

DATE

HEALTH SERVICE EXECUTIVE [PLEASE EDIT EMPLOYER NAME AS APPROPRIATE]

-and-

[INSERT EMPLOYEE NAME]

Contract of Employment – 2023 CONSULTANTS’ CONTRACT

Strictly Confidential

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This Contract is dated the day of 2023

PARTIES

Health Service Executive, having its office at Oak House, Limetree Avenue, Millennium Park, Naas, Co Kildare (the “**Employer**”) **[PLEASE EDIT EMPLOYER NAME AND ADDRESS AS APPROPRIATE]**

And

[PLEASE INSERT EMPLOYEE NAME]

of **[PLEASE INSERT EMPLOYEE ADDRESS]**

(the “**Employee**”)

IT IS AGREED that the following terms and conditions will apply to the Employee's employment by the Employer.

1. TITLE AND GLOSSARY

1.1 The Employee is employed as [PLEASE INSERT ROLE TITLE].

1.2 In this contract, except where the contrary appears, the following expressions have the following meanings:

1.2.1 "**consultants' representative bodies**" means such trade unions and associations as are recognised by the HSE as being bodies that are representative of medical and/or dental consultants;

1.2.2 [PLEASE DELETE THIS DEFINITION IF THE EMPLOYEE'S LINE MANAGER IS NOT A CLINICAL DIRECTOR] "**clinical director**" means a consultant¹ employed by the Employer whose functions include (among others) functions relating to the deployment and management of consultants, and, for the avoidance of doubt, any definition of the term "clinical director" in any enactment is not relevant to the interpretation of that term in this contract except where expressly provided, and the capitalised expression "**Clinical Director**" if used means the clinical director who is the Employee's line manager further to this contract;

1.2.3 "**consultant**" means a registered medical or dental practitioner who:

- (a) by reason of their training, skill and expertise in a recognised specialty, is consulted by other registered medical or dental practitioners;
- (b) is registered on the Specialist Division² (in the case of a medical consultant) or on the Register of Dental Specialists (in the case of a dental consultant);
- (c) has a continuing clinical and professional responsibility for patients under their care, or that aspect of care on which they have been consulted; and
- (d) in the case of a public health consultant, provides leadership for the protection and improvement of the health of a population; leads a public health consultant-provided service; has responsibility for the assessment of and/or delivery of care, with a focus on proactive, preventative and integrated care, and the overall management of the health of a population within an assigned role;

1.2.4 "**enactment**" has the same meaning as in the *Interpretation Act 2005*;

1.2.5 [PLEASE DELETE THIS DEFINITION IF THE EMPLOYEE'S LINE MANAGER IS NOT AN EXECUTIVE CLINICAL DIRECTOR] "**executive clinical director**" means a consultant employed by the Employer whose functions include (among other functions) functions relating to the deployment and management of consultants in the mental health services³ and the capitalised expression "**Executive Clinical Director**", if used, means the executive clinical director who is the Employee's line manager further to this contract;

¹ Note that the definition of a consultant includes a requirement that the consultant be on the specialist register – and therefore that a Clinical Director needs to be on the specialist register as well. PLEASE DELETE THIS FOOTNOTE.

² Note the definitions of "Specialist Division" and "Medical Council" on the next page. Taken together, the definitions mean that a consultant must be on the "Specialist Division" of the register (colloquially known as the "specialist register"). PLEASE DELETE THIS FOOTNOTE.

³ The expression "Executive Clinical Director" is used in the mental health services as an alternative to the expression "Clinical Director" because the expression "Clinical Director" has a specific statutory meaning in respect of the mental health services. PLEASE DELETE THIS FOOTNOTE.

- 1.2.6 **“material criminal offence”**⁴ means
- (a) an offence that is an “excluded offence” within the meaning of subsection (5) of section 14A of the *National Vetting Bureau (Children and Vulnerable Persons Act 2012*, and
 - (b) any offence provided for in the *Criminal Justice (Theft and Fraud Offences) Act 2001*, and
 - (c) any other serious criminal offence that can reasonably be considered to give rise to a concern about the Employee’s employment with the Employer in light of the elevated level of trust and confidence that is placed in the Employee further to their role as a consultant,
 - (d) but does not include
 - (i) any offence listed at paragraphs (a), (b) and (c) of subsection (4) of section 14A of the *National Vetting Bureau (Children and Vulnerable Persons Act 2012*,⁵ or
 - (ii) an offence that led to a conviction that is a spent conviction within the meaning of the *Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016*;
- 1.2.7 **“NCHDs”** means “non-consultant hospital doctors”;
- 1.2.8 **“public health service”** means the HSE and any entity that receives funding under section 38 of the *Health Act 2004*;
- 1.2.9 **“secondary service(s)”** means _____ [PLEASE SPECIFY THE NAME OF THE SECONDARY SERVICES, IF ANY – OTHERWISE PLEASE DELETE THIS DEFINITION] (and, if there is more than one secondary service, “secondary service” means any of the secondary services);⁶
- 1.2.10 **“the 2023 consultants’ contract”** means the template contract approved by the Department of Health for use with effect from XXX February 2023 as contracts for the employment of consultants in the public health service and in certain other agencies;
- 1.2.11 **“the Commencement Date”** has the meaning provided in clause 5;
- 1.2.12 **“the Consolidated Salary Scales”** are Department of Health’s consolidated salary scales, as sanctioned by the Minister for Health and approved by the Minister for Public Expenditure and Reform from time to time, insofar as those scales apply to consultants;
- 1.2.13 **“the Dental Council”** is the body established by section 6 of the *Dentists Act 1985*;
- 1.2.14 **“the letter of approval”** is the document, attached at Appendix 1, in which the HSE approved the Employee’s post further to the discharge by the HSE of its functions relating to regulating the number and type of appointment of consultants in the public health service;
- 1.2.15 **“the Medical Council”** is the body established by section 6 of the *Medical Practitioners Act 1978* and continued in being by section 4 of the *Medical Practitioners Act 2007*;
- 1.2.16 **“the Parties”** means the Employer and the Employee, each of whom is a “Party”;

⁴ This new definition restricts the number of criminal offences that the Employee need to report to the Employer, in order to focus on serious offences and omit minor offence. PLEASE DELETE THIS FOOTNOTE.

⁵ These three items exclude from the definition of “material criminal offence” most road traffic offense and a number of minor offences under the *Intoxicating Liquor Act 1988* and the *Criminal Justice (Public Order) Act 1994*. PLEASE DELETE THIS FOOTNOTE.

⁶ Please insert name of secondary services(s) as set out in the letter of approval and then PLEASE DELETE THIS FOOTNOTE. If there is no secondary service, PLEASE DELETE THIS DEFINITION AND THIS FOOTNOTE.

- 1.2.17 **“the Register of Dental Specialists”** is the Register of Dental Specialists established and maintained by the Dental Council further to section 29 of the *Dentists Act 1985*;
- 1.2.18 **“the Secretariat”** is a unit within the HSE that provides administrative support to decision-makers in procedures established under this contract to resolve differences or disputes;
- 1.2.19 **“the Single Scheme”** means the Single Public Service Pension Scheme established by the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012*;
- 1.2.20 **“the Specialist Division”** is the specialist division of the register of medical practitioners established and maintained by the Medical Council further to section 43 of the *Medical Practitioners Act 2007*;
- 1.2.21 **“they”, “them” and “their”** are singular pronouns that refer to the Employee;
- 1.2.22 **“twilight working”** will be interpreted in accordance with paragraph 13.4;
- 1.2.23 **“urgent”** means requiring immediate action or attention; and
- 1.2.24 **“work plan”** will be interpreted in accordance with paragraph 13.5.
- 1.3 “On call” systems exist as part of arrangements to provide service cover across the public health system. The Employee is **“on call”** when, as part of an arrangement established by the Employer that relates expressly to “on-call” working, they are required to be available to provide advice to patients or colleagues; and/or to diagnose and/or treat patients, whether the Employee is (during the “on call” period) located at the Employee’s workplace, at their home, or elsewhere.
- 1.4 In this contract, a reference to an enactment will be read as being a reference to that enactment as amended or replaced by any subsequent enactment (whether before or after the making of this contract).
- 1.5 In this contract, a reference to any document (such as a code, guidance, guide, model of care, plan, policy, procedure, programme, regulation, scheme, set of principles or strategy) will be read as being a reference to such document as amended, substituted, supplemented, revised or replaced by any subsequent document (whether before or after the making of this contract).
- 1.6 In this contract, except in Appendix 7, a reference to any “clause”, “paragraph”, “sub-paragraph”, “item” and “appendix” is a reference to a clause, paragraph, sub-paragraph, item or appendix of the main part of this contract (excluding the appendices) unless the contrary is expressly provided. References to “this contract”, except where the contrary is stated, are references to the whole of the contract, including the appendices. In Appendix 7, a reference to any “section”, “paragraph” or “sub-paragraph” is a reference to a section, paragraph or sub-paragraph in Appendix 7 unless the contrary is expressly provided.
- 1.7 This contract supersedes and replaces any and all previous contracts of employment between the parties except to the extent (if any) as may be provided by Appendix 9.
- 1.8 The headings to the clauses of this contract are for convenience of reference only and will not affect the meaning or construction of anything contained in this contract.
- 2. CORE PRINCIPLE**
- 2.1 The Parties recognise that the employment relationship is founded upon mutual trust and respect for each other.

3. APPOINTMENT

OPTION 1 – SINGLE SERVICE, NOT ACADEMIC CONSULTANT – DELETE IF APPOINTMENT IS AS ACADEMIC CONSULTANT OR TO MULTIPLE SERVICES

The Employee's appointment will be to _____ [PLEASE INSERT NAME OF EMPLOYER AS SET OUT IN THE HSE LETTER OF APPROVAL at APPENDIX 1] ("**the Employer**").

OPTION 2 – ACADEMIC CONSULTANT – DELETE IF APPOINTMENT IS NOT AS ACADEMIC CONSULTANT

The Employee's appointment will be as an academic consultant in the grade of _____ [PLEASE INSERT GRADE HERE, ONE OF: PROFESSOR/CONSULTANT; ASSOCIATE PROFESSOR/CONSULTANT; OR SENIOR LECTURER/CONSULTANT]. This is a joint appointment between _____ [PLEASE INSERT NAME OF HOSPITAL/HEALTH AGENCY HERE] and _____ [PLEASE INSERT NAME OF UNIVERSITY HERE] ("**the University**"). The provisions of Appendix 4 will apply to this appointment.

OPTION 3 – MULTIPLE SERVICES, NOT ACADEMIC CONSULTANT – DELETE IF APPOINTMENT IS TO A SINGLE SERVICE OR AS AN ACADEMIC CONSULTANT

In the event that the Employee is employed to provide services to multiple clinical services, then PLEASE DELETE the preceding options and instead use the following paragraphs 3.1 to 3.5. In such cases, the Employee will still have one "primary" employer – that is the organisation described as "the Employer" in this contract. The Employee will work in the other services ("secondary services") (to the extent set out in the letter of approval) but those secondary services will not be the Employee's employer.

PLEASE DELETE THE TEXT IN THIS BOX.

- 3.1 The Employee's commitment will be to the Employer [OR SPECIFY THE RELEVANT SERVICE WITHIN THE EMPLOYER, WHERE RELEVANT] for _____ hours per week and to _____ [SPECIFY THE NAME OF THE SECONDARY SERVICES] for _____ hours per week.
- 3.2 The Employee's employment is contingent on the Employee continuing to meet the commitments to both the Employer and the secondary service(s) as set out in the letter of approval. If the Employer and/or the secondary service(s) reconfigure services such that the Employee is no longer required to meet the commitments set out in the letter of approval, the Employee will be entitled to be redeployed within the parameters that are, for the time being, applicable further to national public service agreements.
- 3.3 Notwithstanding that the Employee has certain obligations to the secondary service(s), the Employee's employer is nevertheless the Employer (and is not any of the secondary services). Therefore:
- (a) the Employee's line management and clinical governance will be conducted through the Employer's structures;
 - (b) the Employee's line manager will be a person employed by the Employer as provided for in clause 9;

(c) issues relating to the provision of adequate resources and supports for the Employee in respect of the secondary service(s), subject to the following sentences, should be addressed between the Employee and the Employer. When such issues arise in respect of a secondary service, the Employee will normally be expected to raise such issues with management of the secondary service. If such issues remain unresolved after the Employee has raised the issues with secondary service (or if for some reason it is not appropriate for the Employee to raise such issues with the management of the secondary service) then both the Employer and the Employee will cooperate with each other and the secondary service with a view to addressing such issues.

3.4 Without prejudice to paragraph 3.3, the Employee will cooperate with the management of the secondary service(s) in all matters relating to the provision of those services, including in respect of service delivery, clinical governance, investigations, inquiries and similar processes relating to staff, patients and service users. The Parties acknowledge that service management is a matter for the Employer.

3.5 The remuneration of the Employee will be paid by the Employer and not by any secondary service(s).

[PLEASE DELETE PARAGRAPHS 3.1 TO 3.5 IF THE LETTER OF APPROVAL IS ONLY FOR ONE SERVICE]

4. SCOPE OF ROLE

4.1 The Employee is hereby employed as a consultant. The Employee will be clinically independent in relation to decisions on the diagnosis, treatment and care of individual patients. This clinical independence derives from the specific relationship between the patient and the Employee. In that relationship, the patient places trust in the consultant who is personally involved in the patient's care to make clinical decisions in the patient's best interests and to take continuing responsibility for the consequences of that consultant's decisions.

4.2 The Employee acknowledges that they are subject to statutory and regulatory requirements and corporate policies and procedures including those adopted for implementation by the national clinical programmes.

4.3 The Employee has a substantial and direct involvement in the medical diagnosis, treatment and delivery of care to patients.

4.4 The Employee may discharge their responsibilities through:

- (a) a direct professional relationship with the patient;
- (b) shared responsibility with other consultants who contribute significantly to patient management; and
- (c) (subject to the following paragraphs of this clause) delegation of aspects of the patient's care to other appropriate members of staff.

4.5 The Employee will only delegate responsibility to other doctors or staff members where the delegation is consistent with the continued provision of an appropriate level of diagnosis, treatment and care to the patient in respect of the relevant episode of care. Notwithstanding any such delegation, the Employee will retain a continuing overall responsibility for the care of the patient.

- 4.6 The determination of the range, volume and type of services to be provided and responsibility for the provision of same within available resources rests with the Employer. Services not provided because of a resource limit are the responsibility of the Employer and not the Employee.
- 4.7 The Employee will generally work as part of a consultant team. The primary purpose of consultant teams is to ensure consultant-provided services to patients on a continuing basis. In effect this requires that the Employee will provide diagnosis, treatment and care to patients who are under the care of other consultants on their consultant team and vice versa. This may include discharge and further treatment arrangements, as appropriate.
- 4.8 The membership of the Employee's consultant team will be determined by the Employer in the context of the local working environment. The team may be defined at specialty/sub-speciality level or under a more broadly based categorisation, such as "general medicine" or "general surgery".
- 4.9 The work of the Employee will be determined by reference to the Clinical Directorate Service Plan that applies from time to time. The principles underpinning the preparation of the Clinical Directorate Service Plan are set out in Appendix 3.

5. COMMENCEMENT DATE AND TYPE OF CONTRACT

OPTION 1: FOR PERMANENT CONTRACT IF THE EMPLOYEE IS NOT TRANSITIONING FROM ANOTHER CONSULTANT CONTRACT [PLEASE DELETE IF ANOTHER OPTION APPLIES]

This contract is a permanent contract of employment, subject to the conditions in respect of probation that may be set out in clause 7 (if any). The Employee's employment with the Employer will commence on [PLEASE INSERT COMMENCEMENT DATE] ("**the Commencement Date**") and will (unless otherwise terminated in accordance with this contract) continue indefinitely.

OPTION 2: FOR PERMANENT CONTRACT IF THE EMPLOYEE IS TRANSITIONING FROM ANOTHER CONSULTANT CONTRACT [PLEASE DELETE IF ANOTHER OPTION APPLIES]

The Employee was, immediately prior to the making of this contract, employed by the Employer as a consultant under a permanent contract of employment. This contract will take effect from [PLEASE INSERT DATE ON WHICH THIS CONTRACT TAKES EFFECT] ("**the Commencement Date**") but does not affect the continuity of the Employee's service. Appendix 9 sets out certain transitional provisions that will apply to the Employee's employment under this contract. Subject to Appendix 9, this contract replaces and supersedes all prior contracts (if any) between the parties but does not affect any rights and obligations accrued by the parties under such contracts prior to the making of this contract.

OPTION 3: FOR SPECIFIED-PURPOSE CONTRACT ONLY [PLEASE DELETE IF ANOTHER OPTION APPLIES]

This is a specified purpose contract, for the purpose of: [PLEASE INSERT PURPOSE HERE]. This contract will commence on [PLEASE INSERT COMMENCEMENT DATE] ("**the Commencement Date**") and will cease on the cesser of the aforesaid purpose. The *Unfair Dismissals Act 1977* will not apply to a dismissal of the Employee consisting only of the cesser of the aforesaid purpose.

OPTION 4: FOR FIXED-TERM CONTRACT ONLY [PLEASE DELETE IF ANOTHER OPTION APPLIES]

This is a fixed-term contract which will commence on [PLEASE INSERT COMMENCEMENT DATE] ("**the Commencement Date**") and will expire on [PLEASE INSERT EXPIRY DATE]. The *Unfair Dismissals Act 1977* will not apply to a dismissal of the Employee consisting only of the expiry of this contract without it being renewed.

6. REGISTRATION WITH MEDICAL COUNCIL OR DENTAL COUNCIL AND NECESSARY QUALIFICATIONS

- 6.1 This contract is conditional on the Employee being registered on the Specialist Division (in the case of medical consultants) or the Register of Dental Specialists (in the case of consultant dentists) as having one or more medical or dental specialities. By executing this contract, the Employee warrants that they are registered on the Specialist Division or the Register of Dental Specialists, as the case may be.
- 6.2 The Employee is required to maintain their registration on the Specialist Division or the Register of Dental Specialists for the duration of this contract.
- 6.3 The Employee's appointment to the role is conditional on the Employee providing the Employer, prior to the Commencement Date, appropriate evidence that the Employee holds the following qualifications and/or registrations, as set out in the letter of approval:
- (a) [PLEASE INSERT DETAILS OF QUALIFICATIONS OR REGISTRATION(S) REQUIRED]
 - (b) [PLEASE INSERT DETAILS OF ANY FURTHER QUALIFICATIONS OR REGISTRATION(S) REQUIRED].
- 6.4 Should the Employee fail to provide the Employer prior to the Commencement Date, appropriate evidence that the Employee holds the above-required qualifications and/or registrations prior to the Commencement Date this contract will not have effect.
- 6.5 The Employee's continuing employment in the role is conditional on the Employee continuing (throughout the Employee's employment with the Employer) to hold the qualifications and registrations mentioned in the preceding paragraphs. Where continued qualifications and/or registrations are not evident to the Employer from available information, the Employer may require the Employee to provide appropriate evidence that the Employee continues to hold such qualifications and/or registrations. If required to do so, the Employee will provide such evidence.
- 6.6 Should the Employee be required by the terms of the offer of appointment (appended) to comply with any specified requirements and/or conditions (including any requirement or condition that the Employee will, within a specified period after the Commencement Date, acquire a specified qualification and/or registration) the Employee's employment will be terminated by Employer unless, within such period, the Employee has provided appropriate evidence that they have complied with such requirements and/or conditions.
- 6.7 What qualifies as appropriate evidence for the purposes of determining qualifications will be determined by the Employer.

7. PROBATIONARY PERIOD

[EITHER]

- 7.1 Permanent appointment to this post is dependent upon the Employee satisfactorily completing a probationary period of 6 months. The probationary period may be extended at the discretion of the Employer for a further period of up to 6 months. In such an event the reasons for the extension will be furnished in writing to the Employee. The expression "**probationary period**" includes both the initial probationary period of 6 months and any further period of extension. The period of notice of termination that applies during the probationary period is the same as that provided in clause 36. Further conditions of probation are set out in section 10 of Appendix 7.

7.2 Where, in accordance with a “specified provision” within the meaning set out in section 6D(6) of the *Terms of Employment (Information) Act 1994*, the Employee is absent from work during the probationary period, such period shall be extended by the Employer for the duration of the Employee’s absence.

[OR]

A probationary period does not apply to this contract of employment.

[PLEASE DELETE AS APPROPRIATE]

[NOTE: PLEASE DELETE THE FOLLOWING NOTE PRIOR TO ISSUING CONTRACT]

A probationary period will not apply in the following instances:

- Where the Employee currently holds a permanent consultant appointment with the Employer or another public health service provider and the Employer is satisfied that the Employee has satisfactorily completed probation in their current role.

- Where the Employee previously held a permanent consultant appointment with the Employer or another public health service provider and the Employer is satisfied that the Employee (a) satisfactorily completed probation in that previous appointment and (b) the duration of the period of time between the termination of that previous appointment and the Commencement Date is not more than 26 weeks (or such longer period, if any, as the Employee was on a pre-approved career break for the duration of that longer period).

- Where the Employee has, for a period of not less than 12 months, held this post (ie the post to which this contract relates) on a temporary basis pending the filling of this post on a permanent basis and the Commencement Date is not more than 26 weeks after the termination of the temporary contract under which the Employee held this post (or a longer period, if any, as the Employee was on a pre-approved career break for the duration of that longer period).

8. LOCATION

[EITHER]

8.1 From the Commencement Date the Employee’s normal place of work will be [INSERT NAME OF LOCATION EG COMMUNITY CARE SERVICE, PRIMARY CARE SERVICE, MENTAL HEALTH SERVICE, HOSPITAL OR OTHER LOCATION] in line with the letter of approval.

[OR, WHERE EMPLOYEE’S ROLE IS SPLIT BETWEEN TWO OR MORE LOCATIONS, PLEASE SUBSTITUTE THE ABOVE PARAGRAPH AS FOLLOWS]

From the Commencement Date the Employee’s normal places of work will be:

- (a) [PLEASE INSERT NAME OF COMMUNITY CARE SERVICE, PRIMARY CARE SERVICE, HOSPITAL(s) OR OTHER LOCATION] (“**the primary location of work**”) and
- (b) [PLEASE INSERT NAME OF SECOND SUCH LOCATION].

in line with the letter of approval.

[PLEASE DELETE AS APPROPRIATE]

- 8.2 The Employee agrees to work in other sites in acute and/or community settings, or to change their normal place(s) of work:
- (a) further to transfers of services between places, the relocation of care to the community having regard to clinical programmes, models of care and reformed care pathways and/or other structural changes in the manner in which the Employer's services are delivered, provided that such changes will be effected after the Employer engages in its standard consultation processes with consultants' representative bodies; and/or
 - (b) on an individual basis based on service needs provided that the Employer will consult the Employee before giving effect to any such change on an individual basis; and/or
 - (c) for short periods of time (up to a small number of weeks) in exceptional and infrequent circumstances, as decided by the Employer having regard to the needs of the services.
- 8.3 The Employer will have regard to the Employee's individual circumstances before changing the Employee's normal place of work further to the preceding paragraph.
- 8.4 The Employer will comply with public service agreements that are for the time being in effect and that relate to changing the normal place of work of public service employees.
- 8.5 The Employee will be available to respond readily to clinical or service needs at the places specified in this clause.
- 8.6 The Employer will, in respect of the Employee, comply with arrangements that, for the time being, apply in the public service and the Employer in respect of employees who are required to travel in the course of those employees' duties.

9. REPORTING RELATIONSHIPS

- 9.1 The Employee will report to a line manager who will be the [PLEASE INSERT FULL TITLE E.G. "CLINICAL DIRECTOR FOR SURGICAL DIRECTORATE"/"EXECUTIVE CLINICAL DIRECTOR"⁷].
- 9.2 In the event that the Employee's line manager's title changes (e.g. because of changes in directorates within the Employer's organisation, or because of a temporary vacancy in the role of CLINICAL DIRECTOR/EXECUTIVE CLINICAL DIRECTOR) the Employer will inform the Employee of the title of the new line manager. Any such vacancy will be filled by a person who is:
- (a) qualified to fill the relevant clinical director role or
 - (b) the chief executive officer of the relevant hospital group, or the chief officer of the relevant community health organisation (and the expressions "chief executive officer" and "chief officer" also mean a person who holds an analogous role as chief officer of any structure that may, in due course, replace the structures of hospital groups and community health organisations), or an appropriate delegate of such a person; or

⁷ PLEASE DELETE FOOTNOTE: In this contract, wherever "Clinical Director/Executive Clinical Director" appears, please delete whichever is not applicable. In some cases, the line manager will have a different title such as "General Manager" or "Service Manager". At present this is the case for roles such as community ophthalmologists, where the consultants in question each report to a General Manager. A number of consultants in specialities such as, for example, palliative care, disability services, addiction services and older persons report to persons such as general managers, service managers, directors of service in section 38 bodies or other non-clinicians. In cases such as those, please replace "Clinical Director/Executive Clinical Director" with the appropriate title.

(c) (if the Employer is not the HSE) the chief executive officer of the Employer.

10. DUTIES

10.1 The initial scope of this post is as set out in the letter of approval. The main duties of the Employee's position (as of the Commencement Date) are set out in the job description attached at Appendix 2. The scope and duties of the post may be changed by the Clinical Director/Executive Clinical Director/line manager from time to time provided the Clinical Director/Executive Clinical Director/line manager consults the Employee before making any such change.

10.2 In addition to or instead of their normal duties, the Employee may be required to undertake other duties as may be assigned to them provided such other duties are consistent with

(a) the role of a consultant having regard to the letter of approval and the duties set out at Appendix 1 and Appendix 2 respectively and

(b) the Employee's clinical speciality (as recognised in their registration on the Specialist Division or the Register of Dental Specialist).

10.3 Any other duties that are assigned further to the preceding paragraph will be discussed between the Employee and their Clinical Director/Executive Clinical Director/line manager and will be incorporated into the Employee's work plan.

10.4 The Employee is required to cooperate with the delivery of national clinical programmes, national health strategies and nationally agreed models of care. If any of these materially change the terms and conditions of this contract, the same will be subject to negotiation. Such cooperation will not impinge on the clinical independence set out in clause 4 of this contract.

11. APPLICABLE CODES OF CONDUCT ETC

11.1 As the Employee is a member of a statutory profession they are, in addition to all obligations expressed in this contract, obliged to comply with any code of conduct/ethics/professional standards (and similar codes) published by any relevant statutory, regulatory or professional body in relation to their practice of that profession or their speciality within that profession, including but not limited to those published by the Medical Council (in the case of medical consultants) and the Dental Council (in the case of dental consultants).

12. POLICIES, PROCEDURES AND LEGISLATION

12.1 The Employee is required to comply with all legislation, policies, procedures and regulations which apply to the Employer and its employees.

12.2 The public health service has well-established consultation processes through which policies and procedures are developed by management in consultation with organisations representative of staff (or, where appropriate, representative of specific grades, groups or categories of staff) affected by such policies and procedures. Before it introduces any new policies and procedures and/or amends any existing policies and procedures the Employer will work within the scope of established consultation processes.

12.3 The Employee is required to participate in (and cooperate with) any investigations, reviews, statutory inquiries (or similar processes) and any statutory and mandatory training. The Employer will facilitate the Employee to participate and cooperate without delay in such processes and training.

12.4 All human resources policies of the Employer that for the time being apply to employees of the Employer will apply to the Employee unless such policies expressly exclude application to consultants or where an alternative policy has been provided in the appendices to this contract.

13. HOURS OF WORK

13.1 Without prejudice to the other provisions of this contract, the core weekly working hours for the Employee's grade are XXX hours per week net [PLEASE INSERT NUMBER OF CORE HOURS – NOTE THAT FULL-TIME COMMITMENT IS 37 HOURS]⁸. The Employee's core working hours will be scheduled by the Employer to meet service needs and having regard to the principles, including rostering principles, referred to in paragraph 13.7. It will be a matter for the Clinical Director/Executive Clinical Director/line manager and/or management of the relevant public health service to determine how the applicable schedule will be organised.

13.2 To support the Employer in the delivery of extended consultant-provided services the Employee's core weekly working hours will (subject to paragraph 13.4) be scheduled to occur between 8.00 am and 10.00 pm on rostered Mondays to Fridays and between 8.00 am and 6.00 pm on rostered Saturdays.

13.3 At such times when services to patients require it, and subject to the other provisions of this clause 13, the Employee may work overtime during periods when the Employee is not otherwise scheduled to work or rostered to be on-call. Such overtime will normally be worked by the Employee between the hours of 10.00 pm and midnight on Mondays to Fridays and 6.00 pm and midnight on Saturdays. The preceding sentence does not preclude the possibility of overtime being worked at other times, but in any event, for time to qualify as "overtime" all of the conditions set out in this contract in respect of overtime must be met. Overtime will only occur if either:

- (a) the Employer requests the Employee to work such overtime and the Employee expressly agrees, or
- (b) the Employee requests to work such overtime and the Employer expressly agrees.

13.4 Where services to patients require it, the Employer may request the Employee to be available to be scheduled to carry out their core weekly working hours later than is provided in paragraph 13.2. If the Employee agrees to such a request, the Employee's core weekly working hours will be scheduled to occur between 8.00 am and midnight on rostered Mondays to Saturdays. In that event, work that is

- (a) done by the Employee during the hours of 8.00 pm and midnight (on Mondays to Fridays) and 6.00 pm and midnight (on Saturdays) and
- (b) that is part of the Employee's scheduled core weekly working hours

will not be regarded as overtime and will be regarded as "**twilight working**". For the avoidance of doubt, work that is done by the Employee

⁸ The Employer is committed to providing flexible and family-friendly working hours for employees, to the greatest extent practicable. It hopes to facilitate, where practicable, provisions such as: contracts of employment that provide for fewer than full-time hours (full-time hours being 37 hours per week) from the first day of employment or reduced hours for periods during the employment relationship; flexible scheduling of work where employee can vary start and finish times; job sharing; compressed hours; fixed work patterns to support different family arrangements; HSE flexible working schemes. It is envisaged that these arrangements would last at least 12 months. PLEASE DELETE THIS FOOTNOTE.

- (c) during the hours of 8.00 pm and midnight (on Mondays to Fridays) and 6.00 pm and midnight (on Saturdays) and
- (d) that is not part of the Employee's scheduled core weekly working hours

will not be regarded as twilight working but will be regarded as overtime if it meets the requirements for overtime set out in this contract.

- 13.5 Scheduling of work will be completed in accordance with a work-plan that will be prepared from time to time by the Employer in respect of the Employee. Template documents have been provided in Appendix 3. These template documents can be used (where necessary with appropriate amendments to reflect the Employee's duties and the circumstances of the service or services in which the Employees works) to reflect relevant provisions of the Employee's work plan. The templates provided in Appendix 3 may be amended or updated from time to time. The Employee's schedule pattern or work plan may be changed from time to time. Any changes will be subject to a 3-month notification period by the Employer.
- 13.6 The Employee will be required (in addition to working their core working hours each week) to work on-call. On-call work will be rostered at such times and will be subject to such conditions as are in line with the Employer's practices in respect of on-call work. Those conditions and practices may be changed by the Employer from time to time. It is the Employer's intention to reduce the on-call requirement for individual consultants in line with overall increases in the total number of consultants employed in the public health service.
- 13.7 Subject to exceptional circumstances and emergencies, scheduling of the Employee's working hours (excluding on-call time, where applicable) will comply with the following principles⁹ and such other principles relating to the scheduling of the work of consultants that the HSE may from time to time apply after appropriate consultation with consultants' representative bodies, including those principles set out in the 'Principles of Rostering Consultants' produced by the HSE for application in the public health service.
- (a) The Employee will not be scheduled to work more than 12 hours in any one day.
 - (b) There will be at least consecutive two days each week on which the Employee is not scheduled to work ("unscheduled days") except that an unscheduled day may occur at the beginning and/or the end of a week provided that each such unscheduled day is consecutive with another unscheduled day of the preceding week or succeeding week.
 - (c) Work schedules will be prepared having regard to the Employee's on-call commitment for the time being (if any). The Employer may, from time to time, issue guidance in respect of the interaction between scheduling of work and on-call commitments.
 - (d) Work scheduling should ensure that there are sufficient and appropriately skilled staff members scheduled to work at times when services are being delivered, such that service demands can be met and appropriate levels of patient care are provided.
 - (e) Work schedules will not include split shifts. A "split shift" consists of two or more periods of working time in a day, where the periods of working time are separated by periods of non-working time that are materially longer than normal rest breaks.

⁹ Note the provisions of clause 4.6 which make it clear that provision of services within available resources is the responsibility of the Employer. Note also that the Grievance Procedure is available to the Employee if the Employee believes that the Employer is not being reasonable in its scheduling of the Employee's work. PLEASE DELETE THIS FOOTNOTE.

13.8 Work scheduling will aim to achieve equitable distribution of schedules, such that (subject to the Employer's contractual obligations and insofar as is reasonably practicable) there is a reasonable distribution of work at weekends, on public holidays and in late evenings. The Employer's objective is to achieve a working environment that facilitates personal and family-friendly patterns of working, which will be supported by the development of appropriate policies. Any application by the Employee to reduce the Employee's core working hours will be considered in line with circulars, policies and procedures that for the time being apply to employees of the Employer.

14. REMUNERATION

14.1 Salary

14.1.1 The Employee's remuneration will be set by reference to an incremental salary scale (together with applicable allowances) as set out in the Consolidated Salary Scales from time to time. The Consolidated Salary Scales that are currently applicable to the Employee are set out on the HSE's website, [www.hse.ie].

14.1.2 Subject to verification of any prior reckonable service¹⁰ the Employer has calculated the basis of the Employee's salary arrangements as follows:

- (a) gross annual salary at the Commencement Date (based on-full time commitment of 37 hours per week): [INSERT];
- (b) point on scale: [INSERT];¹¹
- (c) next incremental date (subject to applicable conditions for grant of increments, including satisfactory performance): [INSERT].¹²

14.1.3 Should the Employee work for fewer than 37 hours per week, or for only a part of a year, they will be paid on a pro-rata basis. [IF THE EMPLOYEE HAS, FROM COMMENCEMENT DATE, A NUMBER OF CORE WEEKLY WORKING HOURS THAT IS FEWER THAN 37 HOURS PER WEEK THEN ADD: "Having regard to the fact that the Employee will, from the Commencement Date, have a core weekly working hours of INSERT then the Employee's pro-rated gross annual salary at the Commencement Date will be: INSERT.]

14.1.4 The Employee will be paid [INSERT: WEEKLY/FORTNIGHTLY/MONTHLY] by electronic funds transfer. The Employee's pay reference period is WEEKLY/FORTNIGHTLY/MONTHLY.

14.1.5 The Employee's salary will be adjusted in line with any applicable nationally negotiated increases for their grade or it may be adjusted in line with public pay policy as determined by the Department of Health and/or the Department of Public Expenditure and Reform.

14.1.6 The Employee may, further and subject to section 23 of the *National Minimum Wage Act 2000*, request from the Employer a written statement of their average hourly rate of pay for any pay reference period (other than their current pay reference period) falling within the twelve-month period preceding the request.

¹⁰ For consultants moving to Ireland from employment in an equivalent post abroad the point on the scale should be set by reference to equivalent experience (ie experience in a role equivalent to the role of consultant) in other jurisdictions. PLEASE DELETE THIS FOOTNOTE.

¹¹ For consultants transitioning from a previous template contract the point on the scale should be set by reference to Appendix 9. PLEASE DELETE THIS FOOTNOTE.

¹² For consultants transitioning from a previous template contract the incremental date should be set by reference to Appendix 9. PLEASE DELETE THIS FOOTNOTE.

14.2 Deductions

14.2.1 Deductions will be made from the Employee's gross salary in respect of PAYE, PRSI, USC, Additional Superannuation Contribution (ASC) and other statutory or contractual deductions.

14.2.2 The Employee agrees that the Employer may deduct any sums which are owed by the Employee to the Employer. Deductions for any overpayments will be made from subsequent salary payments in line with the HSE's *National Financial Regulation Payroll Overpayments and Underpayments* NFR-04. V. [NON-HSE EMPLOYERS PLEASE AMEND AS APPROPRIATE].

14.3 Overtime and premium payments

14.3.1 As one of the most senior grades in the public health sector, it may be necessary for the Employee, from time to time, to work additional hours to meet the needs of patients. Except as expressly provided in this contract, the Employee will not be entitled to be paid either normal salary or premium rates in respect of such additional hours.

14.3.2 Subject to the provisions of this contract, if the Employee is requested to work overtime further to paragraph 13.3, and (by agreement) works such overtime, the Employee will be paid the overtime rate that applies in the public health service generally. For the avoidance of doubt overtime will not be payable during any period of time for which on-call payments or twilight premium is payable.

14.3.3 Notwithstanding any other provision of this contract:

- (a) overtime will not be paid in respect of any working time that occurs in a week in which the Employee works an aggregate number of hours that is less than 37 hours, and
- (b) the amount of overtime that is paid to an Employee in respect of any week will not be greater than
 - (i) the amount of working time worked by the Employee in that week minus
 - (ii) 37 hours.

14.3.4 If the Employee's roster involves twilight working then a twilight premium (and not the overtime rate) will apply to the hours during which the Employee is engaged in twilight working (as defined in paragraph 13.4). This twilight premium will be an additional 1/6th of the Employee's hourly rate of pay.

14.3.5 There may be some exceptional and limited circumstances in which the Employer may request the Employee to undertake overtime for a specific purpose and the Employee will receive overtime payments if the Employee (by agreement) works such overtime. Such payments will be provided in the circumstances, and at the rates, prescribed in nationally applicable procedures that will be applied by the Employer from time to time and where the work for which premium payments are made has been pre-approved by the Employee's line manager. The Employee will not in any circumstances receive any overtime payment in respect of

- (a) the Employee's scheduled hours and
- (b) other scheduled periods of working time, such as on-call time.

14.3.6 The Employer will always comply with public pay policy, including in relation to the administration of premium and other payments. The Employer may not pay any premium payment (whether

described as a “premium”, “overtime” or in other terms) that is not provided for either in this contract or in a nationally-applicable arrangement.

14.4 Sunday premium and public holiday arrangements

14.4.1 The Employee will receive the benefit of such premium payments (and other arrangements) in respect of Sunday work and work done on public holidays as are, from time to time, prescribed for employees in the public health service.

14.5 On-call payments and benefits

14.5.1 If the Employee is for the time being working on a roster pattern that involves on-call work, the Employee will be remunerated for on-call work, and/or may receive paid rest days arising from onerous on-call schedules, in accordance with such arrangements as the Employer and/or the Department of Health may from time to time agree for employees in the same category as the Employee.

14.6 “B” factor on-call payments

14.6.1 “B” Factor payment will apply for extended duty (on-call) liability. Payments will be as set out from time to time in the Department of Health Consolidated Salary Scales.

14.7 “C” factor on-call payments

14.7.1 The Employee will be eligible for payments on a per call-out basis for the provision of on-site services when the Employee:

- (a) is rostered for on-call duty and is contacted by another medical practitioner/hospital manager/the senior nurse on duty in the hospital or other member of staff specifically designated for that purpose and attends on-site to perform clinical work of an emergency or urgent nature or carries out urgent diagnostic or therapeutic procedures;
- (b) is rostered for on-call duty and where, in the exercise of the Employee’s professional judgement, attends on-site and performs clinical work of an emergency or urgent nature or carries out urgent diagnostic or therapeutic procedures;
- (c) having been requested by another consultant to provide medical care to patients in a service within the public health service to which the Employee does not have a scheduled commitment and where such services cannot be provided within their scheduled commitment when such care is approved by the Clinical Director/Executive Clinical Director/Employer and the Employee attends at the site of such service and provides such care. This payment will be on the basis of the equivalent payment per call-out.

14.7.2 Payments will be as set out from time to time in the Department of Health Consolidated Salary Scales.

14.7.3 Claims for “C” Factor payments must be made by the Employee no later than three months from the earliest date of on-call liability to which they relate. Such claims are subject to the upper financial limit applicable to “C” Factor payments.

14.8 Compensatory rest

14.8.1 If the Employee has, for the time being, an obligation to work on-call, the Employee will have an entitlement to avail of compensatory rest on the following basis.

- (a) 1:1 on-call roster entitles the Employee to 5 days in lieu per 4-week period.
- (b) 1:2 on-call roster entitles the Employee to 3 days in lieu per 4-week period.
- (c) 1:3 and 1:4 on-call rosters or otherwise will benefit from rest as set out in the *HSE Guidance on Provision of Compensatory Rest for Consultants* issued on 16 April 2014 .

14.8.2 Subject to compliance by the Parties with the *Organisation of Working Time Act 1997* and regulations made further to that statute,¹³ compensatory rest is to be taken within 7 weeks from the date it is accrued. When, for operational reasons, the Employee cannot take all or any of their compensatory rest within 7 weeks, the hours outstanding will be paid at the relevant hourly rate.

15. RETIREMENT AND SUPERANNUATION

15.1 Contractual provisions in respect of retirement and superannuation

15.1.1 The retirement age that applies to the Employee (if any) has been set by enactments. The Employee's entitlements under any superannuation scheme are set by the enactments, instruments and/or rules relating to such schemes. This clause 15 does not supersede any enactments, instruments and/or rules relating to the retirement age or superannuation arrangements that apply to the Employee. Paragraph 15.2 of this clause 15 sets out the understanding of the parties in respect of retirement and superannuation based on information provided by the Employee and information available to the Employer at the date of this contract. In the event that any such understanding or information is incorrect then paragraph 15.2 of this clause 15 will read as if it is amended to reflect the correct understanding or information. In the event of any amendments to the enactments, instruments and/or rules relating to such schemes this clause 15 will be read as having been amended accordingly.

15.1.2 Further to section 51 of the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012*, the Employee is obliged to declare to the Employer any entitlements to a public service pension/retirement benefit (whether in payment or preserved) from any other public service employment and/or where the Employee has received a payment in lieu of service in any public service employment. If the Employee has not already provided such a declaration to the Employer, the Employee will promptly on the making of this contract provide such a declaration.

15.1.3 If the Employee (at any time during the Employee's employment under this contract) is in receipt of a public service pension, the Employee's pension will be subject to abatement during that employment further to section 52 of the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012*. Any changes to the Employee's remuneration and/or public service pensions during such period will cause the level of any such abatement to be reviewed. The Employee is obliged to notify the pension-paying authority of any such changes to the Employee's remuneration or pension entitlements. Any overpayments arising may be recouped from pension payments or otherwise in accordance with applicable procedures.

15.1.4 If the Employee has previously availed of an incentivised scheme for early retirement (ISER) or voluntary early retirement (VER)/Voluntary Redundancy (VR) arrangements/schemes in the public service and in accordance with the terms of such arrangements/schemes was still deemed eligible for appointment to this post, the Employee is obliged to declare to the Employer any benefits acquired under such schemes. The implications of the Employee's new employment on their ISER/VER/VR benefits will be determined by the Employer in consultation with the

¹³ Compensatory rest that is required by the *Organisation of Working Time Act 1997* and regulations made under that statute must be taken. Payment in lieu of compensatory rest only arises in respect of such compensatory rest as is contractual rest (ie rest entitlements that are in excess of the statutory minimum). PLEASE DELETE THIS FOOTNOTE.

Department of Health and the Department of Public Expenditure and Reform in accordance with the terms and policies governing the ISER/VER/VR in question.

15.2 Information in relation to retirement and superannuation

15.2.1 Section 52(6) of the *Public Service Pensions (Single Scheme and Other Provisions) Act 2012* limits the amount of pensionable service an individual may accrue across all pre-existing public service schemes (i.e. schemes other than the Single Scheme) to a maximum of forty years or equivalent. Where an individual's pensionable service exceeded forty years on 28 July 2012, section 52(7) provides that they may retain the benefit of that service. This may have implications if the Employee has acquired pension rights in a previous public service employment. Department of Public Expenditure & Reform Circular 13/2020, which is available on the website www.gov.ie/en/circulars/ provides guidance on the method of calculating pension entitlement in such cases.

[OPTION 1 – IF THE EMPLOYEE IS A MEMBER OF THE SINGLE SCHEME USE THESE PARAGRAPHS AND DELETE OPTIONS 2 AND 3]¹⁴

15.2.2 The Employee is (or will, further to their employment under this contract, become) a member of the Single Scheme. The following information is provided for clarity.

- (a) The terms of the Single Scheme will apply to this employment.
- (b) The minimum age at which pension is payable is the age of eligibility for payment of the State Pension (Contributory).
- (c) Employee contributions are deductible at 3% of pensionable remuneration and 3.5% of net pensionable remuneration.
- (d) Full details on the scheme are available at www.singlepensionscheme.gov.ie.
- (e) The Employee's compulsory retirement age is 70 years of age. The Employee's employment under this contract will terminate on the Employee's 70th birthday.

[OPTION 2 – IF THE EMPLOYEE IS A MEMBER OF A PRE-EXISTING SCHEME AND IS NOT A "NEW ENTRANT" DELETE OPTIONS 1 AND 3]

15.2.3 The Employee is a member of the [INSERT NAME OF PENSION/SUPERANNUATION SCHEME]¹⁵ and the associated provisions in relation to spouses, civil partners and children. Appropriate deductions will be made from their salary in respect of their contributions to the scheme and in respect of the associated provisions. The following information is provided for clarity.

- (a) The minimum age at which pension is payable is provided in the rules of the applicable scheme.
- (b) Contributions in the main scheme are deductible at the rate of 3.5% of net pensionable remuneration and 1.5% of pensionable remuneration, if fully insured, and 5% of remuneration if not fully insured.
- (c) Information on these schemes will be forwarded to the Employee on request.

¹⁴ If the Employee is appointed for the first time on or after 1st January 2013 or is a person returning to public service employment after a break of more than 26 weeks, they will be members of the Single Public Service Pension Scheme. PLEASE DELETE THIS FOOTNOTE.

¹⁵ Subject to confirmation by the Employee prior to executing the contract. PLEASE DELETE THIS FOOTNOTE.

- (d) The Employee's compulsory retirement age is 70 years of age. The Employee's employment under this contract will terminate on the Employee's 70th birthday.

**[OPTION 3 – IF THE EMPLOYEE IS A MEMBER OF A PRE-EXISTING SCHEME AND IS A “NEW ENTRANT”
DELETE OPTIONS 1 AND 2]**

15.2.4 The Employee is a member of the [INSERT NAME OF PENSION/SUPERANNUATION SCHEME] and the associated provisions in relation to spouses, civil partners and children apply. Appropriate deductions will be made from their salary in respect of their contributions to the scheme and in respect of the associated provisions. The following information is provided for clarity.

- (a) The minimum age at which pension is payable is provided in the rules of the applicable scheme.
- (b) Contributions in the main scheme are deductible at the rate of 3.5% of net pensionable remuneration and 1.5% of pensionable remuneration (if fully insured) and 5% of remuneration (if not fully insured).
- (c) Information on these schemes will be forwarded to the Employee on request.
- (d) The Employee does not have a compulsory retirement age.

16. TRAVEL AND SUBSISTENCE

16.1 Travel and subsistence expenses necessarily incurred in the course of the Employee's duties will be met on the basis applicable to employees and in accordance with the National Financial Regulation Travel and Subsistence NFR-05 of the HSE. [NON-HSE EMPLOYERS TO AMEND AS APPROPRIATE].

17. CONTINUING MEDICAL EDUCATION/CONTINUING PROFESSIONAL DEVELOPMENT

17.1 The Employee will be provided with appropriate professional competence supports as set out in the *Guidance on Continuing Medical Education Supports for Consultants* issued by the HSE. The Employee will be eligible for a vouched annual allowance of €12,000 per annum. The Employer may set and amend applicable conditions for payment from time to time. The policy on the management of continuing medical education is available from the Employee's line manager.

17.2 The Employer intends that other supports will be made available to help foster innovation in patient care by consultants. These other supports will be made available in support of innovative research and innovation projects (an expression that has a broad meaning, to include academic research and innovation projects) and such other similar projects as may be specified by the Employer from time to time. Such projects will be undertaken by the Employee (normally in conjunction with other colleagues) and will not be payable directly to (or on behalf of) the Employee. Payment in respect of such support will be subject to national guidance. The Employer intends to:

- (a) make available support of up to €8,000 per annum to each consultant whose contract of employment is based on the 2023 consultants' contract in respect of such projects; and

- (b) facilitate the pooling of such support in cases where multiple such consultants work together in respect of such projects.¹⁶

- 17.3 Notwithstanding the preceding paragraphs of this clause 17, in the event that the Employee's Clinical Director/Executive Clinical Director/line manager is satisfied that exceptional circumstances apply such that the allowance provided for in paragraph 17.1 is inadequate to meet the Employee's expenses in relation to continuing medical education in respect of any year, then with the express approval of the Clinical Director/Executive Clinical Director/line manager some or all of the amount provided for in paragraph 17.2 may be used for the purposes of meeting approved vouched expenditure by the Employee on appropriate continuing medical education (instead of for the purposes set out in the paragraph 17.2). Any such payments will be subject to the same conditions for payment as apply to payments under paragraph 17.1.
- 17.4 Notwithstanding the preceding paragraphs of this clause 17, in the event that less than €12,000 is allocated in any year in respect of the Employee's continuing medical education (further to paragraph 17.1) then the unallocated balance of that amount may, with the express approval of the Employee's Clinical Director/Executive Clinical Director/line manager, be added to the amount provided for the purposes described in paragraph 17.2.
- 17.5 The aggregate amount paid by the Employer further to this clause 17 in respect of the Employee will not in any event exceed €20,000 in any year.

18. TELECOMMUNICATIONS

- 18.1 The Employee will be provided with a mobile phone (or equivalent device determined by the Employer) or provided with appropriate reimbursement for the cost of same, in accordance with such policies and procedures in respect of such phone or device as the Employer may, from time to time, adopt.
- 18.2 The Employee will cooperate with the ongoing development of eHealth initiatives and the use of information technology in the provision of medical care to patients and service users.

19. ARRANGEMENTS IN RESPECT OF LEAVE

19.1 Annual leave and public holidays

- 19.1.1 Benefits in respect of annual leave and public holidays will be granted in accordance with the provisions of the *Organisation of Working Time Act 1997*.
- 19.1.2 The annual leave entitlement for the Employee's grade is 30 working days per annum for full-time employees. The Employee is entitled to a pro-rata of this amount for periods of employment of less than one year or for work that is less than full-time work.

19.2 Leave and planned absence

- 19.2.1 All leave or planned absences must be approved by the Clinical Director/Executive Clinical Director/line manager before being taken. Approval will be granted only in line with established rota and service requirements (including in respect of cover). Applications for leave should be

¹⁶ For example, if five consultants whose contracts are based on the 2023 consultants' contract work together on a research project, this would allow up to €40,000 per annum to be made available to cover, e.g., salary and related costs for a clinical research assistant to support the project. Note that any person employed for such research projects will be employed on terms of employment that are lawful and appropriate. Funding arrangements will make appropriate provisions for such terms of employment. PLEASE DELETE THIS FOOTNOTE.

made in accordance with the Employer's applicable policy. This clause 19 should be read in conjunction with clause 20 in respect of locum cover.

19.3 Sick leave

19.3.1 The Employee is covered by the Public Service Sick Leave Scheme (details of which are available on the website [www.hse.ie] or through the Clinical Director/Executive Clinical Director/line manager. The granting of paid sick leave is subject to compliance with the Managing Attendance Policy and Procedure and related policies and procedures that are in place from time to time. Details are set out in HSE Circular 005/2014 as may be amended from time to time. [NON-HSE EMPLOYERS PLEASE PROVIDE ALTERNATIVE PROVISIONS WHERE APPROPRIATE.]

19.4 Family-related leave and flexibility

19.4.1 The Employer is a flexible employer that provides a range of types of leave for family-related and other reasons. The details of such leave are set out in circulars and HR policies which are updated from time to time. Details are available from the Employer's HR department and (where the Employer is the HSE) on the Employer's website.

19.5 Other types of leave

19.5.1 The Employee may, in accordance with any applicable circular, apply for special leave to provide services in countries where health services are underdeveloped. The Employer may grant or refuse such leave in accordance with applicable circulars.

19.5.2 Leave for special circumstances will be available to the Employee in accordance with applicable circulars and subject to the express written consent of the Employer.

19.5.3 If the Employee is not employed by the HSE, the provisions of Appendix 8 apply in addition to the provisions of this clause 19. [PLEASE DELETE IF THE EMPLOYEE IS AN EMPLOYEE OF THE HSE].

19.5.4 The Employer may, at its discretion and in accordance with applicable circulars, policies and procedures, grant leave with pay for the following:

- (a) participating in continuing education and/or attendance at clinical meetings of societies appropriate to the Employee's speciality, provided such participation and attendance (excluding travel time) does not exceed seven days in any one year;
- (b) attendance at courses, conferences, etc. that the Employer is satisfied are relevant to the work on which the Employee is engaged;
- (c) participation in World Health Organisation or Council of Europe fellowships;
- (d) participation in interview panels in other areas/jurisdictions when agreed with Clinical Director/Executive Clinical Director/line manager.

20. LOCUM COVER

20.1 In the event of the Employee being absent on a scheduled or unscheduled basis, the Clinical Director/Executive Clinical Director/line manager will determine the requirement for locum cover and make necessary arrangements based on clinical need.

20.2 The Clinical Director/Executive Clinical Director/Employer will work with the Employee in the development and execution of such arrangements as required.

20.3 Every reasonable effort will be made by the Employer to ensure that there is cover provided where required and available. In exceptional circumstances (meaning circumstances that are unusual and that pertain for a limited duration), where either sufficient cover cannot be provided or appropriate locum cover obtained, the Clinical Director/Executive Clinical Director/line manager may request the existing employees to undertake the urgent and emergency work of an absent colleague. This request will have regard to such employee's own work commitment.

21. PERFORMANCE REVIEW

21.1 The Employer will review the Employee's performance during their employment at a minimum once a year in line with corporate policy. Such reviews will normally involve structured discussions between the Employee and their Clinical Director/Executive Clinical Director/line manager in relation to their performance and conduct. Performance will be reviewed with reference to the Employee's work-plan.

22. PROFESSIONAL COMPETENCE

22.1 The Employee will maintain their professional competence on an on-going basis pursuant to any Medical Council or Dental Council professional competence scheme applicable to them as a medical or dental practitioner.

22.2 While this obligation is one that is personal to the Employee, the Employer will facilitate the Employee's maintenance of their professional competence pursuant to any such professional competence scheme.

23. CODE OF CONDUCT FOR HEALTH AND SOCIAL SERVICE PROVIDERS

23.1 The Employee is required to abide by the Code of Conduct for Health and Social Service Providers ("the Code"). The Code is available on the HSE website [www.hse.ie].

23.2 Failure to abide by the terms of the Code may result in disciplinary action up to and including dismissal.

24. EXTERNAL WORK

24.1 The Employee may engage in clinical or non-clinical employment or gainful occupation (including self-employment) outside the scope of this contract (collectively described as "**external work**") subject to the provisions of this contract including in particular this clause 24.

24.2 The Employee is obliged to:

- (a) meet their commitment further to this contract within the work schedule established by the Employer from time to time; and
- (b) ensure that full performance of all the Employee's contractual obligations is not adversely affected by any external work.

24.3 If the external work relates to the Employee being an employee of another employer, permission for the Employee to engage in such external employment will be granted only to the extent that such external employment will not result in a contravention of the provisions of section 33 of the *Organisation of Working Time Act 1997*. The Employee will provide the Employer with accurate

particulars of the times during which the Employee works during any such external employment.¹⁷

24.4 Subject to paragraph 24.14, the Employee may engage in external work only if and when the Employee requests and the Employer grants permission for such external work. The Employer may refuse permission for external work, or grant permission for external work subject to restrictions, only if the Employer is satisfied that such refusal or such restrictions are reasonably based on the following objective grounds:

- (a) the protection of patient health and safety and the health and safety of persons other than patients, including other persons receiving care from the health service;
- (b) safeguarding productive and safe working conditions;
- (c) the protection of the integrity of the public health service and the administration of vital public health service functions;
- (d) the avoidance of conflicts of interest;
- (e) compliance by the Employer and/or the Employee with any applicable statutory or regulatory obligations;
- (f) compliance by the Employee with any professional standards for the time being in force;
- (g) implementing and achieving the State's objectives of the promotion of public welfare by improving public health, the removal of inefficiencies and inequalities in the delivery of healthcare services, and assisting in the implementation of a universal healthcare service in which patients are treated on the basis of health needs.

24.5 The Employer will introduce a system, code or procedure¹⁸ for handling and facilitating requests by the Employee for permission to engage in external work and such requests will be decided on in a timely and efficient manner (normally within 1 month) by the Clinical Director/Executive Clinical Director/line manager. Ideally, this would be facilitated in discussions regarding the Employee's work-plan.

24.6 Any such system, code or procedure will provide that permission will not be unreasonably withheld.

24.7 Without prejudice to paragraph 24.4 the restrictions to any permission given to the Employee may relate to:

- (a) the amount of external work to be carried out;
- (b) the type of external work that can be carried out;
- (c) the location of such external work; and/or
- (d) the hours during which such external work is carried out.

¹⁷ This paragraph is to achieve compliance with the parties' statutory obligations under section 33 of the *Organisation of Working Time Act 1997*. It relates only to external employment. It does not require the Employee to report time worked in external self-employment. PLEASE DELETE THIS FOOTNOTE.

¹⁸ This procedure, which will be the subject of consultation with consultants' representative bodies, will be written in clear, accessible language so as to provide clear guidance for both consultants and clinical directors about how applications for permission for external work are to be made and considered. This will help provide consistent and transparent decision-making. PLEASE DELETE THIS FOOTNOTE.

These restrictions may vary from time to time as required and different restrictions may apply to different employees or categories of employee.

- 24.8 Any permission granted (whether or not subject to restrictions) may be revoked, modified or amended by the Employer from time to time on the grounds referred to in paragraph 24.4. Once permission is given, it will remain in effect unless and until it is revoked, modified or amended or a new decision is made after a review further to paragraph 24.12.
- 24.9 Without prejudice to paragraph 24.4 permission for external work will only be granted if (and only to the extent that) the Employer is satisfied that any such external work will:
- (a) be consistent with the discharge of the Employee's duty as an Employee of the Employer under this contract, including obligations relating to on-call working arrangements and work scheduling;
 - (b) be compatible with the objective grounds set out in paragraph 24.4.
- 24.10 Without prejudice to the foregoing, the Employee may not (except as expressly permitted by the Employer):
- (a) engage in any private medical practice at any location operated by the Employer or another part of the public health service; or
 - (b) refer any patient or service-user to whom the Employee is providing care within the public health service to any private medical practice (being any medical practice that is not part of the public health service) in or with which the Employee has any interest or commercial relationship (whether as owner, director, employee, independent contractor or otherwise) or provide medical care to any such patient or service user in any such medical practice.
- 24.11 Where the Employer decides under this clause 24 to:
- (a) refuse permission; or
 - (b) to grant permission subject to restrictions,
- the Employer will provide to the Employee written reasons for any such decision.
- 24.12 Any grant of permission, restriction or refusal of permission under this clause 24 will be reviewed by the Employer in the event that either the Employer or the Employee identifies a need for the matter to be reviewed or where a change in circumstances requires such a review. Following any such review a new decision (to grant or refuse permission or to impose, modify or renew restrictions) will be made by the Employer. If, after such review, the Employee is still not satisfied with the Employer's decision, that decision may be appealed to an independent appeals committee established for the purpose of considering such decisions. This will be a committee comprised of:
- (a) a member of a panel of persons nominated by consultants' representative bodies;
 - (b) a member of a panel of persons nominated by HSE management; and
 - (c) a chairperson who will be a member of a panel of independent chairpersons agreed by consultants' representative bodies and HSE management.

- 24.13 This appeals process is in lieu of the operation of the Grievance Procedure provided at Appendix 6. A matter that has been reviewed and/or appealed under paragraph 24.12 will not also be raised through the Grievance Procedure.
- 24.14 The Employee is not precluded by this clause 24 from engaging in any external work that consists of the activities listed at items (a) to (d) of this paragraph. The Employee does not require permission to engage in external work that consists of such activities, provided (and only to the extent that) such activities are completed outside of their work schedule established by the Employer and do not otherwise impede the Employee's discharge of their duties under this contract.
- (a) The treatment of any patients on behalf of the Employer providing that neither the Employee nor any person not a party to this contract charges any fees for such treatment.
 - (b) The provision of professional/medical/dental practice carried out for or on behalf of the Mental Health Commission, the Medical Council, the Dental Council, a coroner, or such other bodies expressly approved by the Employer for the purpose of this item.
 - (c) The provision of expert medical/dental opinion relating to insurance claims, preparation of reports for the courts and court attendance on behalf of persons including (but not limited to) patients to whom the Employee has provided care further to this contract.
 - (d) The provision, outside of the Employee's work schedule for the Employer, of medical services in respect of which no charge (other than reasonable travel and subsistence expenses) is paid, including the provision by the Employee of voluntary or *pro-bono* services to or on behalf of any community, charitable or sporting organisation.
- 24.15 The Employee will provide the Employer (on request by the Employer) with full and complete information about any external work engaged in and any confirmation reasonably required by the Employer in respect of external work.

25. **MEDICAL EDUCATION TRAINING AND RESEARCH**

- 25.1 As part of the Employee's standard contractual commitment, they will contribute to the education, training and supervision of students, NCHDs and trainee professionals including members of the multi-disciplinary team. Protected time within the Employee's /work plan will be provided in line with minimum HSE requirements.
- 25.2 As part of this standard contractual commitment, the Employee will contribute to the advancement of knowledge by facilitating and supporting research.
- 25.3 Where the Employee's location of work is an Academic Teaching Hospital/Agency, the Employer(s) may, through the Clinical Director/Executive Clinical Director/line manager, provide in the Clinical Directorate Service Plan measures to take account of the academic schedule and related delivery of academic commitments. In that case, the Employer will liaise with:
- (a) the relevant university/universities regarding local arrangements for the provision of undergraduate medical education and training and research; and
 - (b) the relevant university/universities and the relevant recognised postgraduate training body (or bodies) regarding local arrangements for the provision of postgraduate medical education and training.

- 25.4 The Employee accepts that all consultants have a significant commitment to training healthcare professionals and will discharge such a commitment on an ongoing basis as this is a core function of their role. In some cases this will be completed in a structured and scheduled way.
- 25.5 Where the Employee contributes in a structured manner to, or receives any remuneration associated with, the education, training or supervision of students, NCHDs or trainee professionals including members of the multi-disciplinary team, totalling more than two hours of the core weekly working hours per week, this contribution should be specified (in the Employee's work plan) in terms of purpose, affiliated medical school or training body and role.
- 25.6 Subject to the prior agreement of the Employer the Employee may, within their core working hours commitment, make an explicit further structured and scheduled commitment to educational activities commensurate with their role in conjunction with
- (a) the relevant affiliated medical/dental school(s) and
 - (b) training bodies for postgraduate medical education and training.
- 25.7 Such structured and scheduled commitment, responsibility and accountability for same will be agreed with the relevant medical/dental school or training body and will be consistent with the established training principles for postgraduate medical education and training. These structured commitments will be set out in the agreed Clinical Directorate Service Plan.
- 25.8 The Employee may, in accordance with the scope of their post, have the opportunity to restructure their commitments to facilitate structured research or educational programme development for a defined period, on condition that:
- (a) the Employer agrees;
 - (b) funding is secured to support such activity for that period; and
 - (c) such research is subject to appropriate research governance and ethics.

26. ADVOCACY

- 26.1 The Employee may advocate on behalf of patients, service-users or persons awaiting access to services in line with their professional obligations.
- 26.2 In the first instance advocacy should take place within the employment context through the relevant Clinical Director/Executive Clinical Director/line manager.
- 26.3 Information given to the public should be expressed in clear factual terms.
- 26.4 In advance of making any comment in public discourse (e.g. in the media) the Employee is requested to provide reasonable notice to the relevant Clinical Director/Executive Clinical Director/line manager. This advance notification does not give the right to the Employer to prohibit the Employee from making a public comment that the Employee is otherwise entitled to make.
- 26.5 Subject to any contrary entitlement that the Employee may have further to this clause 26, the Employee is required to comply with the Employer's social media and communications policies/protocols.

27. GRIEVANCE PROCEDURE

27.1 The Employee has the right to seek redress in respect of their terms and conditions of employment in accordance with the Employer's Grievance Procedure(s) that applies to the Employee. The Grievance Procedure that applies for the time being is attached at Appendix 6. The Employer may from time to time amend, substitute, supplement or revise this Grievance Procedure.

28. DISCIPLINARY PROCEDURE

28.1 The Employer requires that the Employee carries out their duties in such a way as to achieve high standards of conduct and performance of work. In the event that the Employee may have failed to achieve these standards the Employer's Disciplinary Procedure that applies to the Employee will be invoked. The Disciplinary Procedure that applies to the Employee for the time being is attached at Appendix 7. The Employer may from time to time amend, substitute, supplement or revise this Disciplinary Procedure.

29. HEALTH AND SAFETY

29.1 The Employer is committed to ensuring the safety, health and welfare of its staff. To this end, national and local safety statements, policies, risk assessments, control programmes and procedures, have been prepared setting out all the safety arrangements which are in force. All the members of the Employer's staff have legal and other obligations in relation to safety, health and welfare at work and are required to become familiar with and adhere to the provisions contained in the aforesaid safety statements, policies, risk assessments, control programmes and procedures, including completing statutory occupational safety and health training without delay. Any necessary health and safety training will be provided by the Employer during the Employee's working time.

30. ACCESS CONTROL

30.1 The Employee will comply with such policies and procedures as the Employer may from time to time implement in respect of control and monitoring of access to parts of the location(s) at which the Employee carries out their duties under this contract. Such policies may control and/or monitor access for such purposes as health and safety, physical security or staff, patients and service-users, security of medications and/or property; performance and attendance and/or for other legitimate purposes.

31. CONFIDENTIALITY

31.1 In the course of the Employee's employment, they will have access to records and information concerning the medical and personal affairs of patients/service-users, and/or staff of the Employer and or any public health service providers. Such records and information are strictly confidential and unless acting on the instructions of the Employer, on no account will the Employee discuss or disclose any information of a confidential nature except in the performance of their normal duty.

31.2 Records and information must never be left in such a manner that unauthorised persons can obtain access to such records and information and must be kept in safe custody when no longer required in accordance with data protection policies. This duty of confidentiality will continue to apply after the termination of this contract.

32. RECORDS/PROPERTY

32.1 The Employee will not remove any records or information belonging to the Employer from the Employer's premises at any time without proper authorisation. The foregoing sentence does not preclude:

- (a) the proper use by the Employee of information and communication technology (such as using electronic devices to access patient and Employer information remotely); or
- (b) the appropriate transfer of records between different locations under which the Employee works further to this contract;

provided that such access and/or transfer is in line with all the Employer's applicable policies and procedures, including those regarding data security, healthcare records management and the proper use of technology.

32.2 The Employee will return to the Employer upon request (and, in any event, upon the termination of this employment) all documents and copies all documents and copies, whether written, printed, electronic, recorded or otherwise and wherever located, made, compiled or acquired during the course of employment with the HSE or relating to the business or affairs of the HSE, all records and property belonging to the Employer which are in the Employee's possession or their control. For the avoidance of doubt, this includes all laptops, mobile phones, keys, ID badges, documents, papers, memorandums, disks, USB storage devices, files, accounts and any other devices or papers including private notes and memoranda concerning the Employer and its service-users and patients and all copies and extracts of same that were made or acquired by the Employee in the course of their employment.

32.3 Failure to return to the Employer's property such as a laptop or mobile phone on termination of the Employee's employment may result in the value of it being deducted from their last salary payment.

33. INTELLECTUAL PROPERTY

33.1 Intellectual property generated by the Employee in the course of their employment will be in the ownership of the Employer. Due regard will be given to national policies, in particular any such policy developed by the HSE and national codes of practice.

34. CLINICAL INDEMNITY

34.1 The Employee will be provided with an indemnity against the cost of meeting claims for personal injury arising out of bona fide actions taken in the course of their employment under this contract only. This clinical indemnity is in addition to the Employer's Public Liability/Professional Indemnity/Employer's Liability in respect of the Employee's non-clinical duties arising under this contract.

34.2 Notwithstanding paragraph 34.1, the Employee is strongly advised and encouraged to take out supplementary cover with a defence organisation or insurer of their choice, so that they have adequate cover for matters not covered by this indemnity such as any external work; any voluntary or pro-bono services provided by the Employee to or on behalf of any community, charitable or sporting organisations; representation at disciplinary and fitness to practise hearings; Good Samaritan acts done outside of the jurisdiction of Ireland; or other acts done outside of the jurisdiction of Ireland.

34.3 Under the terms of this indemnity the Employee is required to report (to an officer designated by the Employer in such form which may be prescribed) all adverse incidents of which they are aware that might give rise to a claim and to otherwise participate in the Employer's risk management programme as may be required from time to time.

34.4 The Employee is obliged to comply with such risk management framework(s) (howsoever described) and other obligations about incident reporting that the Employer may from time to time introduce or apply.

35. CONFLICT OF INTEREST AND ETHICS IN PUBLIC OFFICE

35.1 The Employee must refrain from knowingly engaging in any outside matter that might give rise to a conflict of interest. If in doubt the Employee must consult the relevant clinical director (i.e. the clinical director with responsibility for the service area in respect of which the potential conflict of interest might arise) hospital group chief executive officer or other person with responsibility for the service in which the Employee is for the time being working and any direction given by the relevant clinical director, chief executive or other person must be followed. If the Employee discloses in writing a potential conflict of interest and complies with any directions given to them by the relevant clinical director, chief executive or other person then actions taken that are consistent with such directions are not prohibited by this paragraph 35.1.

35.2 The Employee occupies a designated position of employment under the *Ethics in Public Office Acts 1995 and 2001*. Therefore, the Employee is required, in accordance with section 18 of the *Ethics in Public Office Act 1995*, to prepare and furnish an annual statement of any interests which could materially influence the Employee in the performance of their duties, to the chief executive officer of the Employer not later than 31st January in the following year.

35.3 In addition to the annual statement, the Employee must whenever performing a function as an employee and the Employee has actual knowledge that they, or a connected person, have a material interest in a matter to which the function relates, provide at the time a statement of the facts of that interest. The Employee should provide such statement to the chief executive officer of the Employer. The function in question cannot be performed unless there are compelling reasons to do so and, if this is the case, those compelling reasons must be stated in writing and must be provided to the chief executive officer of the Employer.

35.4 Under the *Standards in Public Office Act 2001*, the Employee must within nine months of the date of their appointment provide the following documents to the Standards in Public Office Commission at 6 Earlsfort Terrace, Dublin 2, D01 W773:

35.4.1 a statutory declaration, which has been made by the Employee not more than one month before or after the date of their appointment, attesting to compliance with the tax obligations set out in section 25(1) of the *Standards in Public Office Act 2001* and declaring that nothing in section 25(2) prevents the issue to them of a tax clearance certificate and

35.4.2 either:

(a) a Tax Clearance Certificate issued by the Collector-General not more than 9 months before or after the date of their appointment; or

(b) an Application Statement issued by the Collector-General not more than 9 months before or after the date of their appointment.

35.5 The Employee is required under the *Ethics in Public Office Acts 1995 and 2001* to act in accordance with any guidelines or advice published or given by the Standards in Public Office Commission.

Guidelines for public servants on compliance with the provisions of the *Ethics in Public Office Acts 1995 and 2001* are available on the Standards Commission's website <https://sipo.ie>.

36. NOTICE

- 36.1 The Employee's employment may be terminated at any time by the Employer giving 3 months' written notice or notice in accordance with the *Minimum Notice and Terms of Employment Act 1973*, whichever is greater. Should the Employee wish to resign from the Employer's employment, they must give 3 months' notice in writing.
- 36.2 Nothing in this contract prevents the giving of a lesser or greater period of notice by either party where it is agreed between the Employee and a member of senior management at their work location.
- 36.3 The Employer reserves the right to pay the Employee in lieu of the notice period or any part of it.
- 36.4 The Employee's employment may be terminated by the Employer without notice for serious misconduct or persistent and wilful failure to carry out the duties of their role.

37. DATA PROTECTION

- 37.1 The Employer will process the Employee's personal data in connection with their employment. Details of the personal data that will be processed by the Employer, the reasons for any such processing and the measures that the Employer has implemented to protect its employees' privacy rights are set out in the Employer's Data Protection Policy.
- 37.2 The Employee is obliged to take all necessary measures to ensure that data protection rights of patients, staff and service users of the Employer are complied with and not (by act or omission) to cause or permit any breach of such rights. The Employee is obliged (insofar as is possible) to comply with all applicable policies and procedures of the Employer in respect of data protection.

38. CRIMINAL PROCEEDINGS

- 38.1 During the Employee's employment with the Employer, if the Employee is convicted of any material criminal offence, and/or given the benefit of the *Probation of Offenders Act 1907* when tried for a material criminal offence in the Circuit Court or superior courts, they must report that fact immediately in writing to their Clinical Director/Executive Clinical Director/line manager.
- 38.2 If the Employee is charged with a material criminal offence, they must promptly notify their line manager.
- 38.3 On receipt of any such report, the Clinical Director/Executive Clinical Director/line manager will consider whether the nature of the offence (or alleged offence) is such as would require any action to be taken by the Employer, and if action is required will take such action.

39. MONITORING

- 39.1 The Employee is required to comply with the Employer's policies in force from time to time regarding the use of equipment provided to them for use in the normal course of their employment including, without limitation, any method of electronic communication.
- 39.2 The Employer monitors its communication and electronic equipment. Details of the Employer's monitoring activities are contained within the Employer's Information Technology Acceptable Usage Policy. This policy may be amended, replaced or supplemented by the Employer from time to time.

40. GOVERNING LAW

40.1 This Contract will be interpreted and will operate in accordance with the laws of Ireland. The Parties submit to the exclusive jurisdiction of the Irish courts and tribunals for the purposes of any proceedings arising out of or in any way relating to the contract or any other proceedings in any way connected with the subject matter of this contract.

41. AMENDMENT

41.1 The Employee's terms and conditions (including as provided for in this contract) may be amended by the Employer to implement national public service collective agreements or changes in legislation.

42. TITLES AND JOB FUNCTIONS WITHIN THE EMPLOYER'S ORGANISATION

42.1 Where this contract provides for any role, power or function (howsoever described) to be exercised by a person holding any position, grade or title in the Employer's organisation, the Employer may at its discretion nominate a different person (whether by name or by reference a different position, grade or title) to exercise that role, power or function.

42.2 This clause 42 is without prejudice to clause 9.

43. TERMS OF EMPLOYMENT (INFORMATION) ACT 1994

43.1 This contract is a statement of the Employee's terms and conditions of employment within the meaning of the *Terms of Employment (Information) Act 1994*.

44. EMPLOYEE WARRANTIES AND ACCEPTANCE OF CONTRACT

44.1 The Employee hereby makes the following warranties and undertakings.

44.1.1 Except as expressly disclosed in Appendix 5, I declare that:

- (a) I am not the subject of any current/active investigation by a medical registration or licensing body or authority in any jurisdiction regarding my medical practice or conduct as a practitioner;
- (b) I have not been suspended from registration nor had my registration or licence neither cancelled or revoked by any medical registration or licensing body or authority in any jurisdiction in the last ten years nor am I the subject of any current suspension or any restrictions on practise; and
- (c) I am not the subject of any investigation or review by a current or previous employer.

44.1.2 I understand that this appointment is conditional on the receipt by the Employer of

- (a) evidence of appropriate registration with the Medical Council or the Dental Council;
- (b) references;
- (c) Garda vetting disclosures; and
- (d) an occupational health report in respect of me

all of which are satisfactory to the Employer.

- 44.1.3 I have read and understood the Medical Council's "*Guide to Ethical Conduct and Behaviour*" or (if I am a dental consultant) the Dental Council's "*Code of Practice relating to Professional Behaviour and Ethical Conduct*" and any other relevant guidance provided by the relevant council in relation to ethical or professional conduct. I undertake to apply the relevant council's ethical and professional conduct guidance to the clinical and professional situations in which I may work.
- 44.1.4 All representations made by me to the Employer pertaining to academic and/or professional qualifications, career history or level of experience are true and complete in all material respects.
- 44.1.5 I am legally entitled to work in Ireland without any additional approvals and will notify the Employer immediately if I cease to be so entitled during the period of my employment with the Employer.
- 44.1.6 By making this contract or performing any of my obligations under it, I will not be in breach of any court order or any express or implied terms of any contract or other obligation binding on me and undertake to indemnify the Employer against any claims, costs, damages, liabilities or expenses which the Employer may incur by reason of me being in breach of any such obligations.
- 44.1.7 I have read this document and I hereby accept the post described in clause 3 of this contract in accordance with the terms and conditions specified.

Note about sub-paragraph 44.1.1: if the Employee is subject to investigation, suspension, cancellation, revocation or review within the meaning of sub-paragraph 44.1.1 the Employee will not necessarily be precluded from being employed by the Employer. The Employee must in those circumstances disclose the investigation, suspension, cancellation, revocation or review and the Employer will determine the appropriate response. The matters disclosed by the Employee and the response taken by the Employer should be recorded at Appendix 5.

PLEASE DELETE THE TEXT IN THIS BOX

I accept and agree to be bound by the above terms and conditions.

This contract, the associated Terms and Conditions and Appendices and terms expressly incorporated by reference or by statute contain the terms of the Employee's employment with the Employer.

Name (block capitals): _____

Signature of Employee: _____

Date: _____

Employer (block capitals): _____

Title: _____

Signature on behalf of Employer: _____

Date: _____

[FOR ACADEMIC CONTRACTS ONLY, THE CONTRACT SHOULD BE SIGNED ON BEHALF OF THE UNIVERSITY. PLEASE DELETE THE FOLLOWING SIGNATURE BLOCK FOR CONSULTANT CONTRACTS THAT ARE NOT ACADEMIC CONSULTANT CONTRACTS.]

The provisions of this contract (including Appendix 4) are agreed on behalf of the University.

University (block capitals): _____

Title: _____

Signature on behalf of University: _____

Date: _____

APPENDIX 1

Letter of approval for the post

[INSERT LETTER OF APPROVAL HERE]

APPENDIX 2

Job description for the post

[JOB DESCRIPTION NEEDS TO BE SPECIFIC TO THE POST. TEXT FOR THE JOB DESCRIPTION WILL BE REVIEWED AND UPDATED FROM TIME TO TIME. IT MAY OR MAY NOT INCLUDE THE FOLLOWING. PLEASE DELETE THIS NOTE.]

1. The annual Clinical Directorate Service Plan will detail how plans are to be implemented and will be assessed by reference to a series of performance monitoring arrangements. The Employee agrees to complete and submit their plan (ie the consultant-level component of the Clinical Directorate Service Plan) on an annual basis or as required contributing to the Clinical Directorate Service Plan.
2. The Clinical Directorate Service Plan will set out how regulatory and legislative compliance requirements will be achieved by the Employee and the team in which the Employee works for the time being.
3. Certain decision-making functions and commensurate responsibilities may be delegated to the Employee by the Employer. These will be documented in the Clinical Directorate Service Plan.
4. In addition to their normal duties, the Employee may be required to undertake other duties appropriate to their position as may be assigned to them, including deputising as appropriate.
5. The Employer is required to comply with Government policy in respect of the future provision of healthcare. The Employee is required to cooperate and engage proactively with the implementation of such policy including by cooperating with any changes in the organisation of healthcare services (and any consequential changes in reporting relationships), arising from such policy. Subject to the compliance by the Employer with its legal obligations, any significant changes in the organisation of healthcare services implemented by the Employer further to its compliance with Government policy will, prior to implementation, be the subject of consultation by the Employer through established consultation processes.
6. The Employee will have line management responsibilities for NCHDs on their team.
7. The Employee is required to work to the Employee's job description which may be amended during the course of the Employee's employment. The Employee's obligations will include the following.
 - (a) To participate in the development of and undertake all duties and functions pertinent to the Employee's specialty, as set out within the applicable Clinical Directorate Service Plan or alternative Plan for community-based services and in line with policies as specified by the Employer.
 - (b) To discharge any statutory obligations attaching to any particular consultant role held (e.g. the clinical director role under the *Mental Health Acts 2001 and 2018*, or the medical officer of health role under the *Health Acts 1947 to 2020*).
 - (c) To ensure that duties and functions are undertaken in a manner that minimises delays for patients and possible disruption of services.
 - (d) To work within the framework of the hospital/agency's service plan and/or levels of service (volume, types etc.) as determined by the Employer. Service planning for

individual clinical services will be progressed through the Clinical Directorate structure or other arrangements as apply.

- (e) To be subject to the HSE's *Performance Achievement Policy* which will be structured to take account of the particular needs of consultants and ensure regular review/appraisal of performance and individual needs for effective service delivery. The Clinical Director/Executive Clinical Director/line manager will be responsible for the implementation of the Performance Achievement Policy with the Employee.
- (f) To co-operate with individual and team-based performance review processes as outlined by the Employer, the focus of which will be on quality, patient safety and supporting individual and/or team performance.
- (g) To deliver a quantity and quality of care that is evidence-based and included in the Clinical Directorate Service Plan and appraised at performance meetings which is aimed at addressing patient care needs and supporting individual professional practice.
- (h) To carry out the duties of the post in such a way as to achieve high standards of clinical care, conduct and performance of work. In the event that the Employee fails to achieve these standards the Employer's disciplinary procedure that (for the time being) applies to the Employee will be invoked.
- (i) To co-operate with the expeditious implementation of the Employer's disciplinary procedure that (for the time being) applies to the Employee. Any update to the disciplinary policy will apply to the holder of this contract.
- (j) To lead in clinical programmes of work which include quality improvement, education, both intra and inter-disciplinary, promotion of excellence, and information technology.
- (k) To formally review the execution of the Clinical Directorate Service Plan with the Clinical Director/Executive Clinical Director/line manager periodically. The Clinical Directorate Service Plan will be reviewed periodically at the request of the Employee or Clinical Director/Executive Clinical Director/line manager. The Employee may initially seek internal review of the determinations of the Clinical Director/Executive Clinical Director/line manager regarding the Clinical Directorate Service Plan as it relates to the Employee's commitment.
- (l) To participate in the development and operation of the Clinical Directorate structure and in such management or representative structures as are in place or being developed. The Employee will receive training and support to enable the Employee to participate fully in such structures.
- (m) To lead and manage the professional development of staff, including establishing and maintaining a positive team culture and enhancing staff engagement.
- (n) To lead and manage the performance of the consultant team in which the Employee works for the time being to ensure the standards expected by the Employee and the Employer are met.
- (o) To provide, as appropriate, clinical consultation in their area of designated expertise in respect of patients of other consultants at the request of such persons.

- (p) To ensure in consultation with the Clinical Director/Executive Clinical Director/line manager that appropriate senior clinical decision makers cover is available at all times having due regard to the *Organisation of Working Time Act 1997*.
- (q) To supervise and be responsible for diagnosis, treatment and care provided by NCHDs treating patients under the Employee's care.
- (r) To participate as an obligation in selection processes for NCHDs and other staff as appropriate. The Employer will provide training as required. Where practicable the Employer will ensure that a consultant representative of the relevant speciality/sub-speciality is involved in the selection process.
- (s) To participate in clinical audit and proactive risk management and facilitate production of all data/information required for same in accordance with regulatory, statutory and corporate policies and procedures.
- (t) To work within the governance structures and accountability of the organisation, to include both corporate and clinical governance arrangements.
- (u) To participate in and facilitate production of all data/information required to
 - (i) validate delivery of duties and functions,
 - (ii) inform planning and
 - (iii) manage service delivery in the best interest of quality and patient safety.
- (v) To support assessment of patient outcomes and institute change in the best interest of patient care and safety.
- (w) To participate in the use of best evidence to inform safe, high quality care and minimise variation across the health service including development and implementation of, and compliance with national clinical guidance.
- (x) To support the Clinical Director/Executive Clinical Director/line manager to consider assessment of patient and health service outcomes as part of performance management and institute change on the basis of audit.
- (y) To support the use of digital technology, data and quality improvement to improve patient care and service provision.
- (z) If the Employee is a consultant in public health medicine they will undertake relevant duties and functions in accordance with the foregoing sub-paragraphs and as provided for in the job description for their posts and the agreed public health model.

PLEASE DELETE THE TEXT IN THIS BOX AND REPLACE APPENDIX 2 WITH THE SPECIFIC JOB DESCRIPTION

APPENDIX 3

Clinical Directorate Service Plan

Clinical directorate service plans – consultant assignment/work schedules

1. Introduction

- 1.1 Provisions for organisation and delivery of services at the front-line at operational level are set out primarily in Clinical Directorate Service Plans.
- 1.2 Each Clinical Directorate Service Plan is concerned with, inter alia, specifying resources/funding available (including workforce, facilities etc.) and how these are deployed in delivering services. Each Clinical Directorate Service Plan specifies quantity of services to be delivered and quality/outcomes parameters to apply thereto.
- 1.3 The Clinical Director/Executive Clinical Director/line manager is simultaneously the key directorate resource with respect to service delivery and the core decision-maker regarding utilisation of resources of the Directorate and the organisation generally.
- 1.4 It is accordingly centrally important that the Employee's contribution at individual level is scheduled into the Clinical Directorate Service Plan over designated parameters (i.e. assignments, services etc.)
- 1.5 This Appendix sets out high level provisions to apply in the regard. These provisions are likely to develop considerably over time. Further development of these issues will also be required at local level.

2. Clinical Directorate Service Plan

- 2.1 The Clinical Directorate Service Plan is developed and executed at two linked and interdependent levels as follows.
 - (a) Corporate level. This sets out the overall Clinical Directorate Service Plan of the organisation. It is set at a high level and is progressed and reported on quarterly.
 - (b) Directorate level. This is part of the operations provisions of the Directorate. It is set at directorate level and is developed, progressed and reported on monthly by the clinical director to the chief executive officer of the hospital.
- 2.2 Individual consultant assignment/work schedules are incorporated as part of the Directorate level of the Clinical Directorate Service Plan.
- 2.3 Responsibility for development and execution of the Clinical Directorate Service Plan lies with the Clinical Director/Executive Clinical Director/line manager. This will be effected with the full participation of Directorate personnel.
- 2.4 In developing the Clinical Directorate Service Plan the Clinical Director/Executive Clinical Director/line manager, inter alia:
 - (a) quantifies the total resources available to the Directorate for the forthcoming year/month;
 - (b) specifies services to be delivered through these resources in quantity and qualitative terms by the Directorate on an annual/monthly basis;

- (c) explores and determines with key Directorate personnel (including consultants) how to deploy resources in a manner which optimises service delivery, quantity and quality in the context of requirements set out in the National Service Plan; and
- (d) determines the monthly assignment/work schedule for consultants and how each consultant's commitment will be discharged in achievement of the planned level of service determined for the Directorate.

3. Consultant assignment/work schedules

- 3.1 The Clinical Directorate Service Plan incorporates, inter alia, consultant assignment and work schedules set at both Directorate and personal levels monthly. Sample assignment/work schedule documentation is attached.

4. Reporting on Directorate/consultant performance against service plans

- 4.1 Reports on Directorate/Consultant performance against targets set in the Clinical Directorate Service Plan are produced on a monthly basis. Typically, these are provided at the following levels:
 - (a) Directorate;
 - (b) specialty;
 - (c) consultant.

5. General

- 5.1 This Appendix addresses Clinical Directorate Service Plans at a high framework level.
- 5.2 Detailed provisions in this respect will be developed at local level within the parameters set out herein.

Clinical Directorate Service Plan

Consultant assignment schedule:

Month: _____

Clinical directorate work plan / schedule – location and activity									
Service commitment	Absence / leave	O P D	Ward rounds/inpatient care	Theatre / day theatre	On-call	Quality and risk (incl. audit)	Medical education training and research	Statutory commitment	CME/CPD (protected time)
Day of month									
1st	Am								
	Pm								
2nd	Am								
	Pm								
3rd	Am								
	Pm								
4th	Am								
	Pm								
5th	Am								
	Pm								
6th	Am								
	Pm								
7th	Am								
	Pm								
Etc.	Am								
	Pm								

Consultant work plan / schedule – month

Service commitment	Absence / leave	O P D	Ward rounds/inpatient care	Theatre / day theatre	On- call	Quality and risk (incl. audit)	Medical education training and research	Statutory commitment	CME/CPD (protected time)
Day of month									
1st	Am								
	Pm								
2nd	Am								
	Pm								
3rd	Am								
	Pm								
4th	Am								
	Pm								
5th	Am								
	Pm								
6th	Am								
	Pm								
7th	Am								
	Pm								
Etc.	Am								
	Pm								

**Performance report – at Directorate, specialty/sub-specialty and consultant level
Planned vs. actual (month)**

Areas of Focus	Planned			Actual		
	Public	Private	Total	Public	Private	Total
In-patient measures						
Day patient measures						
Out-patient measures						
Education measures						

Other measures						
Quality / performance indicators • Corporate						
• Management						
• Operational						
• Clinical (including outcomes)						

APPENDIX 4¹⁹

Provisions specific to academic consultants

[THIS APPENDIX SHOULD SAY “DELIBERATELY LEFT BLANK” IF NOT APPLICABLE]

1. Academic consultant posts are joint appointments between universities²⁰ and the HSE or its funded agencies. For the purposes of administering this contract (eg for administering salary, remitting tax to Revenue etc) one entity, rather than two entities, needs to clearly be identified as the employer. For that reason, the HSE or relevant hospital or funded health service agency is described in this contract as “the Employer”. The relevant university is defined as “the University”. The Employer and the University are joint and co-equal parties in this tri-partite relationship with the academic consultant.
2. All terms of this contract are applicable to the holders of academic consultant posts which have been approved through the established HSE/HEA process in response to agreed submissions from the University and the Employer. The provisions set out in this Appendix are confined to holders of academic consultant posts approved by the HSE²¹. These provisions are additional and particular to academic consultants.
3. The continued employment of an academic consultant is conditional on the academic consultant having both academic and clinical duties, such that (for example) an academic consultant cannot resign from the academic part of their appointment but retain the clinical part of their appointment.
4. Academic consultant posts are structured to ensure a minimum 50% commitment to the University. However, the HSE (in conjunction with the HEA, as appropriate) may, following consultation and agreement with the Employer and the University, structure an academic consultant post to reflect a lower than 50% commitment to the University²², where;
 - (a) the nature of the clinical sub-speciality associated with the academic consultant post is such that a commitment to clinical duties in excess of 50% is required for the appointee to maintain the required skills and competencies; and
 - (b) the relevant academic department does not require an individual structured commitment of 50% to deliver its teaching and research programmes.²³
5. Academic consultants are graded as follows:
 - (a) Professor/Consultant;
 - (b) Associate Professor/Consultant; and
 - (c) Senior Lecturer/Consultant.
6. The Professor/Consultant, where appointed pursuant to the relevant statutes and regulations of the University, will act as head of the relevant academic department or other academic unit, with

¹⁹ PLEASE DELETE IF EMPLOYEE IS NOT AN ACADEMIC CONSULTANT.

²⁰ For the purpose of this Agreement the term ‘University’ includes the Royal College of Surgeons in Ireland.

²¹ And previously Comhairle na nOspidéal.

²² Academic consultant posts will have a minimum 30% commitment to the academic institution.

²³ The letter of approval at Appendix 1 and (where appropriate) the job description at Appendix 2 should clearly set out the agreed percentage division of time between the academic consultant’s clinical commitment and their academic commitment. PLEASE DELETE THIS FOOTNOTE.

responsibility for the academic curriculum and administration of the academic department or unit.²⁴

7. The academic consultant is accountable for the delivery of the clinical component of the post as provided for in this contract.
8. The academic consultant is accountable via the management and governance structures in place in the University in relation to the delivery of their academic commitment. The policies and procedures of the University will apply to the academic consultant (in relation to the delivery of their academic commitment) in the same way as such policies and procedures apply to academic employees of the University.
9. The academic consultant's role in teaching and training on the university campus extends to the relevant clinical site(s) for both undergraduate and postgraduates and will, where required include responsibility for relevant university students, teaching, training, assessment, modules and courses.
10. Management and governance structures in respect of academic activities will be described in a framework developed by the Employer and the University which will, inter alia, set out the relationship between academic and clinical activities; roles and responsibilities within these structures, including the respective roles of the Clinical Director/Executive Clinical Director and the academic head of department(s) and/or other relevant academic unit; have regard to national policy on medical education and training, and standards of medical education and training for basic and specialist medical qualifications set and published by the Medical Council or, where appropriate, the Dental Council.
11. The academic consultant will fully commit to and play a key role in the development and reform of medical education and training, innovation and research in alignment with government policy. This may include a requirement to participate in and collaborate across university and clinical sites and with postgraduate bodies and the Medical Council or, where appropriate, the Dental Council, on international, national and regional initiatives in academic and related activities.
12. The rights and obligations implied in the exercise of academic independence are recognised.

²⁴ In the event that any terms of employment apply to the academic consultant in respect of the delivery of their academic commitment the University (and such terms of employment are not already provided in this contract) the University may wish to record such terms of employment in an agreement ancillary to this contract. Such terms of employment may not amend this contract without the express written consent of the Employer. PLEASE DELETE THIS FOOTNOTE.

APPENDIX 5

Record of disclosures that the Employee may have made in respect of warranties

IF THE EMPLOYEE HAS NOT MADE ANY DISCLOSURES AGAINST THE WARRANTIES AT CLAUSE 44 OF THE CONTRACT, THE EMPLOYER IS ENTITLED TO REGARD THE WARRANTIES PROVIDED BY THE EMPLOYEE AT THAT CLAUSE AS BEING UNRESERVED AND UNCONDITIONAL WARRANTIES.

HOWEVER, IF THE EMPLOYEE HAS DISCLOSED ANY OF THE FOLLOWING:

- THAT THEY HAVE BEEN THE SUBJECT OF ANY INVESTIGATION BY A MEDICAL REGISTRATION OR LICENSING BODY OR AUTHORITY IN ANY JURISDICTION WITH REGARD TO THEIR MEDICAL PRACTICE OR CONDUCT AS A PRACTITIONER;
- THAT THEY HAVE BEEN SUSPENDED FROM REGISTRATION AND/OR HAD THEIR REGISTRATION OR LICENCE EITHER CANCELLED OR REVOKED BY ANY MEDICAL REGISTRATION OR LICENSING BODY OR AUTHORITY IN ANY JURISDICTION IN THE LAST TEN YEARS;
- THAT THEY ARE THE SUBJECT OF ANY CURRENT SUSPENSION OR ANY RESTRICTIONS ON PRACTISE;

THEN THE DETAILS OF THE RESPECTIVE DISCLOSURE, AND ANY MEASURES PUT IN PLACE IN RESPECT OF THE EMPLOYEE ARISING FROM IT, SHOULD BE RECORDED HERE IN NARRATIVE FORM.

IF ANY PROTECTIVE MEASURES HAVE BEEN PUT IN PLACE ARISING FROM A GARDA VETTING RISK ASSESSMENT, SUCH MEASURES SHOULD BE RECORDED IN THIS APPENDIX.

IF THERE IS NO MEASURE TO RECORD IN THIS APPENDIX, IT SHOULD SAY "DELIBERATELY LEFT BLANK".

APPENDIX 6

Grievance Procedure

1. Purpose of the Grievance Procedure

- 1.1 The Employer is committed to promoting and maintaining good employee relations and fostering the commitment and morale of staff. The purpose of this procedure is to enable employees to raise any complaints concerning work-related matters so that the issue may be addressed promptly and as close as possible to the point of origin without disruption to patient/client care.

2. Definitions

- 2.1 A “**grievance**” is a complaint which the Employee has concerning their terms and conditions of employment, working environment or working relationships. This procedure covers individual and collective grievances, i.e. complaints raised by or on behalf of a group of employees, provided they come within the scope of this Procedure set out in section 3.
- 2.2 The Employee’s “**line manager**” is the Clinical Director, Executive Clinical Director or other person acting as the Employee’s line manager as provided for in the Employee’s contract of employment.
- 2.3 A “**staff/union representative**” is a representative from a trade union or staff association that is a consultants’ representative body.

3. Scope of this Procedure

- 3.1 The type of issues which are appropriate for referral under this procedure include, but are not limited to, the following:
- (a) allocation of work;
 - (b) assignment of duties;
 - (c) rostering/scheduling arrangements;
 - (d) granting of all forms of leave, i.e. annual leave, compassionate leave, study leave;
 - (e) interpretation and application of national/local agreements including matters relating to pay-related benefits;
 - (f) granting of overtime;
 - (g) access to courses;
 - (h) health and safety issues;
 - (i) acting-up/deputising arrangements;
 - (j) locum cover;
 - (k) relationships with work colleagues; and/or
 - (l) organisational change/new working practices.

Note: This list is not exhaustive.

3.2 This Procedure does not cover matters relating to improvements in pay or existing terms and conditions of employment which are of general application. These are matters appropriate to the collective bargaining process.

3.3 This Procedure applies to consultants whose contract of employment is based on the 2023 consultants' contract.

4. **Principles**

4.1 The Employee should raise complaints on an informal basis in the first instance with their line manager before invoking the formal grievance procedure.

4.2 Every effort will be made to address complaints quickly and fairly and at the lowest level possible at which the matter can be resolved.

4.3 The Employee will not be penalised in any way for making a complaint in good faith regardless of whether or not the complaint is upheld.

4.4 The Employee has the right to be accompanied by a work colleague or staff/union representative at all formal meetings under this Procedure.

4.5 While every effort will be made to adhere to the prescribed time limits these may be extended at any stage in exceptional circumstances.

4.6 Where appropriate, consideration will be given to addressing the grievance through mediation²⁵ facilitated through the HSE mediation services (rather than by an independent Mediator/Adjudicator as set out in this Procedure) at any stage during the process (informal and formal).

4.7 In the event of a grievance arising, and where the Employee(s) is working under protest, a meeting with senior management will be held within 3 working days of the request being received.

4.8 In the event that a grievance is referred to a third party, both sides will co-operate fully with the proceedings in accordance with the *Industrial Relations Acts 1946 to 2015*.

4.9 The grievance meeting will not be used as an opportunity to address shortcomings in the Employee's work standards, conduct or attendance. Any deficiencies will be dealt with through informal counselling or under the Disciplinary Procedure.

5. **Informal Discussions**

5.1 Most routine complaints are capable of being resolved on an informal basis without recourse to the formal Grievance Procedure. Before invoking this Procedure, the Employee may raise the matter informally with their line manager. If the complaint relates to the line manager, the Employee may discuss the matter informally with another manager.

5.2 If the matter has not been resolved satisfactorily through informal discussions, the Employee may raise a formal complaint under the Grievance Procedure.

6. **Formal stages in the Grievance Procedure**

6.1 **Stage 1**

²⁵ Refer to HSE mediation services.

6.1.1 The Employee should refer the complaint to their line manager. Stage 1 discussions must be undertaken and completed within four weeks from the date of referral. The Employee will be advised of their right to be accompanied by a work colleague or staff/union representative. Following these discussions the decision will be conveyed in writing to the Employee within seven working days.

6.1.2 Working under protest

Where the grievance relates to an instruction issued by the line manager arising from a service imperative the Employee is obliged to carry out the instruction “under protest”. A meeting with senior management or a level above will be held within 3 working days of the grievance being received.

6.2 Stage 2

6.2.1 If agreement cannot be reached at stage 1, the matter may be referred to (as the case may be):

- (a) the chief executive officer of the hospital that is the primary location of work (if the Employee is employed by the HSE and their primary location of work is a HSE hospital) or
- (b) the chief officer of Community Healthcare Organisation in which the Employee works (if the Employee is employed by the HSE and their primary location of work is a Community Healthcare Organisation hospital) or
- (c) the person who, in the Employee’s case is equivalent to a hospital chief executive or chief officer of a Community Healthcare Organisation (if the Employee is employed by the HSE and their primary location of work is not a Community Healthcare Organisation or a hospital) or
- (d) the chief executive officer or designated alternative senior executive in the Employer, if the Employee is not employed by the HSE,

within seven working days following receipt of stage 1 decision.²⁶ Discussions must be undertaken and completed within four weeks of the date of referral. The Employee will be advised of their right to be accompanied by a work colleague or staff/union representative. Following these discussions the decision will be conveyed in writing to the Employee within seven working days.

6.3 Stage 3

6.3.1 If agreement cannot be reached at stage 2 the matter may be referred, in writing, to an Independent Mediator/Adjudicator within seven working days following receipt of stage 2 decision. The written submission will be sent to the Secretariat who will forward the complaint to an Independent Mediator/Adjudicator. The Independent Mediator/Adjudicator will decide whether all avenues at local level have been adequately explored and exhausted and further whether the matter is appropriate for mediation. If the matter appears to the Independent Mediator/Adjudicator to be appropriate for mediation, the Independent Mediator/Adjudicator will conclude the mediation stage within eight weeks. Should the dispute not be resolved by mediation the Independent Mediator/Adjudicator will issue an adjudication within a further four weeks.

²⁶ The roles and titles set out in this paragraph will be amended, pursuant to clause 42, on the introduction of the Regional Health Authority structure. PLEASE DELETE THIS FOOTNOTE.

6.3.2 A list of Independent Mediators/Adjudicators will, from time to time, be agreed between management of the public health service and the consultant representative bodies as being suitable nominees for appointment in any individual case. It will be for the Secretariat, having regard to the parties' views, to determine which Mediator/Adjudicator will be employed in any given case. The Secretariat will have due regard (in the appointment of Mediators/Adjudicators from the list) to the need to avoid any possible conflict of interest.

6.4 Stage 4

6.4.1 If the issue(s) remain unresolved after Stage 3 the matter may be referred to the Workplace Relations Commission.

6.4.2 Management may object to an investigation by an adjudication officer under section 13 of the *Industrial Relations Act 1969*. Management will object to such an investigation if management is of the view that the subject matter of the complaint is connected with rates of pay of, hours or times of work of, or annual holidays of, a body of workers and is therefore precluded under this section of the Act.

6.5 No strikes or other forms of industrial action will be initiated or threatened until all stages of the Grievance Procedure, including referrals to third parties such as a Mediator/Adjudicator and/or the WRC, have been fully exhausted.

6.6 This Grievance Procedure does not affect the Employee's statutory rights to bring complaints to the Workplace Relations Commission. Such complaints are subject to strict statutory time-limits which are not suspended by the operation of this Grievance Procedure.

6.7 Guidelines for managers on the operation of the grievance procedure are set out at the Annex to this Grievance Procedure.

7. ANNEX TO GRIEVANCE PROCEDURE: GUIDELINES FOR MANAGERS ON THE OPERATION OF THE GRIEVANCE PROCEDURE

7.1 Introduction

7.1.1 It is management's responsibility to deal promptly and fairly with any complaints raised by employees either informally or under the formal grievance procedure. Managers are expected to handle all complaints in a manner that respects the right of the Employee to air their grievances and to seek redress without fear of reprisal. If an employee feels sufficiently aggrieved to make a complaint then any attempt by a manager to trivialise the issue may result in a local issue escalating into a more serious dispute. Managers are required to address grievances at the lowest level possible and to give careful consideration to the merits of the Employee's case before reaching a decision. Where a complaint is not upheld the Employee is entitled to a clear explanation as to how the decision was reached.

7.1.2 Third-party referrals should be viewed as a "last resort" having exhausted the internal stages of the grievance procedure. In the event that an employee refers the matter to a third party, a manager must respect the Employee's right to exercise their statutory entitlement to seek redress by co-operating fully with proceedings and maintaining normal working relationships. Managers have a duty to ensure that no employee suffers detrimental treatment as a result of making a complaint in good faith either internally or to a third party.

7.1.3 The following guidelines apply to all meetings under the formal grievance procedure:

7.1.4 Management may object to an investigation by an adjudication officer under section 13 of the *Industrial Relations Act 1969*. Management will object to such an investigation if they are of the view that the subject matter of the complaint is connected with rates of pay of, hours or times of work of, or annual holidays of, a body of workers and is therefore precluded under this section of the Act.

7.2 Preparing for the meeting

7.2.1 The manager conducting the meeting should establish the precise details of the complaint in advance in order to check any policies or rules relevant to the matter. Where appropriate the manager should talk to the Employee's immediate supervisor and/or any other relevant person to ascertain all the facts pertaining to the issue. The manager may also need to contact the HR department to obtain advice on how best the issue might be resolved.

7.2.2 The manager should arrange for a colleague to attend the meeting to take notes.

7.2.3 Sufficient time should be set aside for the meeting and reasonable efforts made to avoid unnecessary interruptions.

7.2.4 The Employee should be notified of the arrangements (date, time and venue) for the meeting and informed of their right to be accompanied by a staff/union representative or work colleague.

7.3 Conducting the meeting

7.3.1 The manager should begin by introducing those present and outlining the purpose of the meeting.

7.3.2 The Employee should be invited to state their case and how they would like to see the matter resolved. The Employee may wish their staff/union representative to present the case on their behalf.

7.3.3 The manager should encourage an open discussion of the issue and where appropriate explore possible options for resolving the complaint.

7.3.4 A letter should be issued to the Employee (and copied to their staff/union representative) confirming the outcome of the meeting, the reasons for the decision and what action, if any, will be taken.

7.3.5 A detailed and accurate record of the meeting and its outcome should be retained on the Employee's personnel file. This documentation may be required as evidence in the event of an Employee referring the matter to a third party.

7.3.6 Any action agreed must be implemented without undue delay.

APPENDIX 7

Disciplinary Procedure

1. INTRODUCTION AND SCOPE

- 1.1.1 This Disciplinary Procedure was produced in accordance with the Workplace Relation Commission's *Code of Practice on Grievance and Disciplinary Procedures* SI No. 146 of 2000.
- 1.1.2 This Disciplinary Procedure applies to all consultants employed by the HSE and section 38 organisations with the following exceptions.
- (a) If the Employee is serving a probationary period only section 10 of this Procedure applies during the duration of that period.
 - (b) If the Employees is employed on a fixed-term or specified-purpose contract this Procedure will not apply to the termination of such contract by reason of the expiry date/cesser of the purpose of the contract.
 - (c) This Procedure does not apply to consultants to whom a separate disciplinary procedure, provided by a contract of employment other than one based on the 2023 consultants' contract, applies.

2. PURPOSE OF THE DISCIPLINARY PROCEDURE

- 2.1.1 The delivery of a high quality health service requires the Employees to adhere to high standards of work performance, conduct and attendance. The Employee will comply with all policies and procedures relating to their employment.
- 2.1.2 The purpose of this Disciplinary Procedure is to ensure that the Employee adheres to the required standards by making them aware of any shortcomings and identifying how the necessary improvements can be achieved. The key objective is to assist the Employee to maintain the required standards, rather than to impose penalties.
- 2.1.3 Line managers are responsible for making the Employees aware of the standards of attendance, work performance and conduct expected from them and for dealing with shortcomings promptly and fairly.
- 2.1.4 Some examples of behaviour that may lead to disciplinary action include, but are not limited to, the following.
- (a) Failure to carry out a responsibility of the Employee's role.
 - (b) Persistent poor timekeeping.
 - (c) Unsatisfactory attendance record.
 - (d) Poor work standards.
 - (e) Breach of health and safety rules.
 - (f) Breach of the HSE Policy on Fraud and Corruption.
 - (g) Breach of Code of Conduct for Health and Social Service Providers
 - (h) Bullying, harassment or sexual harassment.

- (i) Breach of the HSE Electronic Communications Policy.
- (j) Inappropriate use of social media.
- (k) Refusal to obey reasonable instructions.
- (l) Negligence.
- (m) Abuse of patient/client.
- (n) Breach of any HSE policies or procedures.
- (o) Breach of ethical standards (including failure to obtain ethical approval).
- (p) Failure to obtain informed consent.
- (q) Failure to co-operate with the provision of services.

This list is not exhaustive.

2.1.5 All employees must comply fully with applicable disciplinary processes. This obligation extends to any employee who is required by the Employer to participate in any disciplinary process, whether as a witness or in any other capacity. An employee who (without reasonable cause) fails to properly participate with a disciplinary process may be the subject of disciplinary action.

2.1.6 In this Disciplinary Procedure, the expression “line manager” refers to the Employee’s Clinical Director, Executive Clinical Director, Service Manager or such other person as is designated by the Employer as the Employee’s line manager either generally or for the purposes of this Procedure or any part of it. The Employer may arrange for a person who is not the Employee’s normal line manager to exercise the functions of a line manager under this Procedure.²⁷

3. PRINCIPLES THAT APPLY THROUGHOUT THE DISCIPLINARY PROCEDURE

3.1.1 These principles apply throughout the disciplinary procedure, including in investigations, disciplinary hearings and appeals, where applicable.

3.1.2 Where appropriate, the Employee’s line manager will attempt to address issues (including, but not limited to, shortcomings in work standards, conduct or attendance) through informal counselling without invoking the Disciplinary Procedure.

3.1.3 While the stages of the Disciplinary Procedure will normally be operated on a progressive basis, earlier stages may be bypassed by the Employer depending upon the severity of the matters addressed. For example, in cases of alleged or suspected serious misconduct, the manager may bypass informal counselling and stages 1, 2 and 3 of the procedure and deal with the matter in accordance with stage 4.

3.1.4 Where the issue(s) that arise in any part of the disciplinary process include issues of a clinical nature, appropriate clinical input will be obtained by the Employer in respect of that part of the process. The Employer will have regard to such clinical input before making any decision.

3.1.5 No decision regarding disciplinary action will be made until a formal disciplinary hearing has been convened and the Employee has been afforded a fair process and an opportunity to respond.

²⁷ This could occur if, eg, the normal line manager is unavailable through leave or illness; or if the normal line manager’s post is vacant; or if for any reason it might not be practicable or appropriate for the normal line manager to fulfil these functions.

- 3.1.6 The Employee will be advised of their right to be accompanied by a work colleague or staff/union representative at any investigation hearing, any disciplinary hearing under the formal stages of the Disciplinary Procedure and any appeal hearing. A “staff/union representative” is a representative from a trade union or staff association that is a consultants’ representative body.
- 3.1.7 The Employee will be advised in advance of any investigation under this disciplinary procedure and (as the case may be) any disciplinary hearing of the precise nature of the matters giving rise to the disciplinary proceedings and will be given copies of any relevant documentation.
- 3.1.8 The Employee will be afforded the opportunity to state their case and challenge any evidence that may be relied upon in reaching a decision.
- 3.1.9 With respect to the right to challenge evidence and to introduce witnesses there will be consideration in each case of the most effective manner in which disputed facts might be determined. All processes will comply with the principles of natural and constitutional justice and will have regard to the right of the Employee to their good name and to the relevant provisions of any Code of Practice issued by the Workplace Relations Commission.
- 3.1.10 The line manager will make a fair and impartial determination of the matter after all relevant facts have been considered.
- 3.1.11 The line manager will take into account any mitigating circumstances before deciding on appropriate action.
- 3.1.12 It will be a disciplinary offence to intimidate or exert pressure on any person who may be required to attend as a witness in an investigation.
- 3.1.13 The employee may appeal any disciplinary action.
- 3.1.14 Audio or visual recording of any hearings held under the Disciplinary Procedure is strictly prohibited except where (and only to the extent that) the person conducting the hearing gives approval for such recording. Recording hearings (other than in accordance with such approval) is a disciplinary offence.
- 3.1.15 Disciplinary proceedings should be confidential except:
- (a) where disclosure is required by law; or
 - (b) to the extent that confidentiality would not be consistent with the conduct of a fair procedure.
- 3.1.16 All participants in such proceedings will be advised that breach of confidentiality may give rise to disciplinary proceedings.

4. INVESTIGATIONS

- 4.1.1 In some circumstances, a disciplinary process may be separated into two steps, in which the following occurs.
- (a) The first step is an investigation. This will normally be conducted by an investigator (or investigators) who will establish the facts of the matter.
 - (b) The second step (which would only occur when the facts as established in an investigation merit such a step) is a disciplinary hearing in which a disciplinary decision-maker (who is

someone different to the investigator/s) determines whether disciplinary action should be taken and, if so, what that disciplinary action should be.

- 4.1.2 A two-step process will not always be required. For example, in cases where the suspected or alleged misconduct is not serious and the facts are not complex, the facts of the matter may be established as part of the disciplinary hearing. These facts may be established by the Employee's line manager, in accordance with all applicable principles as provided for in section 3 of this Procedure, who may also determine whether disciplinary action should be taken and, if so, what that disciplinary action should be.
- 4.1.3 Subject to the following two paragraphs, in cases where serious misconduct is alleged, an investigation²⁸ will be completed prior to any disciplinary hearing taking place. Such an investigation will be completed by a person (or persons) other than the person who will be the decision-maker in any potential disciplinary hearing. The findings of such an investigation will include findings as to whether the allegations have been upheld (in whole or in part) but will not include any recommendation as to what (if any) disciplinary action should be taken.
- 4.1.4 Where an investigation has been carried out under a separate policy or procedure, and in the Employer's opinion the outcome of that investigation merits the convening of a disciplinary hearing, it will not be necessary to carry out a further investigation under this Disciplinary Procedure prior to convening a disciplinary hearing **provided** that the investigation in question was conducted under a policy or procedure (such as *Trust in Care* or the Health Service's *Dignity at Work Policy*) that provided appropriate standards of fair procedures for the Employee.
- 4.1.5 In circumstances where the Employee has a criminal conviction (including circumstances in which the Employee has pleaded guilty to an offence, or has had the *Probation of Offenders Act 1907* applied in respect of a charge or conviction) arising from the facts or concerns which could otherwise form the basis of an investigation under the Disciplinary Procedure, a separate investigation is not required. The facts established in the criminal proceedings may form the basis of management's decision to convene a disciplinary hearing at the appropriate stage.
- 4.1.6 Where the Employer decides to apply a two-stage process (and therefore to conduct an investigation separately to any potential disciplinary hearing) the conduct of the investigation will be governed by this Disciplinary Procedure and (subject to this Disciplinary Procedure) by terms of reference that are specific to the investigation.

5. STEPS IN THE DISCIPLINARY PROCEDURE

5.1 Pre-procedure – informal counselling

- 5.1.1 Where appropriate, the Employee's line manager will attempt to address issues (including, but not limited to, shortcomings in work standards, conduct or attendance) through informal counselling without invoking the Disciplinary Procedure. The purpose of counselling in this context is to ensure that the Employee understands what is expected from them and to provide an opportunity to discuss any aspects of the job which may be causing them difficulties in achieving the required standards.
- 5.1.2 A counselling meeting should be conducted as follows.
- (a) The Employee will be given details of the matters that require improvement.

²⁸ This may be an investigation under the Disciplinary Procedure or an investigation under another policy or procedure as provided for in paragraph 4.1.4.

- (b) The Employee will be given an opportunity to respond to the matters outlined and careful consideration will be given to any explanations given by the Employee.
- (c) The manager in consultation with the Employee will identify appropriate measures that can be taken to assist the Employee and formulate an action plan for achieving the required improvements.
- (d) Details of the counselling meeting and any follow-up action agreed will be documented.
- (e) The Employee will be given advance notice that failure to improve will result in the formal stages of the Disciplinary Procedure being invoked.

5.1.3 Where the Employee's conduct, attendance or work does not meet the required standards despite informal counselling, or where management considers it appropriate to bypass informal counselling, the matter will be dealt with under the following formal stages of the Disciplinary Procedure. Any of the following steps may only be taken after completion of a fair process as set out in section 6.

- (a) Stage 1: a verbal warning, which will have effect for 6 months²⁹.
- (b) Stage 2: a written warning which will have effect for 9 months.
- (c) Stage 3: a final written warning which will have effect for 12 months.
- (d) Stage 4: dismissal or action short of dismissal.

5.1.4 Any warning that is given under stages 1-3 will contain the information that is set out in paragraph 6.3.1.

5.2 **Additional provisions in respect of stage 4**

5.2.1 A disciplinary hearing under Stage 4 will be held:

- (a) if, following the issuing of a final written warning to the Employee, the Employee may have failed to meet the required standards, and/or
- (b) if, following the issuing of a final written warning to the Employee, a separate disciplinary matter arises in respect of the Employee, and/or
- (c) in cases of alleged serious misconduct.

5.2.2 In the cases of consultants employed by the HSE, the decision-maker will be one of the following (or equivalent grade) depending on the Employee's work location.

- (a) A national director.
- (b) The chief officer of the relevant community healthcare organisation ("**CHO**").
- (c) The group chief executive of the relevant hospital group.

²⁹ The duration of any warning under stages 1 to 3 may be extended in the event of further misconduct during the period of validity of that warning, if such an extension is determined (after the conclusion of an appropriate process) to be one of the appropriate disciplinary actions for such further misconduct.

- 5.2.3 If the Employee is at national director level within the HSE, the relevant decision maker is the chief executive officer of the Employer or other member of the Employer’s executive management team (if appropriate).
- 5.2.4 In the case of a consultant employed by a section 38 agency the decision-maker will be such member of senior management as is assigned that function by the agency for the purposes of stage 4.
- 5.2.5 The outcome of the disciplinary hearing at stage 4 may be dismissal or action short of dismissal as set out in paragraph 7.5.5.³⁰

6. CONDUCTING A DISCIPLINARY HEARING

6.1 Notification Requirements

- 6.1.1 The Employee should be informed that they are required to attend a disciplinary hearing under the formal Disciplinary Procedure. The Employee should be advised of the following matters.
- (a) The reason for the hearing, i.e. outline the specific aspects of the Employee’s conduct or performance which is alleged to have fallen below the required standards (in a one-step process) or has been found (in a two-step process) to have occurred.
 - (b) The possible outcome of the hearing, e.g. issuing of a verbal warning under stage 1.³¹
 - (c) The right to representation by a staff/union representative or work colleague.
- 6.1.2 The Employee should be given sufficient notice of the hearing to enable them to arrange for representation and prepare for the hearing. The following details should be confirmed in writing.
- (a) The time and place of the hearing.
 - (b) The name and job title of the manager who will act as decision-maker.
 - (c) The status of the hearing (i.e. that it is a formal disciplinary hearing under the Disciplinary Procedure).
 - (d) The precise nature of the complaint.
 - (e) That the Employee has a right to be accompanied by a staff/union representative or work colleague.
- 6.1.3 Copies of relevant documentation should be provided to the Employee in advance of the hearing.

6.2 Conducting the disciplinary hearing

6.2.1 The purpose of the disciplinary hearing is

- (a) to allow the Employee to respond to the allegations³² in a one-step process or

³⁰ The same potential actions (dismissal or action short of dismissal) are available to the decision-maker irrespective of whether the stage 4 hearing was conducted as a result of a progressive series of steps (without) or as a result of serious misconduct having been established.

³¹ This notification does not preclude the disciplinary decision-maker, after the disciplinary hearing, from issuing a less severe outcome than the possible outcome that has been notified to the Employee. The disciplinary decision-maker will not issue a more severe outcome than the possible outcome that has been notified to the Employee.

³² In this Disciplinary Procedure, the expression “allegation” has a broad meaning. It includes circumstances in which there is a reasonable suspicion of misconduct on the part of the Employee, notwithstanding that no person may have made an express allegation about the Employee.

- (b) to address the findings in a two-step process

before the decision-maker decides whether or not to take disciplinary action. The Employee must be made aware that the outcome of the hearing may result in disciplinary action so that they appreciate the seriousness of the hearing.

6.2.2 The final decision with regard to disciplinary action can only be made when the Employee has had the opportunity to state their case and present any evidence of mitigating circumstances.

6.2.3 A disciplinary hearing should follow a structured format as follows.

- (a) Introduce those present.
- (b) Confirm that this is a hearing under the formal Disciplinary Procedure.
- (c) Confirm the stage of the process under which the hearing is being held, e.g. Stage 2.
- (d) If it is a one-step process: outline the nature of the matter(s) giving rise to the disciplinary proceedings and refer to any supporting evidence (the Employee should have been given a copy of any such relevant documentation in advance).
- (e) If it is a one-step process: allow the Employee to respond to the allegations.
- (f) Allow the Employee to address the question of potential actions, if any, in both a one-step and a two-step process.
- (g) Invite representations on the Employee's behalf.
- (h) Summarise the key points raised.
- (i) Allow the Employee to have a final say before the hearing is concluded.

6.2.4 Each case should be considered on its merits before deciding on what disciplinary action, if any, to take. The outcome of the hearing may be one of the following.

- (a) A formal warning.
- (b) No further action on the grounds that the Employee has given a satisfactory explanation of events or there were strong mitigating circumstances.
- (c) Non-disciplinary action e.g. arrange for the Employee to receive coaching/training and set targets for improvement.

6.3 **Issuing warnings under the Disciplinary Procedure**

6.3.1 The primary purpose of a warning under the Disciplinary Procedure is to give the Employee an opportunity to make the required improvements whilst making clear the consequences of failing to do so. A warning (including a verbal warning) should contain the following information.

- (a) The stage of the Disciplinary Procedure which has been invoked.
- (b) Details of the unsatisfactory attendance, conduct or work standards.
- (c) Details of the improvements required and timescale for improvement.
- (d) Any measures that are available to assist the Employee (e.g. training or coaching).

- (e) The duration of the warning.
- (f) What further action will be taken if the Employee does not make the necessary improvements within the agreed timescale or if there are further instances of unsatisfactory attendance, conduct or work standards during this period.
- (g) The manager to whom an appeal against a disciplinary action may be referred and the timeframe.

6.3.2 Any disciplinary action will normally take effect immediately from the date of the disciplinary decision. If the decision is appealed, the disciplinary action will be regarded as having effect from the date on which the decision was made unless the appeals officer or committee decides otherwise (see section 8).

6.4 **Follow-up action**

6.4.1 The outcome of the hearing should be confirmed to the Employee in writing and copied to their staff/union representative (if any).

6.4.2 The Employee's performance should be monitored during the review period and agreed support measures (e.g. coaching) should be put in place without delay.

6.5 **Removal of warnings**

6.5.1 Where a warning is issued under stages 1-3 and the Employee makes the required improvements, the letter or record of warning and all documentation relating to the disciplinary process itself should be removed from the Employee's file.

6.5.2 Where the Employee does not make the required improvements and the matter progresses to the next stage of the Disciplinary Procedure, all documentation relating to the previous warning should be retained. Such documentation will be removed from the file after the conclusion of all matters arising from the next stage (or subsequent stages, where relevant).

7. **SERIOUS MISCONDUCT**

7.1 **What constitutes serious misconduct?**

7.1.1 Examples of serious misconduct which will be dealt with from the outset under Stage 4 include, but are not limited to the following.

- (a) Theft.
- (b) Serious breach of the HSE Policy on Fraud and Corruption.
- (c) Deliberate damage to property.
- (d) Fraud or deliberate falsification of documents, violation or misuse of confidential information or organisational property, material or equipment.
- (e) Unauthorised entry/access to computer and/or other records/files.
- (f) Gross negligence or dereliction of duties.
- (g) Gross insubordination.
- (h) Serious failure to carry out a responsibility of the Employee's role.

- (i) Reporting to or attending at work while being under the influence of any “intoxicant” (meaning alcohol, unprescribed drugs, or legal medication which have been used other than to comply with a prescription properly issued to the Employee by a registered medical practitioner) or consuming any such intoxicant during working hours.
- (j) Incapacity to perform duties due to being under the influence of any intoxicant.
- (k) Possession and/or sale or use of illegal drugs.
- (l) Serious breach of health and safety rules.
- (m) Serious breach of the HSE’s Electronic Communication Policy.
- (n) Serious breaches of confidentiality.
- (o) Failure to disclose conflicts of interest.
- (p) Improper influence to make personal/family gain/gain for another or others or acceptance of improper gifts/hospitality.
- (q) Serious bullying, sexual harassment or harassment.
- (r) Serious abuse of a patient/client.
- (s) Violent behaviour.
- (t) Sexual assault.
- (u) Downloading/disseminating pornographic material while at work or using a work device.
- (v) Circulation (in the workplace and/or to work colleagues) of offensive, obscene or indecent e-mails or text messages.
- (w) Behaviour that gives rise to a serious breach of trust and confidence.
- (x) Conviction for a material criminal offence³³.
- (y) Serious or repeated breach of ethical standards (including failure to obtain ethical approval for medical procedures or research involving people).
- (z) Serious or repeated failure to obtain informed consent in respect of medical procedures or research involving people.
- (aa) Serious or repeated failure to co-operate with the provision of services.
- (bb) Serious breaches of any other HSE policies and procedures.

7.1.2 The foregoing list is not exhaustive.

7.2 **Notifying the Employee of the allegation**

7.2.1 Upon being made aware of any instance of apparent serious misconduct, or any apparent serious failure on the part of the Employee to deliver the required standard of care due to some lack of capability or competence on the Employee’s part, the line manager will arrange for the gathering of preliminary facts relating to the issue in order for the allegation to be formulated. The

³³ The definition of a “material criminal offence” in the Employee’s contract of employment applies to this item.

Employee will be advised in writing of the details of the allegation and invited to make an initial response.

- 7.2.2 The Employee will be requested to attend a meeting to hear the details of the allegation at the earliest practicable juncture and without undue delay. The Employee will be advised of their right to be accompanied at this meeting by a staff/union representative or work colleague.

7.3 **Protective measures**

- 7.3.1 Pending the outcome of the investigation and any subsequent disciplinary process, management may take whatever protective measures are deemed necessary to ensure that

- (a) a patient or client or service-user or employee of the Employer or
- (b) the Employer or
- (c) the services provided by the Employer

will not be exposed to unacceptable risk.

- 7.3.2 Protective measures are neither disciplinary measures nor an indication of guilt. They may include the following.

- (a) Reassigning the Employee to different duties than their normal duties.
- (b) Reassigning the Employee to an alternative location/work base within a reasonable distance from the Employer's normal location/work base.
- (c) Providing an appropriate level of supervision.
- (d) Putting the Employee off duty with pay.

- 7.3.3 The views of the Employee will be taken into consideration when determining the appropriate protective measures (if any) to take in the circumstances but the final decision rests with management.

- 7.3.4 Putting the Employee off duty with pay pending the outcome of the investigation and any subsequent disciplinary process will generally be reserved for exceptional circumstances. The Employee will be advised that the decision to put them off duty is a protective measure and not a disciplinary action or an indication of guilt.

- 7.3.5 In the event that protective measures have been taken in respect of the Employee the protective measures should be reconsidered by the Employer's management at regular intervals. In the event that the Employee believes that an excessive period of time has passed without a reconsideration taking place, the Employee should request such a reconsideration. In any reconsideration, the Employer's management will take the views of the Employee into consideration as well as considering all other relevant matters. After such reconsideration, the Employer may continue the same protective measures, or remove the protective measures, or apply alternative protective measures.

7.4 **Investigation**

- 7.4.1 An investigation into allegations of serious misconduct will be conducted in accordance with:

- (a) the provisions (specified in section 3) that apply to all elements of the disciplinary process, including investigations³⁴, and
 - (b) (subject to this Disciplinary Procedure) the terms of reference that have been prescribed for the investigation.
- 7.4.2 In the event that the findings of the investigation include any finding that some or all of the allegations have been upheld, then a disciplinary hearing will be convened under stage 4.
- 7.5 Disciplinary hearing under stage 4**
- 7.5.1 The disciplinary decision-maker is responsible for adherence to fair procedures during the disciplinary hearing. The decision maker will be a person prescribed under paragraph 5.2.2. The Employee will be informed of the following in writing in advance of the disciplinary hearing.
- (a) The status of the hearing, i.e. that it is a formal disciplinary hearing under Stage 4 (Dismissal or Action Short of Dismissal) of the Disciplinary Procedure.
 - (b) That the purpose of the hearing is to consider representations on the Employee's behalf and to decide whether disciplinary action is appropriate in all the circumstances and the nature of the potential action, if any.
 - (c) The possible outcome of the hearing, i.e. it may result in dismissal or actions short of dismissal.
 - (d) Copies of the investigation report and all relevant documentation.
 - (e) That the Employee has the right to be accompanied by a staff/union representative or work colleague.
- 7.5.2 The disciplinary hearing will be conducted in accordance with paragraph 6.2.3.
- 7.5.3 The disciplinary hearing is not intended to repeat the investigation but the Employee will be able to raise any concerns regarding the investigation process if they feel that these concerns were not given due consideration by the investigator. The Employee will be afforded an opportunity to present evidence of any mitigating circumstances that may be relevant. The decision-maker will consider any representations made on the Employee's behalf.
- 7.5.4 The decision-maker may, having considered all of the matters arising in the disciplinary hearing, vary any finding of fact made in the investigation.
- 7.5.5 After the conclusion of the disciplinary hearing the Employee will be advised of the decision and the reasons for the decision. The decision may include any of the following disciplinary actions.
- (a) Decision to dismiss (effective from the date of the dismissal decision).
 - (b) Disciplinary action short of dismissal including, but not limited to a final written warning, suspension without pay, reassignment, demotion³⁵ etc.

³⁴ The following sub-paragraphs in section 3 are of particular importance in investigations of allegations of serious misconduct: 3.1.4, 3.1.6, 3.1.7, 3.1.8, 3.1.9, 3.1.10, 3.1.12, 3.1.14, 3.1.15 and 3.1.16.

³⁵ If an employee is reassigned or demoted to a different post/grade, they will be subject to the pay and conditions attaching to the new post/grade.

- (c) No action on the grounds (whether on that there were strong mitigating circumstances or otherwise).
- (d) Non-disciplinary action (e.g. where there were strong mitigating circumstances or where the Employee's continued employment is conditional on the Employee agreeing to seek specialist treatment or other appropriate course of action).
- (e) Transfer of duties and/or work location provided such transfer is reasonable having regard to the nature of the Employee's role and previous work location.

7.5.6 The Employee will be advised of their right to appeal the decision.

8. APPEALS

8.1 Appeals against disciplinary action short of dismissal

8.1.1 Appeals against disciplinary actions short of dismissal will be heard by

- (a) an appeals officer who is a manager at a higher grade than the disciplinary decision-maker or
- (b) an independent appeals officer determined by the Employer.

8.1.2 The Employee is required to submit the grounds for the appeal in writing within 7 days of being notified of the original decision.

8.1.3 The appeal will be a review of the disciplinary decision, not a full re-hearing of the investigation and disciplinary process. The appeals officer will adopt his or her own procedures.

8.1.4 The appeals officer will decide whether to confirm, vary or set aside the original disciplinary decision. The appeals officer may, having considered all of the matters arising from the appeal, vary any finding of fact on which a disciplinary decision was based.

8.2 Appeal against dismissal decisions

8.2.1 If the outcome of the disciplinary hearing is a decision to dismiss, the Employee may appeal the decision to an appeals committee. The appeal may be on one or more of the following grounds.

- (a) That mitigating circumstances existed that were not properly considered by the investigators and/or the disciplinary decision-maker.
- (b) That there were procedural deficiencies in the investigation and/or the disciplinary hearing.
- (c) That the findings of fact on which the disciplinary decision was based were unfounded.
- (d) That the disciplinary action taken was unduly severe.

8.2.2 The Employee is required to submit the grounds for the appeal in writing within 14 days of being notified of the original dismissal decision.

8.2.3 An appeal against dismissal decisions will be heard by an appeals committee comprising persons selected from a nominated panel which has been agreed between the HSE and consultants' representative bodies. Membership of the committee will consist of the following persons.

- (a) A chairperson, who will be a member of a panel of independent chairpersons. This panel will be comprised of appropriately qualified legal practitioners (or other appropriate persons) agreed between the HSE and consultants' representative bodies.
- (b) A member of a panel of persons nominated for this purpose by consultants' representative bodies.
- (c) A member of a panel of persons nominated for this purpose by HSE management.

8.2.4 The committee will adopt its own procedures and may conduct such enquiries as it deems appropriate. The committee will decide whether to confirm, vary or set aside the original dismissal decision. The committee may, having considered all of the matters arising from the appeal, vary any finding of fact on which a disciplinary decision was based.

8.2.5 If the Employee considers that they have been unfairly dismissed they may refer a complaint to the Workplace Relations Commission (WRC) within 6 months of the date of dismissal in accordance with (and subject to) the relevant legislation.

8.3 Outcome of an appeal

8.3.1 In the event that the outcome of the appeal is to confirm the original disciplinary decision, the disciplinary decision has effect from the date on which it was made, not the date on which the appeal was decided.

8.3.2 In the event that the outcome of the appeal is to vary the original disciplinary decision, the appeal officer or appeal committee (as the case may be) will clearly set out any alternative disciplinary action that is to be taken and the date from which that alternative disciplinary action is to take effect. The original disciplinary decision will continue to have effect except to the extent that it is expressly varied or set aside as a result of the appeal.

8.3.3 In the event that the outcome of the appeal is to set aside the original disciplinary decision then the original disciplinary decision will be considered never to have had effect.

9. CAPABILITY, COMPETENCE AND UNDERPERFORMANCE

9.1 This Disciplinary Procedure applies in cases relating to capacity, competence and underperformance

9.1.1 Where possible, as made clear in section 2 and without prejudice to the relevant provisions of the *Medical Practitioners Act 2007*, issues of capability, competence and underperformance (including clinical competence and health) will be addressed under this Disciplinary Procedure. Normally such issues will be addressed through ongoing review and support and, where appropriate, through the progressive stages of this Disciplinary Procedure. There may be cases where there has been an alleged serious failure on the part of the Employee to deliver the required standard of care due to some lack of capability and/or competence on their part. In such cases of alleged serious failure, the matter will be addressed under Stage 4 of this Disciplinary Procedure without recourse to earlier stages.

9.1.2 In cases of capability, competence and underperformance the nature of the process that is required in advance of the convening of a "disciplinary" hearing may be different to the nature of the process that would occur in cases of misconduct. However, in all cases, the process must comply with the principles of fair procedures and natural justice.

9.2 **Cases relating to capacity**

9.2.1 In cases relating to capacity, management may have regard to medical reports (including those submitted by the Employer's occupational health doctors and by the Employee's medical advisers) and other documentation in relation to the managing of the Employee's absence and the rehabilitation process (including a requirement for due consideration of reasonable accommodation measures). In such a process, management will take appropriate steps to establish the capacity of the Employee prior to holding a "disciplinary" hearing. The nature of such process may not be the same as an investigation that would apply in cases of suspected or alleged misconduct, but will nevertheless be both fair and appropriate to the circumstances. The Employee will receive, and have an opportunity to respond to, medical and other information that is being considered by the Employer.

9.2.2 If the Employee has been subject to the provisions of the HSE Rehabilitation Policy and their employment may be terminated on grounds of incapacity, they are entitled to the full range of protections under Stage 4 of the Disciplinary Procedure prior to management making any decision with regard to termination of their employment or otherwise.³⁶

9.3 **Cases relating to underperformance**

9.3.1 The informal counselling stage may be bypassed where the issues relate to continued underperformance or failure to attain the necessary improvements following the implementation of a performance improvement plan (PIP) in accordance with the Employer's processes for performance management. The Employee will be advised by their line manager in advance if failure to fulfil the requirements of their PIP will result in the Disciplinary Procedure being invoked.

10. **PROCEDURE FOR EMPLOYEES SUBJECT TO PROBATION**

10.1 **Probation procedures**

10.1.1 Where employees are required to serve a probationary period, clause 7 of this contract specifies its duration, the terms of notice that apply during the period and the possibility of its extension at the discretion of management and/or further to the provisions of section 6D of the *Terms of Employment (Information) Act 1994*. The Employer may apply probationary procedures further to those set out in this Disciplinary Procedure.

10.1.2 The objective of the probationary period is to monitor employees' progress in their new job in order to establish their suitability for the employment and identify any issues which may impact on their suitability for the job. Although a probationary employee must clearly establish their suitability for the job, there is a corresponding obligation on the line manager to ensure that the Employee is given the appropriate training and assistance to enable them to meet the required standards.

10.2 **Managing the probationary process**

10.2.1 The Employee will be advised of the length of the probationary period and that their performance will be reviewed on an ongoing basis to determine suitability for continued employment.

10.2.2 If the Employee is, during their probationary period, employed in several different locations one line manager will, for the time being, normally have responsibility for conducting the Employee's

³⁶ The reason why this Disciplinary Procedure applies to situations in which dismissal for incapacity may arise, notwithstanding that incapacity is not misconduct, is that the Employer wishes to ensure that fair procedures are applied prior to reaching any decision to dismiss, and this Disciplinary Procedure applies a full range of fair procedures.

probationary process. The Employer will make arrangements for the person conducting the Employee's probationary process to receive appropriate feedback on the Employee's performance at each of the locations at which the Employee is employed.

- 10.2.3 Where the issue(s) that arise in any probation process include issues of a clinical nature, appropriate clinical input will be obtained by the line manager in respect of the issues and the line manager will have regard to such input when making decisions in respect of probation.
- 10.2.4 The line manager will conduct progress reviews with the Employee at regular intervals and keep a formal record of their assessment for the period under review. The line manager will also document any follow-up action that was agreed during the discussion.
- 10.2.5 Where the Employee persistently fails to achieve the required standards, the line manager will advise the Employee of their deficiencies. The objective at this stage will be to help the Employee to improve; to give the Employee the opportunity to respond to concerns that the line manager has raised; and for the line manager to make it clear that failure to make any necessary improvements will result in the Employee's employment being terminated.
- 10.2.6 The line manager will carry out a final overall assessment prior to the end of the probationary period and arrange to meet with the Employee to advise them of the outcome. In cases where the Employee clearly demonstrates their unsuitability during the probationary period, their employment may be terminated at any stage during the probationary period.
- 10.2.7 If the Employee's employment is terminated because they did not successfully complete probation, they will be told the reasons why they have not successfully completed probation and will be provided with the appropriate period of notice of termination. In that event, the Employee will be advised of their right to appeal this decision to a higher level of management and the right to representation by a work colleague or staff/union representative during the appeal. The appeal must be made in writing (setting out the grounds for appeal) within 7 days of the Employee being notified of this decision.
- 10.2.8 The outcome of the appeal will be final.
- 10.2.9 In accordance with the Employee's contract of employment, the probationary period may be extended at the discretion of management. However, this provision does not apply automatically to employees who have not successfully completed their probationary period. The probationary period will only be extended in exceptional circumstances. Normally if the Employee does not successfully complete probation they will have their employment terminated.
- 10.2.10 In cases where an allegation of serious misconduct is made against a probationary employee, the allegation will be notified to the probationary employee. A fair process will be conducted in which the probationary employee will be heard in respect of the allegation and may be accompanied by a work colleague or staff/union representative. The probationary employee will be entitled to appeal the outcome (including a decision to dismiss) to a higher level of management. The outcome of this appeal will be final.
- 10.2.11 Nothing in this procedure affects any of the Employee's statutory rights to refer a complaint or dispute to the Workplace Relations Commission (WRC) under the *Industrial Relations Acts 1946 to 2015* or any other statute.

APPENDIX 8

Special leave provisions for consultants in non-HSE employment

[THIS APPENDIX SHOULD SAY "DELIBERATELY LEFT BLANK" IF NOT APPLICABLE]

1. These provisions are in addition to those set out in clause 19 of the contract.
2. If the Employee is appointed by a minister of the Government to be a member of any commission, committee of a statutory board or to be a director of a State company, the Employer may grant the Employee leave with pay to enable them to attend meetings of the body in question.
3. If the Employee is invited by the Public Appointments Service, a Government department, the HSE, or a local or other public authority, to serve on a selection board the Employer may grant the Employee leave with pay to enable them to serve on the said board.
4. The Employer may grant the Employee leave with pay for annual training with the Defence Forces/Reserves for up to one week in each year. Any such leave in excess of one week in each year will be taken without pay.
5. The Employer may grant the Employee leave with pay for up to three days on the serious illness or death of a near relative.
6. When the Employee is a candidate for a post that has been advertised by the Public Appointments Service, a Government Department, the HSE, or a local or other public authority the Employer may grant the Employee leave with pay for a maximum of six days in any one year, to enable them to appear before a selection board in the application process for such a post.
7. The Employer may grant the Employee leave with pay for the purpose of attending clinical meetings of societies appropriate to their specialty for up to seven days in any calendar year (exclusive of travel time).

APPENDIX 9

PROVISIONS FOR CONSULTANTS WHO ARE TRANSITIONING FROM AN EARLIER TEMPLATE CONSULTANT'S CONTRACT

[THIS APPENDIX SHOULD SAY "DELIBERATELY LEFT BLANK" IF NOT APPLICABLE]

1. This Appendix applies if:
 - (a) immediately before the making of this contract, the Employee was employed by the Employer as a consultant under a different contract of employment ("**the preceding contract**" and, if the Employee was employed by the Employer under a succession of contracts, each is "a preceding contract")³⁷ and
 - (b) the preceding contract was based on a template contract that was used for the employment of consultants prior to the introduction of the 2023 consultants' contract.
2. If this Appendix applies, then the following provisions will have effect.
3. In this Appendix:
 - (a) if this contract is made on or before 31 December 2023, the expression "**the transitional period**" means the period from the making of this contract until 31 December 2025;
 - (b) if this contract is after 31 December 2023, the expression "**the transitional period**" means the period of six months from the making of this contract; and
 - (c) "**private practice**" and "**on-site private practice**" have the same meaning as in the preceding contract(s).
4. Unless paragraph 6 applies, the Employee's starting salary under this contract has been set at the corresponding point of the salary scale on which the Employee was being paid applicable to the preceding contract. This means that:
 - (1) if the Employee was (immediately before the making of this contract) being paid on the first point of the scale applicable to the preceding contract then the Employee will, from the date of making of this contract, be paid on the first point of the scale applicable to this contract;
 - (2) if the Employee was (immediately before the making of this contract) being paid on the second point of the scale applicable to the preceding contract then the Employee will, from the date of making of this contract, be paid on the second point of the scale applicable to this contract;
 - (3) and so on.
5. Unless paragraph 6 applies, the next incremental date after the making of this contract will be the date that would have been the next incremental date under the preceding contract.
6. If the Employee was employed under a preceding contract prior to 2008, and was immediately prior to signing this contract employed on a single-point pay scale, then the Employee's starting

³⁷ A preceding contract could be a contract based on the 2008 template; or a contract based on the 1997 template; or otherwise. PLEASE DELETE THIS FOOTNOTE.

salary under this contract has been set at the top point of the scale approved for the 2023 consultants' contract and therefore no further increments will be provided to the Employee.

7. The provisions of sub-paragraph 14.1.2 of this contract have given effect to the provisions of paragraphs 4 and 5 of this Appendix.
8. Subject to the Employee complying with the conditions of the transition, the provisions of paragraph 24.10 of this contract will not apply to the Employee during the transitional period. During the transitional period, the Employee will remain subject to the terms and conditions relating to private practice and external work (howsoever described) (if any) that were contained in the preceding contract and that applied to the Employee immediately before the making of this contract. From the end of the transitional period the Employee will be subject to paragraph 24.10.
9. In the event that the Employee fails to comply with the conditions of the transition then the Employee's Clinical Director/Executive Clinical Director/line manager may direct the Employee to take such actions as the Clinical Director/Executive Clinical Director/line manager reasonably believe are necessary to bring the Employee into compliance with the conditions of the transition. Such a direction may include a direction that the Employee cease accepting new patients to the Employee's private practice. The Employee will comply with any such direction. If and when the Employee's Clinical Director/Executive Clinical Director/line manager is satisfied that the Employee has returned to compliance with the conditions of the transition the Employee's Clinical Director/Executive Clinical Director/line manager may set aside the direction.
10. If this contract is made on or before 31 December 2023, then notwithstanding the provisions of the preceding contract the conditions of the transition are as follows.
 - (a) The volume of on-site private practice in which the Employee is entitled to engage by the end of 2024 may not exceed 10% of the Employee's workload in any of their clinical activities, including in-patient, day-patient and out-patient.
 - (b) The volume of on-site private practice in which the Employee is entitled to engage by the end of June 2025 may not exceed 5% of the Employee's workload in any of their clinical activities, including in-patient, day-patient and out-patient.
 - (c) The Employee must cease all on-site private practice by the end of 2025.
 - (d) Throughout the transitional period the Employee will take appropriate steps to ensure an orderly wind-down of such of their on-site private practice (if any) as will (at the end of the transitional period) be affected by paragraph 24.10.
11. If this contract is made after 31 December 2023, then notwithstanding the provisions of the preceding contract the conditions of the transition are as follows.
 - (a) The volume of private practice in which the Employee is entitled to engage during the transitional period must progressively decrease to 0% of the Employee's workload in any of their clinical activities.
 - (b) Throughout the transitional period the Employee will take appropriate steps to ensure an orderly wind-down of such of their private practice (if any) as will (at the end of the transitional period) be affected by paragraph 24.10.
12. If, during the period of 12 months immediately following the making of this contract, the Employee suffers a financial loss in respect of their B and C factor on-call payments arising from

the restructuring of their working times, as a result of transitioning from the preceding contract to this contract, they will be entitled to a payment equal to 1.5 times the value of that loss during that period. This will be a once-off payment and will be subject to tax and other statutory deductions. The amount of the payment will be calculated by the Employer in line with established public sector norms.

13. If
 - (a) the Employee had (by 30 June 1998) applied for an entitlement to rest days under a preceding contract ("**historic rest days**") and had (under the mechanism set out in the preceding contract) been recognised as having such an entitlement; and
 - (b) immediately before the making of this contract, the Employee has not availed of the benefit of all of the historic rest days, such that the Employee retained an entitlement to any of historic rest days (the "**untaken historic rest days**");then
 - (c) the Employee retains (under this contract) their entitlement to the untaken historic rest days and
 - (d) may avail of them during the currency of this contract; but
 - (e) other than retaining their entitlement in respect of the untaken historic rest days, no further or ongoing accrual of rest days will apply to the Employee arising from any preceding contract.
14. Except as expressly provided in this Appendix, the Employee will not retain any entitlements under the preceding contract. With effect from the Commencement Date, this contract supersedes and replaces any and all preceding contracts between the Employer and the Employee. Any remuneration, expenses or benefits to which the Employee became entitled during the currency of the preceding contract – but which has not yet been paid or provided to the Employee before the Commencement Date – will be paid or provided to the Employee in the normal way after the Commencement Date.
15. By making this contract the Employee warrants (without prejudice to the obligation of the Employer to comply with the provisions of this Appendix) that, except as expressly notified to the Employer prior to the making of this contract:
 - (a) the Employee has no outstanding claims or disputes with the Employer (whether in the form of litigation or otherwise) arising from the preceding contract and
 - (b) the Employee is not aware of any circumstances on which any such claim or dispute could be based.

Note: if the Employee does have a claim in respect of any matter arising from the preceding contract, this paragraph requires the Employer be notified of this fact before making this contract. The fact that the Employee has a pre-existing claim will not impede the Employee from receiving this new contract.

An employee who is otherwise entitled to be offered a new contract will still receive the new contract, but will need to either (a) confirm that they have no claims in respect of the preceding contract or (b) identify what claims they do have.

An employee who is entitled to receive a new contract and who confirms that they have a claim under the preceding contract will not (as a condition of receiving a new contract) be required to waive any such claim.

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