promptly (and in any event within twenty-four (24) hours) inform the Executive of any actual or suspected breach of security which would give rise to the actual or potential loss, theft, unauthorised release or disclosure of information (where unauthorised disclosure of information relates to the Executive) or any part thereof (the relevant person in the Executive to be promptly informed is the "Key Contact Person" named in paragraph A of Section 1 (Contact Details) of the HPSR). In such an event, the Provider will immediately supply the Executive with all relevant facts surrounding the actual or suspected breach. In the event that the Provider enters into any communication with the Office of the Data Protection Commissioner (including by way of example, the notification of a breach of the DPA, the DSA or the Terms, as applicable, the Provider will inform the Executive as soon as possible.
- 30.5 The Provider hereby undertakes to comply with its obligations under this Clause 30 and the Terms (as applicable) and to indemnify the Executive against any loss, compensation, damages, expenses and costs which become payable or are incurred by the Executive in respect of or as a result of a breach by the Provider of this Clause 30 and or the Terms (as applicable).

31. CONTROL OF STRATEGIC CLAIMS

- 31.1 In the event of any Strategic Claim, or any matter which may give rise to a Strategic Claim, the Provider shall:
- (a) as soon as reasonably practicable upon the Provider becoming aware of same give notice in writing to the Executive of the Strategic Claim and provide such particulars in respect thereof as the Executive may request (the relevant person in the Executive to be promptly informed is the "Key Contact Person" named in paragraph A of Section 1 (Contact Details) of the HPSR);
 - (b) promptly give such information and access to personnel, premises, chattels, documents and records held or controlled by the Provider to the Executive and/ or its professional advisers as the Executive and/or its professional advisers may request;
 - (c) in circumstances which the Executive regard as exceptional and upon the request of the Executive, allow the Executive to take sole conduct, either in the name of the Provider or the Executive, of the Strategic Claim (or any part thereof) as the Executive may deem appropriate, and the Provider shall:
 - (i) follow such directions, take such action, institute such proceedings and give or cause to be given to the Executive all such information and assistance as the Executive may reasonably require (including in avoiding, disputing, resisting, settling, compromising,

defending or appealing any claim, or demand or proceeding arising in relation to or in connection with the matter); and

- (ii) instruct such solicitors or other professional advisers as the Executive may nominate to act on behalf of the Provider and/or the Executive, and to act in accordance with the Executive's sole instructions provided always that the Executive keeps the Provider reasonably informed as to the progress of the claim, action or proceedings;
 - (d) at any time upon the request of the Executive, in instances where the Executive does not deem it appropriate to take sole conduct of the Strategic Claim (or any part thereof), keep the Executive well informed of the progress of the Strategic Claim, and act in accordance with all such directions and instructions as the Executive and its professional advisers may require;
 - (e) make no admission of liability, agreement, settlement or compromise with any third party in relation to any Strategic Claim the subject of this Clause 30 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.
- 31.2 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 30, 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 30, provided that the Executive shall, where practicable, notify the Provider in advance of such settlement.

32. MAJOR INCIDENTS

- 32.1 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.
- 32.2 During the period of the Major Incident, the extent to which it impacts upon the Provider's ability to provide services, including elective activities, under-performance in delivering such activities during a Major Incident will not constitute a matter for which the Executive may issue a First Performance Notice or a Second Performance Notice.
- 32.3 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.
- 32.4 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.
- 32.5 Promptly following a Major Incident the parties shall discuss the circumstances that gave rise to the Major Incident, whether the action taken by the Provider to deal with the Major Incident ought to be continued and whether any adjustment or alteration in the Funding (as a consequence of the Major Incident) is appropriate. 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 by, and/or agreed with, the Executive. Where the Executive agrees to alter or adjust the amount of Funding as a consequence of the Major Incident, any such alteration or adjustment shall be set out in a Contract Change Note in accordance with Clause 38.10 (Change Control).

33. FORCE MAJEURE

- 33.1 **“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 32 of this Arrangement.
- 33.2 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 33 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.
- 33.3 The Claiming party will promptly notify the Non-claiming party of the nature and extent of the circumstances giving rise to a Force Majeure which results in delay in performance or in non-performance of the Services. The parties shall discuss the appropriate actions to be taken in the circumstances in the best interests of the relevant Service Users and the Provider shall implement the actions recommended by the Executive.
- 33.4 If the delay in performance or the non-performance of the Services as a result of the Force Majeure in question prevails for a continuous period in excess of one (1) month after the date on which the Force Majeure begins, the Non-claiming party is then entitled to give notice to the Claiming party to terminate this Arrangement. The notice to terminate must specify the termination date, which must be not less than ten (10) clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Arrangement will terminate on the termination date set out in the notice.
- 33.5 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.

34. DISPUTE RESOLUTION

34.1 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.

34.2 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 and in the case of a Dispute Notice served by the Executive, shall be authorised by an employee of the Executive of a grade not less than National Director, IHA Manager (or where applicable, Hospital Group CEO or Chief Officer), the parties hereby agree subject to Clause 34.4 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 34.2(b) PROVIDED THAT if both parties mutually agree in writing (with no obligation to do so) within seven (7) days of the date of the Dispute Notice, the parties may dispense with Stage 1 and proceed to Stage 2 directly from issue of the Dispute Notice. Otherwise, Stage 1 shall apply.

(b) **Stage 2**

A meeting shall take place between the designated representative(s) of the Executive (not being the representative involved in Stage 1) and a senior representative of the Provider, to discuss resolution of the issue within seven (7) days of completion of Stage 1 (or, if the parties have opted to mutually agree to progress straight from the Dispute Notice to Stage 2, within seven (7) days of the date of the Dispute Notice). In the event that the issue is not resolved, and not confirmed as having been fully and finally resolved by written binding agreement between the parties, within thirty (30) days from the commencement of Stage 2 (or such other period as is agreed in writing between the parties) then the parties shall immediately progress to Stage 3, as set out below in Clause 34.2(c) PROVIDED THAT if both parties mutually agree in writing (with no obligation to do so) (i) within seven (7) days of the date of the Dispute Notice, the parties may dispense with Stage 2 as well as Stage 1 and proceed to Stage 3 directly from issue of the Dispute Notice or (ii) within seven (7) days of completion of Stage 1, the parties may dispense with Stage 2 and proceed to Stage 3 directly from completion of Stage 1. Otherwise, Stage 2 shall apply.

(c) **Stage 3**

If the dispute remains unresolved as between the parties after the completion of Stage 2 (or, if the parties have opted to mutually agree to progress (i) straight from the Dispute Notice to Stage 3, after the date of the Dispute Notice or (ii) straight from completion of Stage 1 to Stage 3, after the completion of Stage 1), then the dispute may be referred by

either party to mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure. If the matter is so referred, the mediator shall be nominated by agreement in writing between the parties. In the event that agreement on the appointment of a mediator cannot be reached between the parties within fourteen (14) days of the commencement of Stage 3 (or such other period as is agreed in writing between the parties), the parties hereby agree that the mediator shall be appointed by CEDR for the time being.

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

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

(d) **Stage 4**

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

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

- 34.3 Arbitration of any dispute arising out of or in connection with this Arrangement shall not prevent or delay in any way performance of its obligations under this Arrangement by the Provider in accordance with the terms of this Arrangement, unless otherwise agreed between the parties, and should a dispute occur, the Provider must ensure that Services to Service Users will not be affected.
- 34.4 Nothing in this Arrangement will prevent either party from seeking any urgent, immediate, interim or provisional relief which it deems necessary from any court or prevent the Executive from bringing any proceeding, suit or action arising out of or in connection with this Arrangement (“**Proceedings**”) in any court in relation to any death or personal injury arising in connection with provision of the Services. The parties to this Arrangement irrevocably waive any objection to Proceedings in the courts of Ireland on the grounds of venue or on the grounds of forum non conveniens.
- 34.5 The provisions of this Clause 34 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 34 relates.
- 34.6 The provisions of this Clause 34 shall be without prejudice to the right of either party to terminate this Arrangement pursuant to any entitlement to terminate held by that party under Clause 35.

35. TERMINATION OR EXPIRY

- 35.1 Subject to the provisions of Clause 35.7, in the event of a serious breach of the performance of this Arrangement by the Provider (which shall be determined by a Lead REO or, where applicable, by the National Director), the Executive reserves the right to terminate this Arrangement by giving the Provider three months’ written notice (or such other written notice period as may be agreed).
- 35.2 In the event of a serious breach of the performance of this Arrangement by the Executive (which shall be determined by the Chief Executive Officer or equivalent of the Provider, acting reasonably), the Provider reserves the right to terminate this Arrangement giving three months’ written notice (or such other written notice period as may be agreed).
- 35.3 Subject always to Clause 36, either party may terminate this Arrangement by giving 12 months’ written notice (or such lesser written notice period as may be agreed) to the other party.
- 35.4 The Executive may terminate this Arrangement upon provision of six (6) months’ written notice where:
- (a) in respect of the Provider, a Reorganisation or Restructuring, dissolution or other analogous event (whether statutory or otherwise) occurs where the circumstances described in Clause 20.7 exist, or,
 - (b) in respect of the Executive, any significant organisational, governance or policy change affecting the Executive occurs, which the Executive is of the opinion substantially alters the nature, manner or amount of the Services and/or the Funding or the ability of the Executive or the Provider to perform its obligations under this Arrangement.
- 35.5 In the event that the Executive wishes to conduct a public procurement in respect of services which include all or part of the Services which are the subject of this Arrangement, the Executive may terminate this Arrangement (in whole or in part) upon provision of twelve (12) months’ written notice and reserves the right to award future services (whether or not such services are

similar to the all or some of the Services) in accordance with any public procurement process which may take place.

35.6 For the purposes of Clause 35.1, a “serious breach” 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 14 of this Arrangement;
- (c) the repeated failure of the Provider to comply with information requirements pursuant to Clause 10;
- (d) the failure of the Provider to comply with Clauses 17.6 and/or 17.7 of this Arrangement;
- (e) and for the purposes of Clause 35.2, a “**serious breach**” shall include but not be limited to:
- (f) 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.

35.7 If, in accordance with Clause 35.1, 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 three months’ notice (or such other written notice period as may be agreed) 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 35.7(d) to 35.7(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 or details of matters addressed received from the Provider and shall meet with the Provider to discuss the matter.
- (f) Following expiry of the period provided for in Clause 35.7(d) and having considered the Provider’s representations or details of matters addressed (if any), the Executive shall make a determination on whether there is a serious breach of the performance of this Arrangement by the Provider which has not been addressed to the Executive’s satisfaction by the Provider and as a result the Executive is to terminate this Arrangement by giving the Provider three months’ notice (or such other written notice period as may be agreed).

- (g) In relation to a determination made pursuant to Clause 35.7(f) to terminate this Arrangement, the Provider may invoke Clause 34.2(d) to access third party arbitration, consent to which shall not be unreasonably withheld. If the provider exercises the right to invoke arbitration this must be done within 14 days of receipt of the notice of termination and judgement by the arbitrator shall be made within the terms of the termination notice.
- 35.8 Without prejudice to Clause 2.5, and subject always to Clause 36 the Provider shall give the Executive twelve (12) months' written notice prior to the expiry of this Arrangement in the event that the Provider does not wish to provide Services or receive Funding from the Executive in the twelve (12) month period following expiry of this Arrangement.
- 35.9 Without prejudice to Clause 2.5, and subject always to Clause 36, the Executive shall give the Provider twelve (12) months' written notice prior to the expiry of this Arrangement in the event that the Executive does not wish to secure the provision of the Services from the Provider following expiry of this Arrangement.
- 35.10 Termination due to Insolvency, etc of Provider
- (a) Without prejudice to the rights of the Executive to terminate this Arrangement pursuant to Clause 33 and this Clause 35 and subject always to Clause 36, if:
 - (i) the Provider enters into any composition, assignment or arrangement with its creditors generally or if a resolution is passed, a petition is presented (save, in the case of petition, where such petition is being contested in good faith by the Provider, as the case may be, and is discharged within 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 of the Provider, (save for an amalgamation or reconstruction, the terms of which shall first have been approved in writing by the Executive, acting reasonably) or if an administrator, an administrative receiver, a receiver, a liquidator, a manager, a trustee-in-bankruptcy, or other similar officer (including, if applicable in any case, a process advisor) is appointed over the whole or the whole or substantially the whole of the assets or undertaking of the Provider;
 - (ii) any execution, order or other process in respect of an amount which (in the opinion of the Executive) would or could have a material impact on the Provider and/ or the provision of the Services and which is not discharged within 90 days is levied on the chattels of or the possessions of the Provider;
 - (iii) the Provider, stops or threatens to stop payment of its debts generally or ceases to carry on substantially all of its business or admits its inability to pay its debts generally or is for the purposes of section 570 of the Companies Act, 2014 (or any statutory modification thereof or under any other analogous law under any other relevant jurisdiction) deemed to be unable to pay its debts;
 - (iv) any cross-default of the Provider in excess of an amount which (in the opinion of the Executive) would or could have a material impact on the Provider and/or the provision of the Services under any other facilities provided by any third party to the Provider and such default has not been cured within any applicable grace period,

- (v) any similar events to the above occurring under any other relevant jurisdiction in which the Provider is incorporated, resident or carries on business, or
- (vi) the Provider (or a key member of the Provider's Personnel) dies or becomes incapacitated or the Provider no longer has a quorate board of directors or governing body and as a consequence the continued provision of the Services by the Provider is delayed, or rendered incapable or substantially more difficult of being performed provided that either party must give notice to the other party at the earliest available opportunity if it forms the opinion that the continued provision of the Services will be delayed, rendered incapable or substantially more difficult of performance as a consequence of death or incapacity or lack of quorum

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

- (b) The Provider agrees that, due to the nature of the Services and the importance of ensuring the safety and welfare of Service Users, including by uninterrupted service provision to the extent possible, it will notify the Executive as soon as practicable once it becomes aware that an event of the type referenced at Clause 35.10(a)(i) to (vi) above is likely to occur and will consult and co-operate with the Executive with a view to minimising, as far as possible, any disruption to the Services or any impact on Service Users.

- 35.11 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.

36. EFFECT OF TERMINATION OR EXPIRY

- 36.1 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.
- 36.2 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.
- 36.3 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.
- 36.4 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. Both parties will endeavour to complete such transition arrangements within a 6 month period.

36.5 In the interests of safeguarding the well-being, welfare and the continuity of Services to Service Users, upon termination or expiry of the whole or any part of this Arrangement, the Provider shall, if required by the Executive on a temporary basis, provide reasonable access to the Executive to any premises or information used in the provision of the Services until such time as the transfer of Service Users to any new premises, or discharge of Service Users, can reasonably occur and until such time, the Provider shall provide all reasonable assistance to the Executive in safeguarding the wellbeing, welfare and continuity of the Services to Service Users.

36.6 Upon termination or expiry of the whole or any part of this Arrangement:

- (a) the Provider shall, subject to Data Protection Laws, co-operate fully with the Executive in providing any data, confidential information and documentation in relation to the Services and/or Service Users as may reasonably be required by the Executive or any replacement provider of services;
- (b) the Provider shall co-operate fully with and provide all reasonable assistance to any replacement provider of services so as to ensure an efficient and expedient transition to the replacement provider without delay or disruption to the provision of the Services;
- (c) the Provider shall immediately return, at its own cost, to the Executive or destroy at the Executive's request, any property (including any information in any format) in its possession or under its control that belongs to, or has been predominantly funded by, the Executive; and
- (d) the Provider, if so directed by the Executive, shall cease to use and, if so directed by the Executive, shall uninstall any ICT National Solution provided by the Executive to the Provider.

36.7 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.

37. REPRESENTATIONS AND WARRANTIES OF THE PROVIDER

The Provider represents and warrants to the Executive that:

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

38. GENERAL

38.1 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.

38.2 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.

38.3 Notices

- (a) Subject to Clause 38.3(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 14.1 (Performance Notice) and Clause 34 (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 38.3(g) and, if so addressed, shall, in the absence of earlier receipt, be deemed to have been duly given or made as follows:
 - (i) if sent by personal delivery, on delivery at the address of the relevant party;
 - (ii) if sent by pre-paid post, two (2) clear Business Days after the date of posting;
 - (iii) if sent by email, when the email was sent as recorded on the device from which the sender sent the email and unless the sender receives an automated message that the email has not been delivered;
- (f) Any notice or other communication given or made, or deemed to have been given or made, outside Office Working Hours will be deemed not to have been given or made until the start of the next period of Office Working Hours.
- (g) The relevant notice details are:

Title of recipient: Address: Email address:

[Insert name of HSE Responsible Contact – there may be several contacts depending on areas covered] [Insert address of HSE Responsible Contact] xxx

[Insert name of Provider Responsible Contact – there may be several contacts depending on areas covered] [Insert address of the registered office of the Provider & Responsible Contact (if different)] xxx

- (h) A party may notify the other parties of a change to its notice details. That notification shall only be effective on:
- (i) any effective date specified in the notification; or
 - (ii) if no effective date is specified or the effective date specified is less than five (5) clear Business Days after the date when notice is received, the date falling five (5) clear Business Days after the notification has been received.
- (i) The provisions of this Clause 38.3 shall not apply in relation to the legal service of documents.

38.4 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.

38.5 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.

38.6 Alterations Do Not Affect Standard Terms

- (a) This Arrangement reflects the standard terms and conditions which the Executive has determined will apply to the provision of Funding under the Health Acts from 1st January 2025.
- (b) 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.
- (c) Any amendment to this Arrangement during the Duration of this Arrangement must be confirmed in writing (to include electronic communication) by a Lead REO (or, where applicable, the National Director) or equivalent and specifically identified by title as an amendment to this Arrangement in order to be valid, enforceable or binding. This Clause 38.6(c) does not apply to the amendment of a HPSR which is governed by Clause 38.10.
- (d) For administrative purposes, the Provider shall send the Executive a copy of this Arrangement signed by the Provider for the Executive's records.

38.7 No Partnership and No Agency

- (a) Nothing in this Arrangement and no action taken by the parties pursuant to this Arrangement shall constitute, or be deemed to constitute, a partnership, association, joint venture or other co-operative entity between any of the parties.
- (b) Subject to Clause 14.5, nothing in this Arrangement and no action taken by the parties pursuant to this Arrangement shall constitute, or be deemed to constitute, any party as the agent of any other party for any purpose. Neither party has, pursuant to this Arrangement, any authority or power to bind or to contract in the name of the other party to this Arrangement.

38.8 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.

38.9 Entire Agreement

- (a) For the purposes of this Clause 38.9, "**Pre-contractual Statement**" means a draft agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to this Arrangement made or given by a party to this Arrangement or any other person at any time prior to the date of this Arrangement.
- (b) This Arrangement constitutes the whole and only agreement between the parties relating to the provision of the Services.
- (c) Except to the extent repeated in this Arrangement, this Arrangement supersedes and extinguishes any Pre-contractual Statement.

- (d) Each party acknowledges that in entering into this Arrangement it is not relying upon any Pre-contractual Statement which is not set out in this Arrangement.
- (e) No party shall have any right of action against any other party to this Arrangement arising out of or in connection with any Pre-contractual Statement (except in the case of fraud) except to the extent repeated in this Arrangement.

38.10 **Variation**

- (a) The HPSR(s) may be varied in writing (excluding electronic methods of writing) signed by each of the parties. Any request for a change to a HPSR (other than changes to a HPSR arising as a result of the introduction of a new HPSR annually or at such other time as notified by the Executive) shall be accompanied by a contract change note completed via the fully automated change control process available through the Executive's Service Provider Governance (SPG) online system ("**Contract Change Note**" or "**CCN**"). Until such time as a Contract Change Note has been signed by both parties, the Provider shall, unless otherwise expressly agreed in writing, continue to supply the Services in accordance with the terms of this Arrangement, including the HPSR (or HPSRs if applicable).
- (b) The Executive reserves the right to amend this Arrangement by notice in writing to the Provider should there be a change in legislation or an order of the Minister necessitating such amendment and subject to paragraph (c) below the Provider shall be bound by such amendment for the Duration of this Arrangement.
- (c) The parties agree to discuss in good faith and on a strictly without prejudice basis any adjustment to the Funding or Services required or desirable to take account of any change in law, direction, requirement for authorisation (in each case not at the date hereof required or in force) that causes a demonstrated material increase or decrease in costs of 5% or greater to the Provider providing the Services in accordance with this Arrangement. The parties shall as far as practicable co-operate to seek to mitigate the effects of such a change.

38.11 **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.

38.12 **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.

38.13 **Governing Law**

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

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

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

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

Signed by _____ **Name:**

for and on behalf of the _____
HEALTH SERVICE EXECUTIVE: _____

Print Name:

Date _____
.....
Title:

SCHEDULES

Schedule 1 – Funding

Schedule 2 – Quality & Safety

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

Schedule 4 – Insurance

Schedule 5 – Complaints

Schedule 6 – Codes of Practice

SCHEDULE 1

FUNDING

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

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

AUDITED ACCOUNTS	DETAILS OF THE FORMAT REQUIRED
The Provider shall submit a copy of its final signed audited financial statements to the Executive, together with a copy of the auditor's management letter (if issued), and the Provider's separate response to the auditor's management letter (if issued), by 31st May for periods ending on 31st December of the prior financial year of the Provider or, within five (5) months of the Provider's financial year end date for periods ending on a date other than 31st December of such prior financial year. For the avoidance of doubt, the expenses of the audit of the Provider's annual financial statements shall be payable by the Provider. The detailed income and expenditure account should be included in the Provider's submission; the detailed income & expenditure account does not need to be audited. The Provider shall publish the annual audited financial statements for each financial year of the Provider on the website of the Provider (or where the Provider does not have a website, in such other manner as agreed with the Executive). It should be noted that, for the purpose of this Arrangement, the financial statements are required to be audited regardless of any applicable exemptions under Section 358 of the Companies Act 2014. It should also be noted that, even if a Provider may fall within the abridged reporting and audit exemption thresholds of the Companies Act 2014, the financial statements to be submitted to the Executive, filed with the CRO and published on the organisation's website must be the unabridged annual audited financial statements and contain the detailed income & expenditure account referred to above and the disclosure requirements outlined below. Note: where a Provider has adopted the SORP for Charities, the funding provided is considered a performance grant and should be shown as restricted income. The Provider shall ensure that the published annual audited financial statements comply in all respects with the disclosure requirements in respect of the Funding set out in the Department of Public Expenditure and Reform Circular 13/2014 Management of and Accountability for Grants from Exchequer Funds (including any interpretations or clarifications of such requirements issued by the Department of Finance, Department of Public Expenditure, NDP Delivery and Reform, Department of Health, Department of Children, Equality, Disability, Integration and Youth and/or the Executive) ("DPER Circular 13/2014") and that the annual audited financial statements include the information outlined in DPER Circular 13/2014 in respect of Funding and expenditure related thereto (as distinct from other funding or monies received by the Provider during the relevant financial year) and from all other State bodies (for the purposes of this clause, a "Grant"): The Provider shall ensure that its published annual audited financial statements separately identify the following items: (a) fundraising, and the proceeds thereof, received by the Provider; (b) monies generated from commercial or other activities of the Provider, and specifying such activities;	

- (c) disclosure of salaries as per requirements of Part 1 in bands of €10K from the first point of Grade VIII of the Department of Health's consolidated salary scales, disclosure as per SORP will be accepted as alternative;
- (d) disclosure of the C.E.O. or equivalent salary; and
- (e) confirmation as to whether the Provider is funded over 50% from Exchequer Funding.

ANNUAL FINANCIAL MONITORING RETURN

An Annual Financial Monitoring Return (**AFMR**) in the required format is required to be returned by the Provider to the Executive. The AFMR provides details of the Funding and is required to be returned with the Provider's audited annual financial statements.

AUDITS AND EVALUATIONS

All audit (Internal Agency, Internal Executive, C&AG and External) recommendations must be implemented. Providers must agree to a management action plan and then to implement on that basis.

FINANCIAL GOVERNANCE

As an organisation funded from public exchequer sources, the Provider is required to conform to the governance principles outlined in this Arrangement and DPER Circular 13/2014, in addition to the separate disclosure requirements outlined in this Schedule 1 regarding the Annual Audited Financial Statements and Annual Financial Monitoring Return, these include the following:-

1. The Funding provided under this Arrangement must be utilised for the specific purposes outlined in the HPSR.
2. The Statement of Principles in DPER Circular 13/2014 outlines core principles in the administration and management of funding from exchequer sources, these include clarity, governance, value-for-money and fairness. As an organisation in receipt of exchequer funding by way of the Funding provided pursuant to this Arrangement, the Provider is obliged to ensure it complies with these core principles. This requires the Provider to have in place strong financial controls to ensure that only expenditure germane to the activities of the Provider are paid from public funds. Such controls should include the following: that gifts, parking fines, entertainment and alcohol should not be funded from public funds, that expenditure on foreign travel and restaurants should also be subject to strict controls and that all such expenditure should be documented fully, to identify the purposes of the activity and those participating, and to ensure that it has been properly approved.
3. Robust systems of internal controls which include written financial procedures to mitigate risks, including financial risk, are essential. It is also essential that they are reviewed by the Provider Board on an ongoing basis.
4. The Provider's annual audited financial statements must state whether the Provider was in receipt of over 50% of its total income from public exchequer sources in the relevant financial year of the Provider.
5. The Provider's annual audited financial statements (unabridged) should be made available on the Provider's website.

6. Where funding sources, other than those made known to the Executive under this Arrangement are available to the Provider, there should be no duplication in purpose or expenditure.
7. This Arrangement requires that the Provider has regard to public sector pay policy and that the Provider does not pay nor subsidise salaries, expenses or other perquisites (including, but not limited to, bonus payments and benefits in kind) which exceed those normally paid within the public sector.
8. All related party transactions should be recorded and transparently disclosed in the annual audited financial statements of the Provider and no employee and or director, executive or otherwise, should be in receipt of additional payments from related entities.
9. General principles of fair procurement should be applied and, where applicable, public procurement regulation should be adhered to.
10. The Provider should be tax compliant and have current Tax Clearance.
11. Where capital assets are funded/part funded by the Executive, the State's interest should be protected through the funding recipient entering into a grant agreement with the Executive and the capital asset should be used for the purpose as set out therein and not be sold or used as security for any loan or mortgage without the prior agreement of the Executive.
12. All audit (internal audit agency, Executive's internal audit, C&AG and external audit) recommendations must be implemented. Providers must agree to a management action plan and then to implement on that basis.
13. Auditors shall be given full access to all information, records, assets, property and personnel required by them for audit or investigation purposes and shall be given every assistance in the conduct of their work.
14. The Provider must report to the Executive any suspected or actual cases of serious irregularities in the nature of fraud or corruption which have come to its attention.

NOTE 1: FINANCIAL PROCEDURES

All organisations funded by the Executive, including the Provider, are expected to have **written** financial procedures commensurate with the size and scale of the organisation's operations.

Where an organisation is in receipt of funding under a service arrangement, including a Provider in receipt of Funding under this Arrangement, such an organisation is expected to have policies and procedures equivalent to the Executive's National Financial Regulations (NFR) in place where relevant to such organisation.

It should be noted that NFR B1 is considered applicable for all such organisations.

The Executive's National Financial Regulations should be used as the basis of such organisation's (including the Provider organisation's) regulation where the Provider organisation engages in associated activities.

Example: if the Provider organisation has fixed assets, it would be expected that the Provider organisation would have Fixed Asset systems equivalent to NFR-B7 Fixed Assets and Capital Accounting or where the Provider organisation has Credit Cards, NFR-B5 Credit Card and Procurement Cards to include approval of all credit card statements and provision of receipts to accompany credit card statements.

PROCUREMENT – REQUIREMENTS FOR FUNDED AGENCIES

Pursuant to the Government decision of April 2013 in relation to procurement, which mandates “Health” to act as one voice in the market, relevant Providers are required to work in a collaborative partnership with the Executive on initiatives to develop and implement a single Multi-Annual Procurement Plan (MAPP) involving both the Executive and Providers funded by the Executive. The Multi-Annual Procurement Plan will be underpinned by an analysis of expenditure on procurement and the procurement and purchasing structures in each Provider organisation. The plan will set practical and strategic aims, objectives for improved procurement outcomes and appropriate measures to achieve these aims will be implemented.

To enable delivery of the Multi-Annual Procurement Plan, Providers are required to undertake the following:

1. *The Provider shall nominate a senior manager to coordinate the Provider’s Procurement Plan activity in the context of implementing the Multi-Annual Procurement Plan.*
2. *The Executive will maintain a Central Contracts Register and Procurement Plan Management System (PPMS) for Providers and will provide a suite of dashboard reports and analyses to the Provider on its contractible expenditure / Procurement Plan. These reports will identify the current position and activity, and opportunities for the Provider to achieve improved compliance and better value for money.*
3. *The Provider shall provide periodic summary reports of its ‘Spend Data’ and information on all contracts / agreements negotiated locally to facilitate effective data analysis and procurement planning. Where data is not available at item level or is incomplete, the Provider shall authorise the Executive to work in conjunction with the relevant suppliers to obtain the necessary breakdown and details.*
4. *The Provider shall provide information on both the procurement and purchasing structures in the Provider’s organisation.*
5. *The Provider shall identify all staff members authorised to source suppliers and to contract / place purchase orders on its behalf and ensure;*
 - *That each authorised officer is registered on hsepass.ie which has details on all contracts awarded by the Executive and the Office of Government Procurement (OGP) and on approved suppliers, and,*
 - *That they use hsepass.ie as their primary source for identifying sources of supply of products and services.*
6. *The Executive and all Providers funded by the Executive are mandated to use contracts put in place by Executive Procurement and the OGP.*
7. *All expenditure over €50,000.00 must be advertised on the eTenders website. (Circular 05/2023 refers).*
8. *The National Public Procurement Policy Framework can be accessed at: gov.ie/en/publication/39a1b-the-national-public-procurement-policy-framework/*

Information and Guidance on Procurement is available on: hsepass.ie

Professional Procurement Advice and guidance is available from: procurement.helpdesk@hse.ie

SCHEDULE 2

QUALITY AND SAFETY

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

CORPORATE AND QUALITY / SOCIAL CARE GOVERNANCE

Quality and Safety Board Committee (*As per clause 25.6 in Part 1 the Provider is required to establish a Quality and Safety Board Committee, the composition and roles of which are outlined below*) – further details available on the Executive's website.

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

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

QUALITY ASSURANCE AND MONITORING OF QUALITY AND STANDARDS

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

- (a) HIQA programmes
- (b) Engage in Healthcare Audits conducted by:
 - the Internal Audit Division Healthcare Audit Function

- the National Centre for Clinical Audit (NCCA)
 - National Office of Clinical Audit (NOCA)
- (c) Cooperation with annual visits by the Inspector of Mental Health Services.

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

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

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

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

INFECTIOUS DISEASES (INCLUDING COVID-19)

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

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

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

(a) The Executive

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

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

(b) HPSC

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

FLU VACCINE

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

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

SCHEDULE 3

REQUIREMENTS FOR INFORMATION, PERFORMANCE MONITORING AND GENERAL GOVERNANCE

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

A. The Provider confirms the following documents will be completed and submitted to the Executive Key Contact Person as appropriate in the highest Funding IHA, national office of the Executive or Funding Health Region (or where applicable, highest Funding CHO or Hospital Group) (as confirmed by the Executive).					
Document Name	Submitted to:	Annual	Bi-annual	Quarterly	Monthly
Audited Annual Financial Statements ("AFS") accompanied by: *External Auditors Management Letter (if issued) *Provider Response to External Auditors Management Letter *Annual Financial Monitoring Return <i>(May require draft prior to final AFS submission due to timing)</i> <i>* Where the previous financial year's reports/ financial statements are not yet available, the latest available should be provided with a date agreed for receipt of the previous financial years.</i>	CMSU	✓			
AFMR (Funding > €250K)	CMSU	✓			
Integrated Management Reporting (IMR) <i>(Where organisations are providing IMR reports this may replace the need for separate Financial Report/Management Accounts)</i>	Executive Financial Contact				✓
Financial Report / Management Accounts	Executive Financial Contact	✓ < €1m	✓ €1m - €5m	✓ €5m - €20m	✓ > €20m

Financial Governance Report – if required
Activity Data will be submitted as required
Senior Staffing Template Senior Staffing - Details of Direct Provider Personnel associated with the Services provided pursuant to this Arrangement who are in receipt of salaries equivalent to current Grade 8 or above on the consolidated salary scales should be set out on the Senior Staffing template which is available on the Non-Statutory Section of the Executive's website. This template must be submitted to the Executive Key Contact Person in the highest Funding IHA, national office of the Executive or Funding Health Region (or where applicable highest Funding CHO or Hospital Group). In this regard, where the Provider is part of a Group, any employee of any other company within that Group who participates in the management/administration of the Services and is funded from the Funding received by the Provider under this Arrangement should also be included. <i>For this purpose, "Group" means the Provider and any holding company or subsidiary of the Provider and any subsidiary of any such holding company, holding company and subsidiary having the meaning ascribed to such terms at Sections 7 and 8 of the Companies Act 2014).</i>
B. The Provider confirms the following documents are in place and will be made available to the Executive's highest Funding IHA, national office of the Executive or Funding Health Region (or where applicable, Funding CHO or Hospital Group) (as confirmed by the Executive) where required:
Document Name
Annual Financial Statements*
Annual Report* <i>(to be submitted where relevant by the 30th September in a given year.)</i>
Annual Compliance Statement from Board <i>(as relevant)</i>
Strategic Plan
Code of Governance
Clinical Governance Policy
Organisational Chart
Complaints Procedures to be submitted to relevant office in the Health Region (Mandatory Requirement)
Constitution or other governing document
Policy for obtaining feedback from Service Users and Staff
Policy/Procedure for Patient Private Property <i>(Where an organisation has charge of a Service User's private property, then an appropriate system of administration and control needs to be in place to ensure compliance with regulations.)</i>
Safety Statements.
Staff levels for return as required (Employment Monitoring Return)
Provider Structure (Organogram)

* these documents should be published on Provider's website

C. The Provider confirms the following processes and procedures are in place:

(a) Provider Personnel

(i) General Requirements

- Recruitment and selection practices will comply with the principles set out in the relevant Codes of Practice issued by the Commission for Public Service Appointments (CPSA) and relevant HR policies of the Executive on the recruitment, selection, clearance/vetting and contracting processes required for new appointments and for promotions.
- The organisation will only appoint staff who meet the relevant Executive-declared qualifications and experience appropriate to the position being filled. Furthermore, qualifications must be validated by the relevant competent authority.
- Staff induction programmes, training, on-going education, personal or professional development are in place.
- Structures and processes are in place to support staff in improving individual and organisational performance.
- A system is in place which records that those staff that are required by legislation to maintain a valid registration, with the appropriate professional organisation, are adhering to this requirement.

(ii) Children First

- It is a requirement for each Provider to be in full compliance with Children First Act 2015 and Children First National Guidance for the Protection and Welfare of Children 2017.
- “An Introduction to Children First” elearning Module available through HSELand – www.hseland.ie
- All staff in HSE funded agencies, including those in agencies supporting adults, must complete the HSE “An Introduction to Children First” elearning Module, which is available through HSELand – www.hseland.ie
- Provider Personnel involved in service provision and/or in contact with service users, must also complete the An Introduction to Children First’ elearning Module. Volunteers can access the eLearning module through – www.hseland.ie
- Provider Personnel (including, for avoidance of doubt, relevant volunteers) must complete the online module, prior to commencement of work or as soon as practicable on commencement.
- The training must be completed every three (3) years.

(iii) Code of Conduct for Provider Personnel

- The Provider shall have a code of conduct in place, with notification of same to all Provider Personnel, that reflects the DOH Code of Practice for Personnel Health Providers:- “Supporting a Culture of Safety, Quality and Kindness: A Code of Conduct for Health and Social Service Providers” May 2018.

(b)	Cyber Security Awareness: The National Cyber Security Centre (NCSC), in conjunction with the Office of the Government Chief Information Officer (OGCIO), have developed a Cyber Security Baseline Standards for Government ICT. The Baseline Standards are intended to create an acceptable security standard and form a broad framework for a set of measures which can be revised over time. The Standards model follows a holistic and comprehensive approach to the issues related to Cyber Security, which combines the best of various standards to address the needs of key stakeholders. It is expected that all Provider organisations will be aware of these standards as set out in the Department of the Environment, Climate and Communications' document, Public Sector Cyber Security Baseline Standards.
(c)	Complaints Please refer to Schedule 5.
(d)	Incident Management The Provider's senior accountable officer is required to ensure that all Incidents are appropriately reported to the Executive's Senior Accountable Officer of the IHA (or where applicable, CHO and Hospital Group).
(e)	Safeguarding Concerns In addition to the obligations for reporting Incidents as set out in this Arrangement, issues, concerns or allegations of abuse that are Incidents (including Category 1 Incidents, Serious Reportable Events and Notifiable Incidents) should be notified by the Provider in accordance with the Codes of Practice and recorded by the Provider in the appropriate manner. The Provider's senior accountable officer, in the context of the management of an Incident, is the person who has ultimate accountability and responsibility for the Services within the area where the Incident occurred.
(f)	Category 1 Incidents, Serious Reportable Events and Notifiable Incidents The Provider's senior accountable officer is also required to immediately notify Category 1 Incidents, Serious Reportable Events and Notifiable Incidents, to the relevant Executive Key Contact Person and to the Executive's Senior Accountable Officer of the IHA (or where applicable, CHO and Hospital Group).
(g)	HIQA, Child and Family Agency or Mental Health Commission Registration As applicable to Provider.
(h)	Data Protection With regard to Data Protection, Data Sharing and Data Protection Laws, the Provider shall comply with all relevant legislative provisions and obligations thereunder, in particular, but not limited to Data Processing Agreements, Data Sharing Agreements and Data Protection Impact Assessments where applicable and/or as required by the Executive.
(i)	Garda Vetting All requirements of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012 are complied with.

SCHEDULE 4

INSURANCE

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

This Schedule 4 sets out the mandatory minimum requirement that the Provider must have in relation to insurance and liability cover, in addition to the indemnities referenced under Clause 15 of Part 1 of this Arrangement.

1. Public Liability insurance with a limit of indemnity of €6,500,000 (€6.5 million) for any one claim or series of claims arising out of a single occurrence. The insurance policy must contain an indemnity to principal clause.
2. Employers Liability insurance with a limit of indemnity of €13,000,000 (€13 million) for any one claim or series of claims arising out of a single occurrence. The insurance policy must contain an indemnity to principal clause.
3. Motor Insurance (if Services involve use of motor vehicle by Provider) with a third party property damage limit of:
 - (a) €2,600,000 (€2.6million) where Provider turnover is under €40 Million
 - (b) €6,500,000 (€6.5million) where Provider turnover is €40 Million or overany one occurrence.
4. Professional Indemnity
 - (a) The Clinical Indemnity Scheme (CIS) covers personal injury risks and subsequent claims/liabilities arising from the negligent act or omission associated with the provision of, or failure to provide Professional Medical Services on the part of the Provider, its servants and/or agents.
 - (b) To the extent that Professional Medical Services are provided by the Provider and not otherwise covered by the CIS, the Provider must ensure that it has professional indemnity and/or Professional Medical Services indemnity insurance in accordance with the following thresholds or such other thresholds as may be specified by the Executive from time to time:
 - (i) Low risk: €1 million up to €4 million any one occurrence and in the aggregate.
 - (ii) Medium risk: €4 million up to €6.4 million any one occurrence and in the aggregate.
 - (iii) High risk: Minimum €6.4 million up to €10 million any one occurrence and in the aggregate. (*Significant risk may require higher indemnity*).
5. Other Insurances

The Provider is responsible for ensuring that all appropriate insurances are in place. Insurance other than those outlined in this Schedule 4 may be required.

Notes:

- Territorial and jurisdictional limits for all insurances must include the Republic of Ireland (ROI)
- Insurances should be placed with an insurer or insurers authorised to operate in Ireland by the Central Bank of Ireland (or within the EU under the Services Directive (Directive 2006/123/EC)).

SCHEDULE 5

COMPLAINTS

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

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

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

Note that a Provider does not need access to the NIMS to manage complaints through the Complaints Management System ("CMS"). CMS is a separate module on the NIMS platform with a separate login process.

TIMETABLE FOR SUBMISSION OF POLICY & PROCEDURES DOCUMENT

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

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

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

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

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

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

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

CONTACT – NATIONAL COMPLAINTS GOVERNANCE AND LEARNING TEAM

Contact Details:

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

SCHEDULE 6

CODES OF PRACTICE

The Non-Statutory Section of the Executive's website contains a list of Codes of Practice (as defined at Clause 1.1 of Part 1 of this Arrangement) relevant to the Services and divided into (i) a Generic Listing which applies to all providers of health and personal social services under Section 39 service arrangements (including the Provider under this Arrangement) and (ii) applicable Care-Group Specific Listing in respect of which the nature of the Services will determinate the care-group listing specific to this Arrangement for information of and reference by Providers.

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

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

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