



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

And

[THE PROVIDER]

SERVICE ARRANGEMENT
Section 10 Child Care Act 1991

STRUCTURE

This document consists of two parts:

Part 1 consists of 33 standard clauses

Part 2 consists of 10 Schedules

Note 1-See also Clause 33.11 (Counterparts).

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SERVICE ARRANGEMENT – PART 1

This **SERVICE ARRANGEMENT** is made on ● for a period commencing on ● (the “**Commencement Date**”) until ●.

BETWEEN

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

AND

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

BACKGROUND

- (A) The Executive is required by statute to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. The Health Acts, 1947 to 2007 empower the Executive, on such terms and conditions as it sees fit to impose, to give assistance to the Provider in respect of a service provided by the Provider which is similar or ancillary to a service that the Executive may provide.
- (B) The Executive wishes to support the provision of the Services and the Provider wishes to provide such services.
- (C) Now therefore the Executive and the Provider enter into this Arrangement for the provision of Services to Service Users on the terms and conditions specified below, as hereinafter defined, and in relation to the catchment area which may be defined.

THE PARTIES AGREE as follows:

1. Definitions and Interpretation

1.1 In this Arrangement

“**Acts**” has the meaning given in Clause 26.1;

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

“**Additional Services Addendum**” has the meaning given in Schedule 3 (Service Delivery Specification);

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

“**Authorised Person**” has the meaning given in Clause 11.2;

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

“**Catchment Areas**” means areas described in Schedule 3 (Service Delivery Specification);

“**Claiming party**” has the meaning given in Clause 29 (Force Majeure);

“**Contract Change Note (CCN)**” means the contract change note referred to in Clause 33.9 (Variation) and as included in Schedule 10 (Change Control);

“**Clinical Indemnity Scheme**” means the scheme relating to claims alleging medical malpractice or clinical negligence operated by the State Claims Agency;

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

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

“**DPA**” has the meaning given in Clause 27.

“**Duration of the Arrangement**” means a period commencing on the Commencement Date and continuing until the date specified above but not to exceed 31st December 2011, unless terminated in accordance with Clause 31 (Termination) or amended, renewed or replaced following the conclusion of a review (to be initiated by the Executive) of the operation and implementation

of the Executive's service arrangements provided always that the details of the Schedules shall be agreed annually by the parties;

“**EMR**” has the meaning given in Schedule 9 (Staffing);

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

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

“**Financial Year**” has the meaning given in Schedule 6 (Funding);

“**First Performance Notice**” has the meaning given in Clause 13.1;

“**Force Majeure**” has the meaning given in Clause 29 (Force Majeure);

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

“**Level Two Business Plan**” means the business plan which sets out the Services together with the objectives, actions and timeframes for the delivery of the Services which is agreed between the Executive and the Provider;

“**Minister**” means the Minister for Health and Children;

“**Major Incident**” means an occurrence

- (i) causing an unexpected surge in demand for the Services or
- (ii) materially impacting on any aspect of the Services (where, for the purposes of this definition, “materially impacting” means an occurrence causing an unexpected surge in demand which results in an increase of [● % or greater] in demand for the resources of the Provider) [*Note:– ● % is to be agreed with each individual service provider.*]

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

“**Mission Statement**” means the respective mission statements of the Executive and the Provider set out in Schedule 2 (Quality & Standards), being statements of each party's principles, purposes, philosophies and objectives and which categorise the manner in which each party endeavours to act in performing its respective functions;

“**Non-claiming party**” has the meaning given in Clause 29 (Force Majeure);

“**NSP**” means the National Service Plan of the Executive from time to time;

“**Performance Monitoring Framework**” has the meaning given in Clause 10.3, (Monitoring, Review and Evaluation);

“**PMU**” has the meaning given in Clause 10.3;

“**Pre-contractual Statement**” has the meaning given in Clause 33.8 (Entire Agreement);

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

“**Public Procurement Law**” means Council Directive 2004/18/EC (and as implemented by S.I. 329 of 2006) co-ordinating the procurement procedures for the award of public works contracts, public supply contracts and public service contracts, and any other legislation in relation to public procurement law having the force of law in Ireland from time to time, any duties and obligations in relation to public procurement arising under common law, decisions of the courts of law in Ireland and the European Court of First Instance and European Court of Justice in relation to public procurement law, all the guidelines issued by the Department of Finance or other Government Department authorised to issue public procurement law guidance and all other duties and obligations in relation to public procurement, whether arising under European Community law, national law or otherwise;

“**Review Meetings**” means the meetings held pursuant to Clause 12.1;

“**Review Process**” has the meaning given in Clause 12;

“**Second Performance Notice**” has the meaning given in Clause 13.2;

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

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

“**Transformation Programme**” refers to the Executive’s stated transformation priorities for 2007-2010: enabling service users to *lead healthier and more fulfilled lives*;

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

“**Working Hours**” means the hours during which the Provider will provide the services as set out in Schedule 3 (Service Delivery Specification) save in respect of Clause 33 (Notices) where it means 9.00a.m. to 5.00p.m.;

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

1.2 In this Arrangement

- (a) references to Clauses, paragraphs and Schedules are to Clauses, paragraphs and Schedules to this Arrangement;
- (b) references to a “**company**” shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (c) references to a “**person**” shall be construed so as to include any individual, firm, company, government, state or agency of a state, local authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (d) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (e) any reference to a “**day**” or a “**Business Day**” shall mean a period of twenty-four (24) hours running from midnight to midnight except in Clause 33 (Notices) where it means a weekday (excluding a Saturday, Sunday or any public or bank holiday);
- (f) references to times are to times in Ireland;
- (g) references to a “**month**” shall mean a calendar month;
- (h) a reference to any other document referred to in this Arrangement is a reference to that other document as amended, varied, novated or supplemented at any time;
- (i) any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or other similar expression shall be construed as illustrative and shall not limit the sense or meaning of the words preceding those terms;
- (j) references to the singular include the plural and vice versa; and
- (k) references to the masculine include the feminine and vice versa

1.3 All headings and titles are inserted for convenience only. They are to be ignored in the interpretation of this Arrangement.

2. Principles of Arrangement

2.1 The Executive hereby agrees to give Funding to the Provider to provide the Services subject to the terms and conditions of this Arrangement and the Provider hereby accepts such Funding. For the avoidance of doubt, the parties

agree that the Funding is payable for the provision of the Services and the extent of the Services to be provided shall be specified in Schedule 3 (Service Delivery Specification).

- 2.2 The parties agree that in carrying out their respective obligations under this Arrangement, they shall each endeavour, within the agreed Funding and without prejudice to any statutory rights or obligations of the Executive, to:
- (a) develop and deliver the Services to a high quality and standard;
 - (b) seek to respond to the assessed needs of Service Users and to improve accessibility to the Services;
 - (c) pursue, where possible, a collaborative approach with other voluntary, community and statutory service providers and agencies;
 - (d) pursue the development of processes that enable local communities and Service Users to be involved in decision-making in the planning and delivery of the Services;
 - (e) demonstrate their commitment to the principle of accountability in relation to the management of public funds and public trust in terms of systems of controls, record keeping, monitoring and evaluation;
 - (f) comply with the Codes of Practice with a view to continuous quality improvement;
 - (g) recognise the importance of providing person-centred, needs-led services which reflect best practice and are responsive to Service Users;
 - (h) recognise the need to provide the Services in a cost efficient manner;
 - (i) protect, recognise and acknowledge any proprietary interest of the Executive, the State or any other statutory body in all property, whether real or personal, used in relation to or in connection with the Services; and
 - (j) maintain the best standards of business ethics to include taking all reasonable steps to prevent their employees or agents from making, receiving, providing or offering gifts of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to this Arrangement or for showing or forbearing to show favour or disfavour to any person in relation to this Arrangement or for the purpose of influencing individuals, firms or bodies corporate to act contrary to both parties interests.
- 2.3 Notwithstanding any other provision of this Arrangement, the parties agree that the requirements, requests and obligations arising from this Arrangement are limited to and applicable only in respect of the Services provided pursuant to this Arrangement.

3. Roles and Responsibilities

3.1 Duties of the Executive

- (a) Subject to the Executive's statutory responsibilities and obligations, with respect to the provision of the Services generally and to the Executive's responsibilities in relation to public funds, and having regard to the level of funding made available to it by the Exchequer, the Executive will agree the Funding to be made available to the Provider in respect of the delivery of the Services in accordance with the NSP.
- (b) Subject to the Executive's statutory responsibilities and obligations, with respect to the relationship of the Executive with the Provider, and having regard to the Executive's responsibilities in relation to public funds, the Executive shall:
 - (i) endeavour to contract and deal with the Provider at all times in accordance with the Mission Statement of the Executive;
 - (ii) endeavour to respect the independent identity and operational autonomy of the Provider in the provision of the Services under this Arrangement;
 - (iii) where the Executive, in its sole discretion, considers it appropriate, take such steps as the Executive thinks fit to assist the Provider in its compliance with all applicable legal obligations directly related to the provision of the Services but, for the avoidance of doubt, the Provider acknowledges that the Executive shall in no way be liable under this Arrangement or otherwise for the failure of the Provider to comply with its legal obligations, compliance with which shall remain solely and entirely the responsibility of the Provider;
 - (iv) subject to any obligations of confidentiality imposed on the Executive, provide the Provider with any information, which the Executive has, which is necessary for the performance by the Provider of its obligations under this Arrangement; and
 - (v) put in place an agreed payments arrangement in respect of the Funding to be given under this Arrangement.

3.2 Duties of the Provider

(a) General

- (i) The Provider shall provide the Services in accordance with the specifications outlined in Schedule 3 (Service Delivery Specification), the Codes of Practice as outlined in Schedule 2 (Quality and Standards), and with such instructions as may be issued by the Executive in writing from time to time throughout the Duration of the Arrangement.

- (ii) The Provider acknowledges that the Executive will be relying on the Provider's knowledge, experience, expertise and competence in the Provider's performance of its obligations under this Arrangement, and on the accuracy of all statements, reports or returns made by the Provider in connection with its obligations pursuant to this Arrangement.
- (iii) The Provider shall provide the Services during the agreed Working Hours at a suitable location within the Catchment Areas outlined in Schedule 3 (Service Delivery Specification).

(b) Provision of the Services

The Provider shall, within the limits of the Funding payable set out in Schedule 6 (Funding):

- (i) make available and provide access to the Services as set out in Schedule 3 (Service Delivery Specification) for the Duration of the Arrangement;
- (ii) develop and deliver services consistent with the Executive's Transformation Programme;
- (iii) make available to each Service User those Services that are consistent with the individual needs of that Service User having regard to resources and the Services;
- (iv) carry out faithfully and diligently all duties and responsibilities which may be required to ensure the provision of the Services in a timely and efficient manner, to a standard which is in all respects to the reasonable satisfaction of the Executive;
- (v) comply with the Executive's policies and objectives as outlined in the annual NSP and the Level Two Business Plan, where applicable;
- (vi) comply with the relevant policies, objectives and directions of the Minister; and
- (vii) respect the individuality of the Service User and the principle of promotion of the well-being of each Service User.

(c) Other Obligations of the Provider

The Provider shall:

- (i) endeavour to contract and deal with the Executive at all times in accordance with the Mission Statement of the Executive;
- (ii) act to the best of its skill and ability and in a competent and efficient manner so as to give to the Executive the full and

complete benefit of the Provider's knowledge, experience, expertise and competence in providing the Services;

- (iii) comply with all applicable laws and regulations and the procedures and requirements of any relevant governmental bodies (including, in relation to the premises from which the Provider operates, all planning regulations), and any safety or security requirements of the Executive notified to the Provider from time to time, in providing the Services (including, without limitation, any statutory safety requirements in force for the time being) and procure that the same are complied with in all respects by all Provider Personnel;
- (iv) obtain and maintain all licences, permits and permissions necessary to provide the Services in accordance with applicable laws and regulations and shall notify the Executive immediately in the event that such licences, permits and permissions are not obtained or maintained;
- (v) respect and comply with the statutory role and regulatory and public accountability responsibilities of the Executive and other relevant statutory bodies and at all times co-operate fully with the Executive, any committees of the Board of the Executive and all other statutory bodies in this regard;
- (vi) comply with all requirements of the Financial Regulations in respect of the sourcing of suppliers for works and related service contracts which are funded more than fifty percent (50%) by the Executive;
- (vii) comply with the provisions of Part 3 of the Disability Act 2005;
- (viii) immediately or as soon as practicable notify the Executive in writing of the occurrence of any significant matters which may affect the delivery, provision or level of the Services;
- (ix) inform the Executive of any changes to its officers, e.g. Treasurer, Chairperson, Directors or Secretary and inform the Executive of any change of Auditors;
- (x) upon request, make available to the Executive copies of any policy, procedure or protocol which the Provider implements, and shall promptly notify the Executive of any material changes to those documents;
- (xi) comply with the provisions of the Health Acts 1947 to 2007 (and any amendments or additions thereto from time to time), and any legislation regarding eligibility and any further relevant legislation passed after the date of this Arrangement, the overall policy set out in "Quality and Fairness: A Health System for

You” (2001), other relevant national health strategies, as the same may be amended, varied or replaced;

- (xii) have in place an ethics committee or other appropriate process;
- (xiii) act (and ensure persons providing Services on its behalf act) in accordance with its fiduciary duties where a fiduciary relationship exists between the Provider and a Service User and in accordance with any relevant guidance issued by the Department of Health and Children and/ or the Executive from time to time;
- (xiv) keep itself fully apprised and compliant with all of its responsibilities under the Fire Services Act 1981 (in particular Section 18) and the Safety, Health and Welfare at Work Act 2005;
- (xv) procure and maintain insurance in accordance with Clause 14 and Schedule 7;
- (xvi) comply with any determinations or directions made by the Executive in respect of the rates of fees or charges which the Provider wishes to impose upon Service Users;
- (xvii) in the event of any member of Provider Personnel having behaved illegally, wrongfully or inappropriately, whether by act or omission, in respect of a Service User or the Provider becoming aware of any allegation or complaint that any such person has behaved in such a manner in respect of a Service User, take all necessary actions in respect of such persons to ensure safety and protection of the Service User and Service Users generally and report the matter to all relevant authorities.

4. **Funding**

- 4.1 The Funding to be paid by the Executive to the Provider inclusive of all duties, taxes, expenses and other costs associated with or incurred in the provision of the Services shall not exceed the amount specified in Schedule 6 (Funding), which amount shall be payable to an account nominated by the Provider as set out in Schedule 6 (Funding).
- 4.2 If the Executive and the Provider agree in advance that any additional services are to be provided by the Provider under the terms and subject to the conditions of this Arrangement, the amount and timing of any payment(s) due in respect of and the specification(s) for such additional service(s) (the “**Additional Services**”) shall be agreed in writing between the Provider and the Executive prior to the commencement of provision of those services as described in Schedule 3 (Service Delivery Specification). Once funding has been agreed in respect of any Additional Services, that funding shall be treated as part of the Funding for the purposes of this Arrangement, and the

Additional Services shall be treated as part of the Services for the purposes of this Arrangement.

- 4.3 The Funding is payable for the provision of the Services only. Any other services provided by the Provider that have not been authorised in advance in writing by the Executive shall be outside the scope of this Arrangement (“**Unapproved Services**”) and the costs of the Unapproved Services and all responsibilities, obligations and liabilities relating to or arising in connection with the Unapproved Services shall be the sole responsibility of the Provider.
- 4.4 Unless provided for elsewhere by law the Executive and the Provider shall agree and determine, in advance, the rates of any fees which the Provider wishes to impose upon Service Users in respect of the Services.
- 4.5 The Executive may require the Provider to remit any fees collected by the Provider (in accordance with Clause 4.4) to the Executive, and for the avoidance of doubt, the Executive shall be entitled to invoke the provisions of Clause 6 (Set-off) in respect of any sums owing to it.
- 4.6 The Provider will immediately notify the Executive and will ensure that all necessary notifications and actions are undertaken in the event that fraud or misappropriation is suspected or if the Provider becomes aware of circumstances suggesting fraud or misappropriation within the Provider, in respect of the Services or arising out of this Arrangement. The Provider shall cooperate with any directions of the Executive in this regard.

5. **Capital Funding**

- 5.1 The funds to be paid by the Executive to the Provider solely for the purpose of capital expenditure shall be managed under a separate process that is, the Executive’s Capital Programme, and do not form part of this Arrangement.
- 5.2 The Provider shall not proceed with any capital expenditure or project involving capital expenditure that will or may require assistance (of a revenue nature or otherwise) to be provided at any time by the Executive without the express prior written consent of the Executive pursuant to this Arrangement.

6. **Set-off**

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

7. **Procurement and Value for Money Initiatives**

- 7.1 Any procurement activities which are undertaken by the Provider (whether alone or in collaboration with one or more other entities) where the activities which are the subject of the procurement are to be funded in whole or in part by the Executive shall be undertaken in compliance with Public Procurement Law.
- 7.2 The Provider hereby indemnifies and holds harmless the Executive against any costs, expenses or damages arising out of any claim, demand or proceedings made against the Provider and/or the Executive in respect of any award of supplies, services or works made pursuant to or in connection with this Arrangement. The Provider shall reimburse the Executive within three (3) months of invoicing the Provider for all costs, expenses or damages incurred by the Executive in preparing and defending any claim, demand or proceedings made in respect of this Clause. The Provider shall co-operate, liaise and keep the Executive informed of any claim demand or proceedings made in respect of this Clause.
- 7.3 The Executive hereby indemnifies and holds harmless the Provider against any costs, expenses or damages arising out of any claim, demand or proceedings made against the Provider in respect of the process of award of any supplies, services or works contracts awarded by the Executive and availed of by the Provider pursuant to or in connection with this Arrangement.
- 7.4 The Executive is statutorily required to be accountable for expenditure on health and personal social services and the Provider acknowledges that value for money in service delivery must be ensured.
- 7.5 The Provider will use its best endeavours to drive, deliver and report value for money in the use of its Funding and in the delivery of Services in a manner that maximises effectiveness and outcomes in the use of public funds and will co-operate and collaborate with the Executive in the achievement of value for money.
- 7.6 Without prejudice to Clause 4, the Executive may, following consideration of the likely impact on the Services, offset savings associated with value for money initiatives against the Funding and only the reduced sum shall be payable as Funding by the Executive.

8. **ICT**

In recognition of the Executive's obligations under Department of Finance Circular 16/97 the Provider shall obtain prior sanction from the Executive for its annual expenditure on ICT and for all its ICT-related projects. The Provider shall obtain formal written approval from the Executive's ICT Programme Office in advance of procurement competitions being initiated for all ICT equipment, software and related services, which are to be funded in whole or in part by the Executive. The Provider shall not enter into purchase commitments in respect of any ICT equipment, software or related services unless and until the proposed expenditure has been approved by the Executive's ICT Programme Office.

9. **Information Requirements**

9.1 **Request for Information**

The Provider agrees that it will comply with a written request from the Executive for any information that the Executive considers material to the provision of the Services. The Executive shall specify in any written request under this Clause the information required and the reason for the request. The Provider shall not be obliged to comply with a request for information where the consent of a third party to the release of the information is required (until such consent has been obtained and the Provider will use reasonable efforts to obtain such consent).

9.2 **Schedule 5 (Information requirements)**

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

9.3 **Integrated Management Report**

- (a) The Provider will comply with the obligations set out in Schedule 6 (Funding).
- (b) In addition to its obligations under Clause 9.3(a), in the event that issues are anticipated or arise during a Financial Year, which result in the Provider having difficulties in delivering, or maintaining delivery of, the Services, the Provider shall at the earliest possible time notify the Executive in writing of such issues. This written notice must include the Provider's proposals as to how it will manage the issues to ensure that the Services are provided by the end of the Financial Year.

9.4 **Audit and Information**

The Provider shall:

- (i) develop an internal audit capacity in consultation with the Executive and evaluate the effectiveness, efficiency and value for money of the provision of its Services on a regular basis;
- (ii) keep detailed records in respect of its performance of its obligations under this Arrangement and at the Executive's request shall make such records available for inspection or shall provide copies to the Executive;
- (iii) maintain annual audited accounts for each financial year and provide copies of such accounts within four (4) months of their adoption to the Executive and, on request, to the Comptroller and Auditor General;
- (iv) ensure that the annual accounts are audited not later than nine months after the end of the relevant financial year by a person,

who is qualified to be appointed as an auditor pursuant to Section 187 of the Companies Act 1963;

- (v) submit an annual report and additional financial information to the Executive in accordance with Schedules 4 and 5;
- (vi) furnish an annual certificate from the Provider's auditors confirming that the accounts have been prepared and audited in accordance with GAAP and relevant legal and regulatory requirements.

9.5 Employment Monitoring Return

The Provider, if applicable, will comply with the obligations in respect of the EMR set out in Schedule 9 (Staffing).

9.6 Other Information Obligations

- (a) The Executive acknowledges the value of information sharing and exchange amongst different providers. The Provider agrees to provide information relating to Services to other providers in accordance with the Executive's Information Sharing protocol (subject to the Data Protection Acts 1988 and 2003).
- (b) The Provider will collaborate with the Executive in its monitoring and audit relationships and in performing the Executive's obligations to third parties (including HIQA, C&AG, etc).
- (c) The Provider will provide information to appropriate and authorised sources (for example, Clinical Indemnity Scheme, National Parasuicide Register, Disability Database, HIPE data etc). The Provider will also provide the Executive with a copy of the information supplied to such sources.
- (d) Subject to Clause 9.1 the Provider will comply with all requests by the Executive and by any committees of the Board of the Executive to supply information and such requests may include without limitation information required by reason of, or relating to or arising out of:
 - i. Parliamentary Questions;
 - ii. Freedom of Information Requests;
 - iii. Responses to complaints from Service Users and/or advocates;
or
 - iv. the compilation of statistical data in relation to the Services or Service Users.
- (e) The provisions of this Clause 9 shall continue to apply for the appropriate retention periods specified by law or in such policies as may be specified by the Executive to the Provider notwithstanding the termination of this Arrangement for any reason and notwithstanding the completion of the performance of the Provider's obligations hereunder.

9.7 **Failure to Provide Information**

The Provider acknowledges that:

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

Accordingly, if any information required pursuant to statute or the provisions of this Arrangement is withheld by the Provider without the prior written consent of the Executive, the Executive may (in its sole and absolute discretion), having given not less than 14 days notice to the Provider, withhold payment of any part of the Funding until such time as the required information is supplied.

10. **Monitoring, Review and Evaluation**

- 10.1 The Executive shall monitor the standard of performance of Services in accordance with the standards envisaged by Clause 3.2 (Duties of the Provider) above, by generally accepted best practice and by reference to the Performance Monitoring Framework.
- 10.2 The Provider shall maintain systems, procedures and controls which reflect the best practices of accountability in expending public funds, and will fully cooperate with the Executive in any reviews of such practices required by the Executive.
- 10.3 The Performance Management Unit (the “**PMU**”) will provide guidance regarding requirements for establishing a Performance Monitoring Framework. The framework will assist both parties in providing a comprehensive set of performance measurements.

11. **Access Rights**

- 11.1 The Executive shall be entitled to inspect and review the performance and provision of the Services by the Provider and may arrange for an independent party to inspect and review the same throughout the Duration of the Arrangement.
- 11.2 Any person duly authorised by the Executive (“**Authorised Person**”) may visit the Provider’s premises on reasonable written notice to carry out an audit and/or inspection of the provision of the Services. Such audits and inspection shall include, inter alia, the inspection, monitoring and assessment of the Provider’s premises, facilities, staff, records, equipment and procedures. The Provider shall give all such assistance and provide all such facilities as the Authorised Person may reasonably require for such audit or inspection.

12. **Review Process**

- 12.1 The Provider shall cooperate in a monitoring and review process (the “Review Process”) to support and monitor the implementation, review and evaluation of this Arrangement.
- 12.2 Review meetings shall take place between the Executive and the Provider (which will be represented by the “Main contact person” specified in Part B of Schedule 1 (Contact Details), or another appropriate person) according to the review frequency detailed within Schedule 4 (Performance Monitoring).
- 12.3 The provisions of the Schedules to this Arrangement, and the performance of the Services and implementation of this Arrangement shall be reviewed at each Review Meeting. In particular, the following shall be considered:
- (a) Financial reports and issues arising.
 - (b) Human Resources and staffing issues.
 - (c) Activity Data – summary of Services provided.
 - (d) The objectives and actions taken by the Provider to deliver the Services as specified in this Arrangement.
 - (e) Review of agreed performance indicators and outcomes as set out in Schedule 3 (Service Delivery Specification).
 - (f) Whether the needs of Service Users are being met.
 - (g) Compliance with Services specifications (including Codes of Practice, Schedule 2 (Quality & Standards), etc.)
 - (h) Evaluation of information provided pursuant to Clauses 9 (Information Requirements) and 10 (Monitoring, Review and Evaluation).
 - (i) Any matters notified in writing to the Executive pursuant to Clause 3.2(c)(viii) (matters which may affect the delivery, provision or level of the Services).
 - (j) Any matters notified in writing to the Executive pursuant to Clause 15.3 (issues of concern in relation to governance).
 - (k) Any matters notified in writing to the Executive pursuant to Clause 9.3(b) (any issues that are anticipated to result in the Provider exceeding the Funding for the Financial Year).
 - (l) Any reports received by the Executive pursuant to Clause 21.4 (areas of concern, or serious untoward incidents) of this Arrangement.
 - (m) The value of any supplies, services or works contracts awarded by the Executive and availed of by the Provider pursuant to or in connection with this Arrangement.

(n) Other issues appropriate to the efficient, effective and safe operation of the Services.

12.4 The Provider shall comply with all requirements of the Executive in reviewing the performance and provision of the Services and such requirements may be set out in Schedule 4 (Performance Monitoring) and revised or amended in writing by the Executive from time to time.

12.5 With the exception of requirements specified by the Executive in Schedule 4 (Performance Monitoring), any amendment to the Schedules to this Arrangement shall be agreed in writing between the Executive and the Provider and shall be evidenced by completion of a CCN as included within Schedule 10 (Change Control).

13. **Performance Issues**

13.1 **First Performance Notice**

If, as a result of information received, or inspection undertaken, or following a Review Meeting or otherwise, the Executive is of the opinion that the provision of the Services by the Provider is not in accordance with this Arrangement, the Executive shall give notice in writing to the Provider specifying in reasonable detail the principal reasons why the Executive believes that the Services are not being provided in accordance with this Arrangement (the “**First Performance Notice**”) and, without prejudice to any other right or remedy which the Executive may have in respect of such failure, the Executive may require the Provider to take such steps as may be necessary to ensure compliance with this Arrangement within fourteen (14) days of receipt of such notice or such other time as may be agreed by the parties having regard to the circumstances.

13.2 **Second Performance Notice**

If the Provider has not taken adequate steps to ensure compliance with this Arrangement within fourteen (14) days of receipt of the First Performance Notice, the Executive shall give notice to the Board or other governing body of the Provider in writing (the “**Second Performance Notice**”) and, without prejudice to any other right or remedy which the Executive may have in respect of such further failure, the Executive may require the Board or other governing body of the Provider to agree with the Executive a plan of action and a timetable for addressing the specified area(s) of non-compliance with this Arrangement.

13.3 **Effect of Non-Compliance**

If the Board or other governing body of the Provider has not carried out the agreed plan of action within the agreed timetable or has failed to engage with the Executive in good faith to agree a plan of action and timetable for implementation pursuant to Clause 13.2, the Executive may, without prejudice to any other rights, remedies or powers the Executive may have pursuant to

this Arrangement or as provided by law, by notice in writing to the Board or other governing body of the Provider;

- (a) without terminating this Arrangement in whole or in part, state that the Executive itself will provide or procure the provision of one or more of the Services at the expense of the Provider (provided that such expense shall not exceed the amount of Funding made available to the Provider under this Arrangement in respect of the relevant Services) until the Provider has shown to the reasonable satisfaction of the Executive that the relevant Services will in future be provided by the Provider in accordance with the terms of this Arrangement; or
- (b) without terminating this Arrangement in its entirety, determine this Arrangement in respect of such part of Services as is not being provided in accordance with this Arrangement and thereafter withhold the proportionate amount of the Funding relating to those Services; or
- (c) without terminating this Arrangement in its entirety, withhold a proportionate percentage of the Funding allocated to the Provider in respect of the non-compliant service until such time as the Provider becomes compliant with this Arrangement.

13.4 Notices

Any notices served under Clauses 13.1 and 13.2 shall not constitute a waiver of any term or condition of this Arrangement and shall be without prejudice to any of the Executive's other rights under this Arrangement. Without prejudice to Clause 33.3, any notices served under Clause 13.3 shall be authorised by an employee of the Executive of a grade not less than the relevant Regional Director of Operations.

14. Insurance

- 14.1 Throughout the Duration of the Arrangement the Provider shall maintain the insurance, which will include an indemnity to the Executive on the public/employers liability insurances and motor insurance policies, as set out in Schedule 7 (Insurance) on the terms specified and with insurers regulated by, or authorised to operate on a freedom of services basis by, the Irish Financial Services Regulatory Authority.
- 14.2 An endorsement in the Provider's public liability, employer's liability and motor insurance policies in favour of the Executive and in a form reasonably acceptable to the Executive in relation to the relevant aspects of this Clause 14 shall be evidenced to the Executive by a certificate from the relevant insurer(s).
- 14.3 This Clause 14 shall be without prejudice to the operation of the Clinical Indemnity Scheme.
- 14.4 For the avoidance of doubt, the Provider shall maintain the minimum levels of insurance as outlined in Schedule 7 (Insurance).

- 14.5 At the request of the Executive the Provider shall increase the agreed insurance limits or obtain additional coverage and the parties agree to discuss whether any alteration or adjustment to the amount of Funding is warranted thereby. Where the Executive agrees to alter or adjust the amount of Funding, any such alteration or adjustment shall be set out in Schedule 10 (Change Control).
- 14.6 The Provider shall, if requested by the Executive, provide the Executive with copies of its certificates of insurance or certified copies of all policies showing that all insurances required by the Provider under this Arrangement are in force for the periods specified. The Provider shall notify the Executive immediately in the event that any of such insurances cease to be available.
- 14.7 If the Provider fails to provide the insurance cover specified in this Arrangement, (for reasons other than those caused or attributed to unforeseen and materially adverse circumstances beyond the Provider's control which are then prevailing in the insurance market), the Executive may do so for the whole or part of the period for which such cover is required, without being under any obligation so to do, and may deduct any costs and/or expenses it incurs in obtaining such cover from any sums due to the Provider under this Arrangement, or otherwise recover such sums from the Provider.
- 14.8 The insurance policies required to be obtained by the Provider pursuant to this Clause 14 shall not limit the obligations, liabilities or responsibilities of the Provider under the terms of this Arrangement or otherwise. Any amounts not insured or recovered from the insurers shall be borne by the Provider in accordance with the obligations, liabilities and responsibilities set out under this Arrangement, except where and to the extent that, the Executive admits, or is adjudged to be, contributory or vicariously liable. If the Provider fails to effect and keep in force any of the insurance policies required under this Clause 14 any monies which should have been recoverable under the insurance shall be paid by the Provider to the Executive.

15. **Governance Arrangements**

- 15.1 The Provider shall co-operate fully with the Executive by implementing policies and procedures consistent with the Framework for the Corporate & Financial Governance of the HSE (published by the Executive pursuant to Section 35 of the Health Act 2004) in areas which include internal audits, risk management, public procurement, financial reporting, quality of service and other matters which may be reasonably deemed appropriate by the Executive and to meet the standards of behaviour as set out in the Code of Standards of Behaviour within the Framework for the Corporate and Financial Governance of the HSE.
- 15.2 The Provider shall ensure that it has effective internal codes of governance in place including an adequate system of internal controls to ensure compliance with laws and regulations and the Provider shall use (among other relevant publications) the *Code of Practice for the Governance of State Bodies* publication as a guide in drawing up such codes of governance.

15.3 Where an issue of serious concern in relation to governance is identified, it shall be notified in writing to the Executive promptly together with a proposal for dealing with the issue and a timetable within which the issue will be addressed.

15.4 The Provider will co-operate with reviews of governance arrangements.

16. **Provider Personnel**

16.1 For the avoidance of doubt, this Arrangement is a contract for services between the Executive and the Provider and any Provider Personnel involved in the provision of the Services shall in all respects be the responsibility of the Provider and not of the Executive. The Executive and the Provider hereby agree that for the Duration of the Arrangement it remains their intent that all Provider Personnel shall not be, nor deemed to be, employees of the Executive for any purpose or in any circumstance and the Provider shall hold the Executive harmless in respect of all such persons.

16.2 The Provider agrees that it shall employ, contract, engage or accept, as part of the provision of the Services, only such persons who:

- (a) are registered with the appropriate professional body (if applicable);
- (b) possess the appropriate qualifications, experience and skills to perform the duties required of them and where this is not the case that such persons are appropriately supervised; and
- (c) are covered by appropriate indemnity insurance for the provision of the Services and are members of a medical defence organisation or equivalent where appropriate.

16.3 The Provider shall ensure that every member of the Provider Personnel involved in the provision of the Services:

- (a) receives appropriate orientation and induction and proper and sufficient training and instruction in the execution of their duties; and
- (b) receives, insofar as the available resources permit, on-going education and training in accordance with the standards of their relevant professional body (if any).

16.4 The Provider will adhere to best practice standards in relation to the recruitment and selection of Provider Personnel and will keep appropriate records of all applications, selection processes, references and contracts of employment.

16.5 Where the Provider is engaged in activity with access to children and vulnerable people, the Provider will agree with the Executive the categories of persons who are to be subject to clearance by An Garda Síochána. However, the Provider as the employer must be satisfied with, and is responsible for the

suitability of, all persons employed, contracted, engaged or accepted by it for that purpose.

- 16.6 (a) The Provider shall promptly take all necessary steps to fully investigate any allegation by any person of illegal, wrongful or inappropriate behaviour whether by act or omission by any member of Provider Personnel or a sub-contractor in respect of a Service User.
- (b) In the event of any member of Provider Personnel having behaved illegally, wrongfully or inappropriately, whether by act or omission or any allegation or complaint being made to the Provider that any such person has behaved in such a manner in respect of a Service User, the Provider shall take all necessary actions (including disciplinary actions where appropriate) in respect of such persons to ensure safety and protection of the Service User and Service Users generally and report the matter to all relevant authorities.
- (c) The Provider will comply with all legal requirements and policies and guidelines issued by any Government Department or by the Executive in respect of child protection and protection of vulnerable adults and shall comply with all reporting procedures in respect of suspected or actual abuse and shall notify the Executive of any reports.
- 16.7 The Provider shall record and regularly monitor the performance of its Provider Personnel to ensure they comply with:
- (a) the terms and conditions of this Arrangement;
- (b) the professional standards current in the Health & Personal Social Services Sectors; and
- (c) the standards of performance expected of them;
- and shall take remedial action promptly where there is any non-compliance.
- 16.8 The Provider shall be responsible for making all statutory deductions in respect of its remuneration of its Provider Personnel and remitting such deductions in a timely manner to the relevant authorities.
- 16.9 The Provider assumes full responsibility for the actions of its Provider Personnel while performing the Services and shall be fully responsible for their acts or omissions, supervision, co-ordination and integration, daily directions and controls, payment and all matters relating to their employment, engagement and work.
- 16.10 The Provider shall fully observe and comply with the provisions of all applicable employment/labour law, both statutory and common law, and regulations as are applicable to its Provider Personnel and/or to the Services including, and without limitation, any Employment Regulation Orders made pursuant to Section 43 of the Industrial Relations Act 1946 or employment

agreements registered pursuant to Section 27 of the Industrial Relations Act, 1946.

16.11 The Provider will indemnify the Executive in respect of all losses, damages, claims, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered whether as a result of any breach of the provisions of this Clause 16, or otherwise, including, without limitation, any claim made or threatened, whether by legal proceedings or otherwise, against the Executive by any third party (including the Revenue Commissioners) on the grounds that any member of the Provider Personnel under or for the purposes of this Arrangement or for the purpose of providing or assisting in the provision of the Services is or was or is deemed to be or have been an employee of the Executive.

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

17. Third Party Contracting

17.1 The Provider must obtain the prior written approval of the Executive if it wishes to engage an agent, subcontractor or third party to provide any of the Services or part thereof.

17.2 The Provider must procure that any such agent, subcontractor or third party is subject to the same obligations to which the Provider is subject under this Arrangement.

17.3 The Provider shall be fully responsible for the acts and omissions of any such third party and will indemnify the Executive in respect of all losses, damages, claims, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by the Executive as a result of any acts and omissions of any such agent, subcontractor or third party.

18. Service User Centred Care

18.1 The Provider will provide the Services to Service Users without discrimination on account of gender, marital status, family status, age, race, religion, disability, sexual orientation or membership of the traveller community.

18.2 All Service Users shall be treated by the Provider equitably. The co-existence of public and private practice within the public system shall not undermine the principle of equitable access.

18.3 The organisation, design and delivery of the Services shall be centred on the Service User and their families and the Provider shall be required to demonstrate a high level of Service User consultation in the development of new services, strategic planning and evaluation of existing services. The Provider shall provide verifiable evidence throughout the Duration of the Arrangement that such consultation and resulting actions have been undertaken.

18.4 The Executive and the Provider are committed to protecting Service Users, whose safety is of paramount importance. The Provider shall ensure that Service Users are aware of the right to be free from abuse (mental, physical, emotional, sexual and financial). The Provider shall also establish and maintain a formal protection from abuse policy and complaints procedure that is accessible to all Service Users, their advocates and carers.

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

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

19.2 If, at the commencement of this Arrangement, the Provider does not have a complaints policy and procedure in place in accordance with Clause 19.1, the Provider undertakes to establish such a policy and procedure within a period of 6 months from the commencement of this Arrangement.

19.3 The Provider shall submit a copy of its complaints policy and procedure to the Executive for approval. The Executive may direct the Provider to amend its complaints policy and procedure in such manner as the Executive sees fit, or alternatively to adopt the Executive's complaints policy and procedure and the Provider shall so amend or adopt the complaints policy and procedure to meet the Executive's requirements within the timescale as may be specified by the Executive.

19.4 The Provider agrees to adhere to the complaints procedure maintained or adopted pursuant to this Clause 19 and to co-operate fully in any review of a recommendation made by a complaints officer following investigation of a complaint against the Provider.

19.5 Where the Provider has established a complaints policy and procedure by agreement with the Executive, the Provider shall provide the Executive with a general report in each year on complaints received by the Provider at a time and in a manner as the Executive may specify, indicating-

- (a) the total number of complaints received,
- (b) the nature of the complaints,
- (c) the number of complaints resolved by informal means, and
- (d) the outcome of any investigation into the complaints.

20. Access, Referrals, Admissions and Discharge Procedures

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

21. **Risk Management**

- 21.1 The Provider shall have in place a written risk management policy and demonstrable risk management process to ensure optimum management of all aspects of health care risks compatible, with best practice. This will include having in place policies and procedures for the prevention and management of all incidents including serious incidents compatible with the Executive's policy.
- 21.2 The Provider will work to enhance Service User safety through systems to identify and learn from all Service User safety and other reportable incidents, and will make improvements in practice based on information derived from the analysis of incidents and local and national experience.
- 21.3 The Provider will provide such information as is required for the Executive's Risk Register (including timely reports to the Clinical Indemnifiers STARS WEB system where this is in operation).
- 21.4 Should the Provider identify any area of concern, or serious untoward incidents arising in connection with the Services or any related matter, it will notify the Executive in writing, giving reasonable details of the issue and setting out the steps that will be taken to eliminate the risks identified.
- 21.5 The Provider must ensure that any requirements of the Provider's insurers in relation to risk management are complied with.

22. **Quality and Standards**

- 22.1 The Provider shall have in place appropriate mechanisms to assess quality and standards of the delivery of Services in line with best practice, as agreed with the Executive. The Provider will conduct Service User satisfaction surveys or use qualitative methods of obtaining Service User input and have systems in place to provide routine monitoring and evaluation of Services.
- 22.2 The Provider shall comply with legislation relating to quality and standards and such other appropriate requirements as may be stipulated by recognised standard setting bodies, HIQA, the Minister and/or the Executive.
- 22.3 The Provider shall comply with its obligations set out in Schedule 2 (Quality and Standards).

23. **Clinical Governance and Audit**

- 23.1 The Provider will have in place governance arrangements with defined management processes, organisational roles, responsibilities and reporting relationships which support the provision of safe and high quality services. The Provider will be accountable for the quality of service provision and the effective use of resources. (Specific measures, such as clinical audit, clinical effectiveness, outcome data etc. may be included, if appropriate, within Schedule 2 (Quality & Standards)).

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

24. Information and Confidentiality

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

- (b) if and to the extent required by any regulatory or governmental authority in Ireland to which that party is subject;
 - (c) if and to the extent necessary or desirable for the conduct of any arbitration pursuant to Clause 30;
 - (d) to its professional advisers, auditors, bankers and insurers on a strictly confidential basis;
 - (e) if and to the extent the other party has given prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed; or
 - (f) if necessary for the Executive to fulfil its statutory object and functions pursuant to Section 7 of the Health Act 2004.
- 24.5 Any information to be disclosed pursuant to Clause 24.4 (a) to (f) shall be disclosed only after notice to the other party.
- 24.6 The provisions of this Clause 24 shall continue to apply notwithstanding the termination of this Arrangement for any reason.
- 24.7 The Provider will comply with Part 9A of the Health Act 2004 and with any procedures of the Executive established pursuant to Section 55H of that Act.

25. **Announcements and Communications**

- 25.1 The Provider will acknowledge the support of the Executive in all public announcements and advertising, where appropriate.
- 25.2 The parties each reserves to itself the right to and control of the use of its names, symbols, trademarks, or service marks presently existing or later established, and neither party will use the other party's name(s), symbols, trademarks, or other service marks in any advertising or promotional material without the prior written consent of that party.

26. **Freedom of Information**

- 26.1 The Provider hereby acknowledges that the Freedom of Information Acts 1997 and 2003 (the "Acts") applies to the Executive.
- 26.2 In the event that any information or materials held or prepared by the Provider are the subject of a request for information under the Acts the Provider will procure that any such materials are supplied promptly to the Executive for consideration and, if appropriate, disclosure.
- 26.3 The Acts offer certain procedural protection for some categories of information and the Provider hereby agrees to clearly identify any information or records which it considers to fall within such categories at the time of provision to the Executive, stating the relevant category and the reason why it is believed that the document or information falls within that category.

- 26.4 Notwithstanding Clause 26.3, the Provider hereby acknowledges that the categorisation of the information by the Provider shall not be final or binding on the Executive and that disclosure may be permitted by law notwithstanding such categorisation.
- 26.5 Unless stated otherwise by the Provider when the relevant document or information is provided to the Executive, it will be assumed that such document or information is eligible for disclosure under the Acts.
- 26.6 The Executive shall have no liability for any disclosure made by it in accordance with the requirements of the Acts and this Clause.

27. **Data Protection**

- 27.1 Both the Executive and the Provider shall have regard to their statutory obligations under the Data Protection Acts 1988 and 2003 (“DPA”).
- 27.2 The Provider undertakes to use its best endeavours to ensure that it has all consents, authorisations and permissions necessary to enable the Provider to access and disclose any personal data of a Service User, to the extent that the Provider may require access to or the ability to disclose such data in the lawful performance of its functions.
- 27.3 The Provider hereby undertakes to comply with its obligations under the DPA and to indemnify the Executive against any loss, compensation, damages, expenses and costs which become payable or are incurred by the Executive in respect of or as a result of a breach by the Provider of this Clause 27 or a breach of the DPA.
- 27.4 Where personal data regarding Service Users is given by either party to the other for the purpose of this Arrangement, it shall be used solely and exclusively for the purposes for which it is expressly provided and for other purposes permitted by law.

28. **Major Incidents**

- 28.1 The Provider shall report, within twenty-four (24) hours of occurrence, any Major Incidents which may impinge on the delivery of Services specified by this Arrangement where such incidents have significant implications for the contractual and service relationship between the parties.
- 28.2 During the period of the Major Incident, the extent to which it impacts upon the Provider’s ability to provide services, including elective activities, under-performance in delivering such activities during a Major Incident will not constitute a matter for which the Executive may issue a Performance Notice.
- 28.3 Where a dispute relating to matters which constitute a Major Incident arises it shall be resolved through the dispute resolution procedures outlined in this Arrangement.

- 28.4 During the period of a Major Incident the Provider shall be paid for performance of the Services and under-performance as a result of the Major Incident shall not be penalised.
- 28.5 Promptly following a Major Incident the parties shall discuss the circumstances that gave rise to the Major Incident, whether the action taken by the Provider to deal with the Major Incident ought to be continued and whether any adjustment or alteration in the Funding (as a consequence of the Major Incident) is appropriate. Where the Executive and the Provider do not agree that the actions taken by the Provider to deal with the Major Incident ought to be continued, then the parties shall discuss the appropriate actions to be taken in the circumstances in the best interests of the relevant Service Users and the Provider shall implement the actions recommended/agreed with the Executive. Where the Executive agrees to alter or adjust the amount of Funding as a consequence of the Major Incident, any such alteration or adjustment shall be set out in Schedule 10 (Change Control)

29. Force Majeure

- 29.1 “**Force Majeure**” means, in relation to either party, a circumstance beyond the control of that party (the “**Claiming party**”) and lock-outs, strikes and other industrial disputes (in each case, whether or not relating to the Claiming party’s workforce and whether or not beyond the reasonable control of the Claiming party). For the avoidance of doubt, Force Majeure does not include Major Incidents which shall be dealt with in accordance with Clause 28 of this Arrangement.
- 29.2 The Claiming party will not be in breach of this Arrangement or otherwise liable to the other party (the “**Non-claiming party**”) for any delay in performance or any non-performance of any obligations under this Arrangement (and the time for performance will be extended accordingly) if and to the extent that the delay or non-performance is owing to Force Majeure. This Clause only applies if:
- (a) the Claiming party could not have avoided the effect of the Force Majeure by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all relevant factors, it ought reasonably to have taken but did not take; and
 - (b) the Claiming party has used reasonable endeavours to mitigate the effect of the Force Majeure and to carry out its obligations under this Arrangement in any other way that is reasonably practicable.
- 29.3 The Claiming party will promptly notify the Non-claiming party of the nature and extent of the circumstances giving rise to Force Majeure.
- 29.4 If the Force Majeure in question prevails for a continuous period in excess of one (1) month after the date on which the Force Majeure begins, the Non-claiming party is then entitled to give notice to the Claiming party to terminate the Arrangement. The notice to terminate must specify the termination date, which must be not less than ten (10) clear days after the date on which the

notice to terminate is given. Once a notice to terminate has been validly given, the Arrangement will terminate on the termination date set out in the notice.

- 29.5 Neither party shall have any liability to the other in respect of termination of this Arrangement due to Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist.

30. **Dispute Resolution**

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

- 30.2 In the event of any dispute between the Provider and the Executive arising out of or in connection with this Arrangement (which shall be evidenced by one party serving on the other a Dispute Notice, setting out in reasonable detail the matter(s) in dispute and in the case of a Dispute Notice served by the Executive, shall be authorised by an employee of the Executive of a grade not less than Regional Director of Operations), the parties hereby agree subject to Clause 30.4 to resolve any dispute in accordance with the dispute resolution process set out below:

(a) **Stage 1**

In the event of a dispute arising out of or in connection with the Arrangement, a designated representative of the Executive and one representative from the Provider will meet within seven (7) days of the date of the Dispute Notice to endeavour to resolve the issue within a further fourteen (14) day period from the date of the said meeting. In the event that the issue is not resolved, and confirmed as having been fully and finally resolved by written binding agreement between the parties, within the said fourteen (14) day period (or such other period as is agreed in writing between the parties) then the parties shall immediately progress to Stage 2, as set out below in Clause 30.2(b).

(b) **Stage 2**

A meeting shall take place between the designated representative(s) of the Executive (not being the representative involved in Stage 1) and a senior representative of the Provider, to discuss resolution of the issue. In the event that the issue is not resolved, and confirmed as having been fully and finally resolved by written binding agreement between the parties, within twenty (20) Business Days from the Commencement of Stage 2 (or such other period as is agreed in writing between the parties) then the parties shall immediately progress to Stage 3, as set out below in Clause 30.2(c).

(c) **Stage 3**

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

- (i) The arbitration shall be governed by Irish law and by the provisions of the Arbitration Acts 1954 to 1998, and any re-enactment, adaptation, amendment or extension of same for the time-being in force;
- (ii) The award of the arbitrator shall be final and binding on both parties;
- (iii) The arbitrator shall have power to determine all disputes arising out of or in connection with the Arrangement between the parties;
- (iv) The seat of arbitration shall be Dublin, Ireland and the language of the arbitration shall be English.

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

30.4 The Executive may refuse to proceed with the dispute resolution process set out at 30.2 in any case where the Executive deems the matter to be frivolous, vexatious, without substance, an abuse of process or adequately dealt with and the Executive shall notify the Provider in writing accordingly.

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

30.6 A decision to refuse to proceed with the dispute resolution process pursuant to Clause 30.4 or to withdraw from and terminate the dispute resolution process (including any arbitration) pursuant to Clause 30.5 shall be authorised by an employee of the Executive of a grade not less than Regional Director of Operations.

- 30.7 The provisions of this Clause shall be without prejudice to any other rights of the parties pursuant to this Arrangement.
- 30.8 The provisions of this Clause shall be without prejudice to the Executive's right to terminate the Arrangement pursuant to Clause 31.

31. Termination

- 31.1 In the event of a serious breach of the performance of the Arrangement by the Provider (which shall be determined by an employee of the Executive of a grade not less than Regional Director of Operations, the Executive reserves the right to terminate the Arrangement by giving the Provider 3 months written notice (or such other written notice period as may be agreed).
- 31.2 In the event of a serious breach of the performance of the Arrangement by the Executive (which shall be determined by the Chief Executive Officer or equivalent of the Provider), the Provider reserves the right to terminate the Arrangement giving 3 months written notice (or such other written notice period as may be agreed).
- 31.3 If the Executive or the Provider exercises its right to terminate this Arrangement, the Executive will within a period of forty-five (45) days pay to the Provider reasonable and agreed costs accrued to the date of termination, but if this Arrangement is terminated by the Executive on the grounds that the Services provided are unsatisfactory, the Executive shall pay to the Provider only the proportion of the Funding which is in respect of the Services provided prior to termination which meet a standard, which is in all respects to the reasonable satisfaction of the Executive.
- 31.4 Neither party shall be liable to the other party for any loss of profit, contracts, goodwill, business opportunity or anticipated saving arising out of or in connection with the termination of this Arrangement for any reason or any consequential loss or damage that may arise out of termination of this Arrangement.
- 31.5 Termination of this Arrangement for any reason shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other party prior to termination.
- 31.6 In the event of termination of this Arrangement for any reason, the provisions of this Arrangement shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations.
- 31.7 Upon termination of this Arrangement, the Executive and the Provider will endeavour to make interim arrangements in respect of those Service Users who are receiving Services on the effective date of termination that will minimise disruption or distress to such Service Users. Pending the finalisation of any such arrangements in respect of such Service Users, the Provider will continue to care for any Service User who is receiving Services on the effective date of termination until such time as any new arrangements are

effective or until the Service User can be discharged or transferred to another facility, whichever is earlier. The terms and conditions of this Arrangement (including funding obligations) will remain in effect for Services provided to each such Service User until discharge or transfer or until any new arrangements become effective, whichever is earlier.

31.8 For the purposes of Clause 31.1, a “serious breach” shall include but not be limited to

- (a) the failure of the Provider to use the Funding in the most beneficial, efficient and effective manner to provide the Services;
- (b) the failure of the Provider to comply with a notice served under Clause 13.1 or 13.2 of this Arrangement;
- (c) the repeated failure of the Provider to comply with information requirements pursuant to Clause 9;
- (d) the failure of the Provider to comply with Clauses 16.5 and/ or 16.6 of this Arrangement;

and for the purposes of Clause 31.2, a “serious breach” shall include but not be limited to

- (e) the repeated failure of the Executive, without demonstrable grounds and following written requests by the Provider to the Executive, to provide the Funding pursuant to this Arrangement.

32. **Representations and Warranties of the Provider**

The Provider represents and warrants to the Executive that:

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

33. **General**

33.1 **Prior Obligations of the Executive**

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

33.2 Existing Rights

Without prejudice to the statutory rights, obligations and powers of the Executive and any orders or written directions of the Minister, nothing in this Arrangement, with the exception of the rights and/ or obligations specified in this Arrangement, shall add to, alter or reduce, or be construed as adding to, altering or reducing, the existing rights of the parties prior to entering into this Arrangement.

33.3 Notices

- (a) Subject to Clause 33.3(b), any notice or other communication under this Arrangement shall only be effective if it is in writing.
- (b) Communication by electronic mail or other electronic methods of writing shall be effective under this Arrangement in respect of day-to-day operational communications only.
- (c) Communication by electronic mail or other electronic methods of writing shall not be effective under this Arrangement in respect of any notices issued pursuant to this Arrangement including those issued under Clause 13 (Performance Notice) and Clause 30 (Dispute Resolution).
- (d) No notice or other communication given or made under this Arrangement may be withdrawn or revoked.
- (e) Any notice or other communication given or made under this Arrangement shall be addressed as provided in Clause 33.3(g) and, if so addressed, shall, in the absence of earlier receipt, be deemed to have been duly given or made as follows:
 - (i) if sent by personal delivery, on delivery at the address of the relevant party;
 - (ii) if sent by pre-paid post, two (2) clear Business Days after the date of posting;
 - (iii) if sent by facsimile, when the sender receives a completed transmission sheet or otherwise receives a mechanical confirmation of transmission.
- (f) Any notice or other communication given or made, or deemed to have been given or made, outside Working Hours will be deemed not to have been given or made until the start of the next period of Working Hours.
- (g) The relevant notice details are:

Title of recipient:	Address:	Facsimile number:
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Title of recipient: **Address:** **Facsimile
number:**

[Insert name of HSE Responsible Contact] *[Insert Address of HSE Responsible Contact]* xxx

[Insert name of Provider Responsible Contact] *[Insert address of the Registered office of the Provider & Responsible Contact (if different)]* xxx

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

33.4 Remedies and Waivers

- (a) No delay or omission by any party to this Arrangement in exercising any right, power or remedy provided by law or under this Arrangement shall:
 - (i) affect that right, power or remedy; or
 - (ii) operate as a waiver of it.
- (b) The exercise or partial exercise of any right, power or remedy provided by law or under this Arrangement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- (c) The rights, powers and remedies provided in this Arrangement are cumulative and not exclusive of any rights, powers and remedies provided by law.

33.5 Severability

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

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

33.6 **No Partnership and No Agency**

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

33.7 **Further Assurance**

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

33.8 **Entire Agreement**

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

33.9 Variation

- (a) the Schedules to this Arrangement may be varied in writing (excluding electronic methods of writing) signed by each of the parties. Any request for a change to the Schedules shall be accompanied by a completed Contract Change Note (CCN), as included within Schedule 10 (Change Control). Until such time as a Contract Change Note (CCN) has been signed by both parties, the Service Provider shall, unless otherwise expressly agreed in writing, continue to supply the Services in accordance with the Schedules to this Arrangement.
- (b) The Executive reserves the right to amend this Arrangement by notice in writing to the Provider should there be a change in legislation or an order of the Minister necessitating such amendment and subject to paragraph (c) below the Provider shall be bound by such amendment for the Duration of the Arrangement.
- (c) The parties agree to discuss in good faith and on a strictly without prejudice basis any adjustment to the Funding or Services required or desirable to take account of any change in law, direction, requirement for authorisation (in each case not at the date hereof required or in force) that causes a demonstrated material increase or decrease in costs [of ● % or greater] to the Provider providing the Services in accordance with this Arrangement. The parties shall as far as practicable co-operate to seek to mitigate the effects of such a change. [*Note:– ● % is to be agreed with each individual service provider.*]

33.10 Costs and Expenses

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

33.11 Counterparts

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

33.12 Governing Law

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

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

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

Date
.....

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

Date
.....