

**DRAFT AGREEMENT**

**FOR**

**THE PROVISION OF SERVICES**

**PURSUANT TO**

**[CITE NEW LEGISLATION]**

**(UNDER 6 YEAR OLDS)**

**2014**

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The population will have access to free GP care, on a phased basis. This will be a key part of the overall reform of the way healthcare services are delivered in the community, with GPs working in teams with other Primary Care Professionals focussing on illness prevention and structured care of chronic conditions. Primary Care Teams will provide the foundation medical and non-medical care that people need, whether it is for health or social needs.

The provision of free GP services for children aged under 6 years represents the first phase in the provision of free GP care at the point of use for all. This document provides the contractual underpinning for the provision of free GP care to children aged under 6 years.

- E. The HSE and the Service Provider wish to enter into a contract under which the Service Provider will provide free General Practitioner's Medical and Surgical Services in accordance with the provisions of this Agreement to persons aged under 6 years.
- F. The HSE and the Service Provider wish to work together to ensure that the medical needs of patients are to the fullest extent possible met in a primary care context. For the purposes of this objective, the importance of local primary care teams is acknowledged, and the Service Provider undertakes to actively participate in and cooperate with its local primary care team(s).
- G. It is acknowledged that the Services provided pursuant to this Agreement are being provided in the context of an evolving health service which is in the process of developing new structures and arrangements. The overarching priority of the Health Service Executive is the provision of effective, safe, high quality health and personal social services; and this priority is a central theme of Future Health - A Strategic Framework for Reform. The National Standards for Safer Better Healthcare approved by the Minister in June 2011 provide a roadmap for improving the safety, quality and reliability of healthcare. Both parties are committed to ensuring that the Services provided pursuant to this Agreement reflect the priority of patient safety and quality. The Service Provider shall take an active approach toward the assurance of patient safety and the provision of high quality services by ensuring that services are organised and delivered in accordance with the National Standards for Safer Better Healthcare and underpinned by clinical effectiveness. Adherence to national clinical guidelines and engagement in clinical audit are key components of this clinical effectiveness agenda for the Service Provider. This quality improvement approach promotes cost-effective healthcare that is evidence-based and consistent.
- H. Children First is Ireland's National Guidance for the protection and welfare of Children. The aim of Children First is to promote the safety and well-being of Children. Professionals have an important part to play in promoting the safety and well-being of Children. In the above context both parties are committed to ensuring that the Services adhere to the principles and objectives of Child Care Legislation and of the Children First National Guidance and that at all times the safety and welfare of children is paramount.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1 Definitions and Interpretation**

1.1 In this Agreement, the following terms shall have the following meanings unless the context otherwise provides:

**"Agreement"** – shall mean these terms and conditions, the Schedules hereto and, to the extent applicable, circulars previously agreed by the Department of Health and the Irish Medical Organisation as part of the GMS contract. In the event of any inconsistency or conflict between the previously issued circulars and these terms and conditions, precedence shall be given to these terms and conditions, and in all cases any question of interpretation shall be resolved in a manner that gives effect to the provisions and stated objectives of these terms and conditions. For the avoidance of doubt, the terms and conditions provided for in the GMS contract do not apply to this Agreement save where otherwise expressly provided for in this Agreement;

**"Application Form"** means the application form entitled "Form of Agreement with Registered Medical Practitioners for the Provision of Services to [ ] under section xx of the [cite legislation]" submitted by the Service Provider to the HSE;

**"Authorised Representative"** means the person nominated by the HSE for the purpose of representing the HSE for the purpose of applying the terms and conditions of this Agreement;

**"Business Day"** means any day other than Saturdays, Sundays and public holidays.

**"Child and Family Agency"** means the agency established under the Child and Family Agency Act 2013 (No.40 of 2013).

**"Child Patients"** means persons under the age of 6 who are eligible for general medical and surgical services pursuant to the provisions of [cite legislation] (or, as the context may require, the parent(s)/ guardian(s) of the relevant child);

**"Community Pharmacy Contractor"** means a pharmacist holding a contract with the HSE for the provision of Community Pharmacy Services under the Health Act, 1970;

**"Director General"** means the Director General of the HSE and, save as followed by the words 'in person' includes any employee of the HSE to whom, from time to time, a function of the Director General has been delegated or sub-delegated in accordance with Section 16H of the Health Service Executive (Governance) Act 2013;

**"End Date"** means the date on which this Agreement shall expire pursuant to **Clause 2.4** hereof;

**"Fees"** means the fees, subsidies and allowances payable to the Service Provider in accordance with **Clause 21**;

**"GP Contracts"** means the 'Agreement with Registered Medical Practitioners for the provision of services under section 58 of the Health Act, 1970 to persons with full eligibility' (referred to as the '**GMS Contract**') and the 'Agreement with Registered Medical Practitioners for the provision of service to certain persons with limited eligibility under section 58 of the Health Act 1970 as amended by the Health (Amendment) Act, 2005' (referred to as the '**GP Visit Card Contract**');

**"Health Acts"** means the Health Acts 1947 to 2014, as amended;

**"Intellectual Property Rights"** means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other

intellectual and industrial property rights and similar or analogous rights existing under the laws of any country, and all rights to apply for or register such rights;

**'Normal Contracted Surgery Hours'** mean the forty hours during which the Service Provider commits to being available for consultations pursuant to this Agreement, as set out in the Service Provider's Application Form;

**'Normal/Routine Surgery Hours'** means all hours the Practice Premises are scheduled to be open, which may include hours outside of the Normal Contracted Surgery Hours;

**"Participating Medical Practitioner"** means a medical practitioner holding a contract for the provision of General Practitioner's Medical and Surgical Services under [cite legislation];

**"PCRS"** means the Primary Care Reimbursement Service;

**"Practice Premises"** means the premises meeting the requirements of **Clause 12** located at [insert] (the location of which may not be amended without the prior agreement of the HSE);

**"Records"** means the records required to be created and/or maintained by the Service Provider, as further described in **Clause 16** hereof;

**"Relevant Body"** means the Medical Council, the Health and Safety Authority, the Health Information and Quality Authority (or 'HIQA'), the Department of Children and Youth Affairs (or 'DCYA') and the Child and Family Agency (or "CFA") and such other bodies as may be recognised by the HSE from time to time.

**"Relevant Representative Bodies"** includes the Irish Medical Organisation and such other bodies as may be recognised by the HSE from time to time as being a representative body of medical practitioners. For the purposes of this Agreement, consultation with a Recognised Representative Body shall not preclude the HSE from consulting individual Service Providers or other stakeholders;

**'Services'** means General Practitioner's Medical and Surgical Services to be provided by the Service Provider in accordance with terms of this Agreement.

**'Service Provider'** means [insert name of medical practitioner or names of up to three practitioners who jointly hold the contract] whose name is included in the Specialist Division of the register of medical practitioners established under section 43(2)(b) of the Medical Practitioners Act 2007, and who holds a current certificate of registration within the meaning of section 2 of that Act in respect of the medical specialty "General Practice" recognised under section 89(1) of that Act;

**"Staff"** means all persons (including, without limitation, medical practitioners, employees, agents and independent contractors) involved in the provision of the Services in accordance with this Agreement;

**"Term"** means the term of this Agreement as defined in **Clause 2** hereof; and

**"the Minister"** means the Minister for Health.

- 1.2 Save as otherwise provided herein, references to clauses and schedules are to those contained in this Agreement. The schedules form an integral part of this Agreement and reference to this Agreement includes reference thereto. Headings are inserted for convenience only and do not affect the construction of this Agreement.
- 1.3 Unless the context requires otherwise, words in the singular may include the plural and vice versa.

- 1.4 Words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa.
- 1.5 Words importing the masculine gender shall include the feminine gender and vice versa.
- 1.6 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or replaced by any subsequent enactment, modification, order, regulation or instrument. References to any statute, enactment, order, regulation or other similar instrument shall include reference to any regulations made thereunder.
- 1.7 Any performance and compliance obligations imposed on the parties include the obligation to meet such obligations at their own cost.
- 1.8 Any obligation on the parties to keep records, data or information includes the obligation to keep them up to date and accessible.
- 1.9 Any obligation on the Service Provider to have systems, procedures or controls includes the obligation to effectively operate them.

## 2 Appointment of Service Provider

- 2.1 In consideration of being appointed and being paid the Fees, the Service Provider shall provide the Services in accordance with the terms and conditions of the Agreement.
- 2.2 Without prejudice to the generality of the foregoing, the Service Provider shall, and shall procure that his/her Staff shall, in the provision of the Services, exercise due diligence and comply fully with appropriate professional standards, all applicable legislation (and all regulations and orders made under such legislation) and all reasonable directions or guidelines issued by the Minister and/or by the HSE from time to time.
- 2.3 In particular (and without limitation), the Service Provider undertakes in the provision of the Services to protect and promote the safety and well-being of children. For the purposes of this, he/she shall familiarise him/herself, and ensure that his/her Staff are familiar with, applicable legal obligations in this regard (as they may be introduced or amended from time to time), and shall ensure full compliance with any such legal obligations. He/she shall also cooperate at all times with the HSE in relation to child protection matters, including adhering to procedures or guidelines the Department or the HSE (after consultation with Relevant Representative Bodies) introduces for the purposes of child protection, and ensuring that he/she and his/her Staff undergo any necessary related training.
- 2.4 The Agreement shall, subject to the Service Provider and the HSE's rights of termination under **Schedule 2** (Agreement Suspension, Sanction and Termination Procedure) be effective for a period of five (5) years from \_\_\_\_\_ until \_\_\_\_\_ (the "Term"). [Insert Date] [Insert Date (the "End Date")]
- 2.5 In circumstances where the Service Provider wishes, on the expiration of this Agreement, to enter into a further agreement with the HSE for the provision of the Services, it shall so notify the HSE twelve months prior to the End Date. The HSE shall then undertake a formal performance review with the Service Provider, which shall have regard to the outcome of performance reviews carried out during the term of this Agreement in accordance with **Clause 19**. Subject to the satisfactory outcome of this formal performance review, the HSE may at its discretion then offer the Service Provider a further agreement for five (5) years or such shorter period as is agreed.



The Service Provider acknowledges, however, that on the termination or expiration of this Agreement he/she has no automatic entitlement to a new contract.

### 3 Persons who perform the Services

- 3.1 Save where otherwise permitted in accordance with this **Clause 3**, the Services shall be provided personally by the Service Provider, supported as appropriate by suitably qualified Staff including the Practice Nurse.
- 3.2 The Service Provider may provide the Services through a suitably qualified deputy or assistant who is a registered medical practitioner (not, without the consent of the Director General of the HSE, being a medical practitioner in respect of whom a GMS Contract or a GP Visit Card Contract or an Agreement for the provision of Services pursuant to the [Cite new legislation] has been suspended or terminated) or through an arrangement set up by the Participating Medical Practitioner(s) and agreed by the HSE for the purposes of providing out-of-hours services (by such registered medical practitioners).
- 3.3 Where the Service Provider is unable to provide the Services due to sickness, bereavement or other unforeseen circumstance, an interim arrangement approved by the HSE must be put in place to ensure continuity of Services for patients. Where the absence continues for more than six months, a long term locum should be appointed in accordance with the relevant provisions of the circulars previously agreed by the Department of Health and the Irish Medical Organisation, subject to amendment from time to time in accordance with the terms of this Agreement.
- 3.4 For the avoidance of doubt, the Service Provider shall at all times retain full responsibility for the proper care of all patients on his/her panel of Child Patients, whether provided directly or through a deputy, assistant, short or long term locum or other Staff including the Practice Nurse.
- 3.5 The Service Provider shall at all times be in a position to demonstrate that their English language competency, and that of any medical practitioner and staff involved in the provision of the Services pursuant to this Agreement, meets the minimum requirements of the HSE as determined from time to time.
- 3.6 The Service Provider shall for the duration of the Agreement reside in his/her area of practice or within reasonable access to it, save in exceptional circumstances subject to the prior approval of the HSE

### 4 Persons for whom Services will be provided

- 4.1 Pursuant to [cite legislation], the Service Provider shall provide the Services, or arrange for the provision of Services, in accordance with this Agreement for:
  - 4.1.1 all Child Patients whom he/she has accepted for inclusion on his/her panel of Child Patients and who have not been notified to him/her by the HSE as having ceased to be on his/her panel;
  - 4.1.2 all Child Patients who have been assigned to him/her by the HSE in accordance with **Clause 6** and who have not been notified to him/her by the HSE as having ceased to be on his/her panel;
  - 4.1.3 all Child Patients who present to him/her as temporary residents (as defined in **Clause 7**);
  - 4.1.4 all Child Patients who present to him/her for emergency services (as defined in **Clause 8**).

## **5 Acceptance of Patients**

- 5.1 The Service Provider shall ordinarily accept on to his/her panel all Child Patients who so request. In the event of a Service Provider not wishing to accept a Child Patient on to his/her panel, the Service Provider, where so requested by the HSE, will give in confidence the reason for his/her decision to the HSE. Where the HSE is satisfied that a Child Patient has not succeeded in obtaining acceptance by a Participating Medical Practitioner, the HSE may assign such a person to a Participating Medical Practitioner in accordance with the provisions contained in **Clause 6**.
- 5.2 The Service Provider shall provide updates to the HSE on at least a monthly basis of any changes to his/her panel of Child Patients on account of births, deaths or other reasons.

## **6 HSE Assignment of a Patient**

- 6.1 Where the application(s) made to register a Child Patient have been unsuccessful in respect of all of the Participating Medical Practitioners in the area in which the Child Patient resides, or at least three of those Participating Medical Practitioners, the HSE may assign that Child Patient to a Participating Medical Practitioner and that Participating Medical Practitioner shall accept the Child Patient onto his/her panel. Unless the Director General directs otherwise, the assignment shall ordinarily be to a Participating Medical Practitioner who practises in the area in which the Child Patient resides.
- 6.2 Where an assignment is made to the Service Provider, he/ she may request a review of the assignment after six months.
- 6.3 Where the Agreement with the Service Provider has been terminated or suspended, the HSE may assign Child Patients on the Service Provider's panel to another Participating Medical Practitioner(s) with the consent of that practitioner until an agreement has been made with another Participating Medical Practitioner in succession to the Service Provider or the suspension has been terminated, as the case may be.

## **7 Temporary Residents**

- 7.1 A Child Patient who moves temporarily to and is resident in a place not ordinarily served by the Participating Medical Practitioner on whose panel he/she is included and who does not, at the time of his/her arrival in that place, intend to remain there for a period exceeding three months, shall be regarded as a temporary resident. If his/her stay at that place extends to more than three months, his/her residence from the end of that period shall cease to be regarded as temporary.

## **8 Emergency Treatment**

- 8.1 The Service Provider accepts responsibility within reason to provide, when available, within his/her area of practice, emergency services for cases arising from accidents or otherwise, of Child Patients not on his/her panel where he/she is summoned to give such services or where the Child Patient attends at his/her Practice Premises for such services. No such responsibility shall arise save where the Child Patient is unable to receive such treatment at that time from the Participating Medical Practitioner on whose panel the Child Patient's name is included, or from his/her deputy.

## **9 Limitation on Numbers**

- 9.1 The number of Child Patients whose names may be placed on the panel of the Service Provider (or, in the case of a practitioner who has agreements with two or more areas within the HSE, the total of the numbers which may be placed on the panels for those areas) shall not, when aggregated with the Service Provider's number of patients under the GMS Contract and the GP Visit Card Contract, exceed

2,000 save where the HSE, in exceptional circumstances, after consultation with the Service Provider, decide to apply a higher limit. Where the Service Provider holds or obtains a HSE appointment (i.e. performs a function for the HSE outside of the terms of this Agreement or a GP Contract), the HSE may specify a limit lower than 2,000 for the total number of patients.

**10 Transfer to another Participating Medical Practitioner**

10.1 Where the parent(s)/guardian(s) of a Child Patient no longer wishes the Child Patient to attend the Participating Medical Practitioner with whom he/she is registered, he/she may seek to have the Child Patient included on the panel of another Participating Medical Practitioner by requesting the HSE for a transfer to another Participating Medical Practitioner and the HSE shall arrange such transfer as soon as possible.

**11 Discontinuance of Acceptance of a Patient by the Service Provider**

11.1 Where the Service Provider requests the HSE to arrange to have a Child Patient (other than a patient who has been assigned to him/her pursuant to **Clause 6** removed from his/her panel, the HSE may ask for the reasons for such a request, which shall be provided in confidence by the Service Provider. The HSE shall thereupon notify the parent(s)/guardian(s) of the Child Patient and supply them with information to enable them to apply for inclusion in the panel of another Participating Medical Practitioner. On the patient being accepted by, or assigned to, another Participating Medical Practitioner, his/ her name shall be deleted from the panel of the original Service Provider and that Service Provider shall be so notified. The HSE shall arrange for action under this Clause to be initiated within seven days and to be completed with all practical speed. If, after the expiration of one month from the Service Provider's request, the Child Patient's name has not been included on the panel of another Participating Medical Practitioner, the HSE shall, unless there are substantial grounds for not doing so, assign him/her to a Participating Medical Practitioner.

**12 Practice Premises**

12.1 The Service Provider shall ensure that the Practice Premises and facilities are fit for purpose, suitable for the delivery of the Services and sufficient to meet the needs and reasonable expectations of patients. The Service Provider undertakes to work continuously towards meeting and *maintaining* generally accepted standards in relation to Practice Premises, such as those published from time to time by the Irish College of General Practitioners.

12.2 Without prejudice to the generality of the foregoing, the Service Provider shall ensure as a minimum that the Practice Premises meet the following requirements:

12.2.1 The Practice Premises shall have a waiting room with a reasonable standard of comfort and hygiene, sufficient in size to accommodate the normal demands of his/ her practice with adequate seating accommodation.

12.2.2 The Practice Premises shall have a surgery sufficient in size for the requirements of normal general practice, with facilities including electric light, hot and cold running water, an examination couch and other essential needs of a practice including a telephone and internet access. The Practice Premises shall have full planning permission for the purposes of providing the Services in accordance with the Agreement. The Service Provider shall exhibit at the Practice Premises in such manner as to be readily visible by the public, a notice indicating that the Services are being carried out by the Service Provider at the Practice Premises and indicating the Normal Contracted Surgery Hours and any additional Normal/Routine Surgery Hours.

12.2.3 All rooms within the Practice Premises shall be decorated to an adequate standard, with no flaking paint, peeling wallpaper or dampness.

- 12.2.4 A high standard of cleanliness shall at all times be maintained throughout the Practice Premises.
  - 12.2.5 Seating in waiting rooms shall be of durable construction and in reasonable repair. Upholstery of such seating shall be non-flammable.
  - 12.2.6 Adequate toilet facilities shall be provided and properly maintained including baby changing facilities.
  - 12.2.7 Provision of appropriate Breast Feeding facilities.
  - 12.2.8 Flooring in the Practice Premises, particularly in areas where patients are being treated, shall be impervious and readily cleanable.
  - 12.2.9 The Service Provider shall ensure that the Practice Premises comply with the Building Regulations 1997 – 2002 (as amended) and all other applicable legislative requirements in relation to wheelchair accessibility;
  - 12.2.10 The Practice Premises shall be wheelchair accessible and the Service Provider shall ensure it is familiar with any guidelines issued by the HSE and/or the National Disability Authority in relation to the accessibility of health services, and shall work towards meeting the standards set out in any such guidance; and
  - 12.2.11 Such other minimum requirements as are determined from time to time by the HSE with respect to matters such as access to and within the Practice Premises, accommodation, toilet facilities, storage of clinical supplies and of clinical waste and to meet appropriate fire safety regulations.
- 12.3 The Service Provider shall not make surgery arrangements which discriminate between Child Patients and other patients (including private patients).
  - 12.4 The Service Provider shall not change the location of his/her Practice Premises or open additional centres of practice (whether under this Agreement or otherwise) without the prior approval of the HSE.
  - 12.5 The HSE may carry out inspections of the Service Provider's Practice Premises which shall ordinarily be by prior arrangement with the Service Provider, (but the HSE reserves the right to inspect the Service Provider's Practice Premises without prior notice).

### 13 Scope of Services

- 13.1 On behalf of the HSE, the Service Provider shall provide for Child Patients all proper and necessary primary medical and surgical services meeting patient needs which are of a kind usually undertaken by a general medical practitioner and/or his/her Staff in a general practice setting, and not requiring special skill or experience of a degree or kind which medical practitioners cannot reasonably be expected to possess. For the avoidance of doubt, in addition to the treatment of acute conditions, the Services required to be provided shall include (without limitation) health surveillance and health promotion activities and the provision of information appropriate to high quality primary care or for epidemiological purposes, the prevention, diagnosis, treatment and management of all conditions; routine phlebotomy services; the administration of the flu and pneumococcal vaccines to high risk patients; palliative care and treatment of minor injuries. It is acknowledged that the Services required to be provided include certain items for which specific payments shall be made by the HSE as set out in **Schedule 1**.
- 13.2 The Service Provider shall take an active approach toward the assurance of patient safety and the provision of high quality services by ensuring that services are organised and delivered in accordance with the National Standards for Safer Better

Healthcare and underpinned by clinical effectiveness. This includes adherence to national clinical guidelines and engagement in clinical audit as key components of this clinical effectiveness agenda. The Service Provider shall pursue a quality improvement approach which promotes cost-effective healthcare that is evidence-based and consistent.

- 13.3 The Service Provider shall maintain a population register of Child Patients registered on his/her panel. This register will include relevant demographic and clinical information relating to the prevention and management of illness. This register will be in accordance with the requirements to be set out by the HSE.
- 13.4 The Service Provider should be a member of and actively participate in its local primary care team(s) and shall liaise with other health care professionals so that the Child Patient can avail of and benefit from an integrated multi-disciplinary approach to the prevention, diagnosis, treatment and management of illness. The Service Provider shall ensure that inter-practice referral protocols and procedures are actively employed in their practice in the interest of patient care and having regard to patient needs.
- 13.5 The Service Provider shall take an active approach toward promoting health and preventing disease and shall use every consultation as an opportunity to detect early warning signs that could prevent illness and disease. The promotion of health should form part of every consultation with an emphasis on the empowerment of the patient and his/her parent(s)/guardian(s) to look after his/her own health.
- 13.6 The Service Provider shall work with other members of its local primary health care team to promote health by applying health promotion and improvement, and disease prevention strategies appropriately within the context of Healthy Ireland.
- 13.7 The Service Provider shall carry out medical assessments where requested to do so by the Child and Family Agency for child patients prior to placement in care.
- 13.8 The Service Provider shall provide periodic wellness assessments (i.e. Healthy Ireland Assessments) to all child patients under their care. Healthy Ireland assessments are age based preventive checks that are focussed on health and wellbeing and the prevention of disease. The requirements of Healthy Ireland assessments will be subject to change on the basis of policy and evidence. Initially, Healthy Ireland assessments will involve *monitoring* and recording of centiles under the age of two and BMI between the ages of two and six, and taking appropriate follow-up action. At the time of the Healthy Ireland Assessments, the Service Provider shall also record whether a child lives in a smoke free household or not with a view to advising on smoking cessation.
- 13.9 When treating terminally ill Child Patients or Child Patients suffering from chronic disease, the Service Provider shall play a proactive role in the management of such patients in accordance with best practice and in close cooperation with, and providing clinical leadership to, other members of the primary care team. This shall include scheduling regular monitoring and reviews, the referral of the patient to other health care professionals as required and, to the extent possible, of supporting self-management.
- 13.10 In providing the Services, the Service Provider shall:
  - 13.10.1 accept clinical responsibility for Child Patients on his/her panel who need medical treatment and treat them or, when the clinical condition is such that it is appropriate to transfer them to appropriate consultant care, do so and accept clinical responsibility for them on becoming aware of their discharge from consultant care.

- 13.10.2 use the most efficient and economic forms of treatment or care consistent with the needs of his/her patients having regard to the resources available to the HSE and to the budgetary imperatives of government.
- 13.10.3 ensure that no discrimination or differentiation is exercised as between the treatment of Child Patients and other patients within the practice (including private patients) and take reasonable steps to ensure that no such discrimination is perceived.
- 13.10.4 furnish in relation to Child Patients whom he/she has examined and for whom he/she is providing Services, a certificate in relation to any illness noticed during the examination or any other document which is reasonably required by the Child Patient's parent(s)/ guardian(s). Certain other certificates, such as insurance or assurance policies, are not covered by this contract.
- 13.10.5 cooperate with the modernisation of diagnostic services on a national basis including the introduction of pilot schemes.
- 13.10.6 ensure that its Services are made available either, as the circumstances may require, at the Service Provider's Practice Premises or at the Child Patient's home.

#### 14 Prescribing

- 14.1 The Service Provider shall prescribe such drugs and medicines, as he/she considers clinically necessary for any Child Patient for whom he/she is obliged to provide Services having regard to patient safety and clinical effectiveness considerations. The Service Provider may prescribe appliances from such categories as may be specified by the HSE. In prescribing drugs, medicines or appliances, the Service Provider shall have due regard to the need for economy.
- 14.2 The Service Provider shall cooperate with the work of relevant HSE Clinical Care Programmes including the Medicine Management Programme and the Health Care Associated Infection (HCAI) Programme.
- 14.3 The Service Provider shall have due regard to patient safety and public health in prescribing to child patients including the control and prevention of antimicrobial resistance and shall have regard to relevant clinical guidelines in this regard.
- 14.4 Where the HSE has developed structured services with Community Pharmacy Contractors, cooperation with such services shall be incorporated into the Service Provider's practice protocols.
- 14.5 To maximise the benefits of prescribed medicines, all Child Patients who are on long-term medications should have an annual medication usage review with feed-back provided to the Child Patient's parent(s)/guardian(s) and referenced in the Child Patient's file. This review shall be conducted by the Service Provider or, where the Child Patient parent(s)/guardian(s) consent, by the Service Provider in consultation with the Child Patient's nominated Community Pharmacy Contractor.
- 14.6 Where a Service Provider suspects that a Child Patient has suffered an adverse drug reaction, such a reaction shall be reported to the Irish Medicines Board and the report shall be referenced in the Child Patient's file. Such reporting shall be carried out in accordance with the HSE's required prescribed procedures, as determined from time to time.
- 14.7 The Service Provider shall have regard to and comply with the requirements of relevant medicines legislation and any clinical guidelines adopted by the HSE from time to time.

- 14.8 The HSE shall make available GMS prescription forms to the Service Provider for the purpose of prescribing drugs, medicines or appliances to Child Patients who have full eligibility under the Health Act, 1970 as amended. The Service Provider shall keep the stocks of these forms carefully and securely. He/she shall use them only for issuing prescriptions pursuant to this Agreement or pursuant to the GMS Contract and shall complete each form in accordance with its terms. The Service Provider shall comply with all legal requirements including misuse of drugs legislation, control of sales regulations and prescription control regulations. The Service Provider shall write "medically urgent" on forms where medicine is urgently required.

## 15 Availability

- 15.1 In line with the objective of ensuring that the Services are provided in a patient-centered manner and that the medical needs of all Child Patients are to the fullest extent possible met in a primary care context, the Service Provider shall organise his/her Normal Contracted Surgery Hours and Normal/Routine Surgery Hours in a manner which aims to best meet the needs of the Child Patients.
- 15.2 The Service Provider shall be routinely available for consultation at his/her Practice Premises and for domiciliary visiting for a total of 40 hours each week on five days or more in the week by agreement with the HSE (referred to as 'Normal Contracted Surgery Hours').
- 15.3 The Service Provider shall by way of a notice outside the Service Provider's Practice Premises and by whatever other appropriate means necessary, such as practice website, make known his/her Normal/Routine Surgery Hours.
- 15.4 The Service Provider shall make known to the HSE his/her Normal/Routine Surgery Hours (including his/her Normal Contracted Surgery Hours). For the avoidance of doubt the Service Provider shall not amend Normal Contracted Surgery Hours without the prior agreement of the HSE. Furthermore the Service Provider shall provide prior notification to the HSE of any changes to his/her normal routine surgery hours.
- 15.5 The Service Provider shall make suitable arrangements to enable contact to be made with him/her or his/her locum/deputy outside normal hours for urgent cases, and shall also make such arrangements known by way of a notice outside his/her Practice Premises and by whatever other appropriate means necessary, such as practice website.

## 16 Records

- 16.1 The Service Provider shall create and maintain comprehensive records of attendance on and treatment of Child Patients and shall ensure that such records:
- 16.1.1 demonstrate a full, accurate and contemporaneous record in respect of the Services requested by and provided to Child Patients;
  - 16.1.2 comply with all applicable laws that relate to the Agreement and to the Service Provider's provision of the Services under the Agreement;
- 16.2 All Records maintained by the Service Provider, including electronic records, shall be dated, legible and shall identify as a minimum the following information:
- 16.2.1 title, name, address, date of birth, gender, PPS number, the card number applying to the Child Patient pursuant to this Agreement; medical card number (where applicable) (including position letter and review date), treatment code where applicable), treatment dates, observations, findings, advice and treatments there from; and to record details of all referrals for each Child Patient;

- 16.2.2 the medical practitioner(s) responsible for carrying out the Services in respect of each Child Patient;
  - 16.2.3 the Services provided to each Child Patient;
  - 16.2.4 details of clinical necessity where required to support an out-of-hours claim in accordance with **Clause 22** or otherwise.
  - 16.2.5 details of any amendments to the Records;
  - 16.2.6 an audit trail of all Records held on an ICT system (to include full history of all documents created); and
  - 16.2.7 the date and (if relevant) the time that the Services were provided.
- 16.3 The Service Provider's records may be subject to independent audit and verification at the request of the HSE.
  - 16.4 The Service Provider shall comply with best practice and with all laws and regulations governing information security, and shall ensure that controls are in place to preserve the confidentiality, security, availability and integrity of its information.
  - 16.5 The HSE shall be entitled to inspect the Records at all reasonable times and to obtain full and true copies of Records upon request.
  - 16.6 The Service Provider shall retain the Records in accordance with such records retention policies as the HSE may, after consultation with the Relevant Representative Bodies, prescribe from time to time.
  - 16.7 When a Child Patient is transferred to the panel of another Participating Medical Practitioner (for whatever reason), the Service Provider shall, subject to the written consent of the parent(s)/guardian(s) of the Child Patient, give to the new doctor a summary of the medical history and condition of the patient and shall co-operate fully and facilitate the transfer of copies of the Records to the new doctor in a timely manner.
  - 16.8 On the death of the Participating Medical Practitioner, the HSE will arrange through the designated HSE officer for the transfer of the Records of the deceased practitioner to the Participating Medical Practitioner(s) taking over the provision of Services to these patients. Where it is necessary to take custody of the Records this should be done by the appropriate designated HSE officer.
  - 16.9 Where the Service Provider retires or resigns from the [insert name of relevant scheme] scheme the Health Service Executive should inform each patient, when notifying him/her of the name of the new doctor, that the Records are being transferred to this doctor. The patient should be notified that if he/she does not agree to the transfer of his/her Records he/she should indicate this to the HSE within fourteen days of the notification. Records deposited with the designated HSE officer may be destroyed after a reasonable time in accordance with the HSE's records retention policy.

## **17 Co-operation with Surveys and Surveillance Systems**

- 17.1 The Service Provider shall, in the format specified by the HSE, record and report each consultation with a person under 6 years to the HSE.
- 17.2 The Service Provider shall co-operate with surveys and Surveillance Systems which the HSE or the Department of Health carry out or establish from time to time for the purposes of monitoring the provision of free General Practitioner's Medical and Surgical Services to persons under 6 years.

## **18 Cooperation with ICT Initiatives**



- 18.1 The Service Provider shall cooperate with the introduction of ICT, eHealth and management information initiatives as may be introduced by the HSE from time to time including but not limited to the proposed introduction of the electronic processing of claims, electronic systems for the ordering and monitoring of diagnostic services, the roll-out of electronic messaging (structured and non-structured communications), identity management services, improved customer services and management of client indices.

## 19 Performance Review

- 19.1 The HSE may carry out performance reviews from time to time, and the Service Provider shall, and shall ensure that his/her Staff shall, co-operate fully with the HSE in relation to all such performance reviews. In conducting its performance review, the HSE shall consider any matters it may decide are relevant, including but not limited to the following:
- 19.1.1 Compliance by the Service Provider with the terms and conditions of the Agreement;
  - 19.1.2 Adherence to applicable clinical guidelines including any guidelines issued by National Clinical Effectiveness Committee (NCEC) or the HSE in relation to prescribing such as the HSE's Medicines Management Programme (including Preferred Drugs Initiative and INN Prescribing);
  - 19.1.3 Adherence to NCEC and the applicable National Prevention Policies and Clinical Protocols as issued by the Department of Health/HSE from time to time.
  - 19.1.4 Matters concerning the Irish Medical Council and the register of Medical Practitioners maintained by the Irish Medical Council;
  - 19.1.5 the probity history of the Service Provider and any Staff involved in the carrying out the Services on behalf of the Service Provider;
  - 19.1.6 Any complaints against the Service Provider which have been upheld;
  - 19.1.7 Any convictions or other relevant considerations.

## 20 Agreement Suspension, Sanction and Termination Procedure

- 20.1 Without prejudice to all other rights of the HSE under the Agreement, in the event of breach by the Service Provider of any term or provision of the Agreement, the HSE may have recourse to **Schedule 2 (Agreement Suspension, Sanction and Termination Procedure)**.
- 20.2 For the avoidance of doubt, the HSE shall, in its discretion, be entitled to exercise its rights pursuant to **Schedule 2** notwithstanding the fact that a mediation procedure has been initiated in accordance with **Schedule 3 (Mediation Procedure)**.

## 21 Fees

- 21.1 The HSE shall, in consideration of the Services provided by the Service Provider, and on foot of claims made in the forms and at the times provided for herein, pay or arrange payment of the Fees to the Service Provider. The Fees are as set out in **Schedule 1** but may be amended by the Minister from time to time following consultation with the Relevant Representative Bodies.

- 21.2 It is acknowledged by the Service Provider that the Fees are subject to review from time to time by the Minister.
- 21.3 The Service Provider shall not demand or accept any payment or consideration whatsoever other than the Fees determined in accordance with this **Clause 21** in reward for the Services provided by him/her or by others on his/her behalf under this Agreement, or in respect of any expenses incurred by him/her in making the Services available. The Service Provider shall instruct any deputy, assistants or members of Staff providing Services on his/her behalf to comply with the provisions of this **Clause 21.3**. For the avoidance of doubt, the GP shall be personally liable for any breach of this **Clause 21.3** by any deputy, assistant or other members of Staff as appropriate.
- 21.4 Any breach of **Clause 21.3** by the Service Provider or his/her Staff or by anyone acting on behalf of the Service Provider (whether with or without the knowledge of the Service Provider) shall be treated as a serious breach of the Agreement and may be subject to the sanctions set out in **Schedule 2**.
- 21.5 The allowances and subsidies available under the GP Contracts are, to the extent applicable, also available under this Agreement and are detailed in **Schedule 1**.
- 21.6 Where the Service Provider also holds a GMS Contract and/or a GP Visit Card Contract, the number of persons on the Service Provider's panel of Child Patients (under this Agreement) will be aggregated with the number of patients on his/her GMS Contract and GP Visit Card Contract for the purpose of calculating the amount of any additional subsidies or allowances to be paid to the Service Provider.
- 21.7 The Service Provider shall maintain such supporting documentation as the HSE requires to demonstrate that any and all Fees claimed by the Service Provider are reasonable and accurate in both kind and amount in this regard, the Service Provider shall record both the details and amounts of any Fees received by the Service Provider and the dates upon which payment of such Fees was made.
- 21.8 The HSE may from time to time carry out such investigations as it considers necessary to verify the accuracy and reasonableness of claims submitted and the Service Provider agrees to cooperate with such investigations and to provide the HSE with copies of such supporting documentation as it requires. Payments of Fees shall be made monthly in arrears and allowances shall be paid at least quarterly. Where an amount of claim is in dispute, appropriate payments on account shall be made. The current rate and frequency of payments to be made to the Service Provider are detailed in **Schedule 1**. Where it is established that a claim made by the Service Provider is unsubstantiated or fraudulent, the HSE may, without prejudice to its other rights under this Agreement, set off the relevant amount against other amounts payable by the HSE to the Service Provider.
- 21.9 Payment of Fees shall be subject to the Service Provider holding and maintaining an up-to-date Tax Clearance Certificate.
- 21.10 Professional Services Withholding Tax shall be deducted at the standard rate from any payments made by the HSE unless proof of exemption is provided by the Service Provider.
- 21.11 Payment of Fees by the HSE shall be without prejudice to any claims or rights which the HSE may have against the Service Provider and shall not constitute any admission by the HSE as to performance by the Service Provider of his/her obligations hereunder.

## 22 Out-Of-Hours Payments

- 22.1 Out-of-hours claims may only be made in respect of appropriate out-of-hours treatment given by the Service Provider outside of the hours 9am to 5pm Monday to

Friday and during all hours on Saturday, Sundays and bank holidays, subject to the terms and conditions of this **Clause 22**.

- 22.2 For the purpose of an out-of-hours claim, the HSE will require appropriate third party verification of the time of the consultation.
- 22.3 Out-of-hours claims may not be made in respect of consultations held during Normal Contracted Surgery Hours or Normal/Routine Surgery Hours. Out-of-hours payments will only be made in circumstances where the patient consultation is unforeseen, non-routine and necessarily carried out out-of-hours, and cannot be safely deferred until Normal Contracted Surgery Hours or Normal/Routine Surgery Hours.
- 22.4 Notwithstanding the fact that a Service Provider may have suitable alternative out-of-hours arrangements, an urgent and unforeseen consultation may be the subject of an out of-hours claim if the service provided by that out-of-hours service is not readily available and/or the Child Patient's complaint is such that he/she required immediate attention and in the opinion of the treating Medical Practitioner it would be injurious to his/her health to wait to attend the out-of-hours service.
- 22.5 Out-of-hours claims will not be paid in any or all of the following circumstances:-
  - 22.5.1 The consultation is not urgent and/or unforeseen.
  - 22.5.2 The consultation takes place during an overflow clinic.
  - 22.5.3 The consultation takes place during Normal Contracted Surgery Hours.
  - 22.5.4 The consultation takes place during Normal/Routine Surgery Hours.
  - 22.5.5 The patient did not require urgent treatment directly by the Service Provider concerned.
  - 22.5.6 No face to face out-of-hours consultation actually took place.
  - 22.5.7 The consultation is otherwise routine.
  - 22.5.8 The time of the consultation was not during the specified out-of-hours period.
- 22.6 The decision by a Service Provider to *accept or refuse* a consultation in respect of any of the foregoing circumstances shall be taken by that Service Provider having regard, inter alia, to the provisions of this Agreement and his/her obligations under Medical Council guidelines.
- 22.7 The Service Provider shall not be entitled to make a claim for out-of-hours in respect of consultations that are offered to a patient outside normal hours merely to facilitate the preference of the Child Patient or his/her parent(s)/guardian(s).
- 22.8 It is the obligation of the Service Provider to ensure that all appropriate claim forms are completed accurately and fully. Out-of-hours claims may be only made by Participating Medical Practitioner on whose panel the Child Patient is registered, or by a partner of that practitioner who is also Participating Medical Practitioner and who has entered into a recognised rota arrangement with the Child Patient's doctor, where such arrangements have been approved by the HSE. Such arrangements may include out-of-hours cooperative rotas.

## 23 Variation

- 23.1 The HSE may, following consultation with the Relevant Representative Bodies, vary the Agreement (other than the Fees determined in accordance with **Clause 21.1**) where:

- 23.1.1 the HSE is reasonably satisfied that it is necessary to vary the Agreement so as to meet its obligations under the Act or other legislation or regulations, or any direction given by the Minister; and
  - 23.1.2 the HSE notifies the Service Provider in writing of the wording of the proposed variation and the date upon which that variation is to take effect,
  - 23.1.3 Where reasonably practicable, the date that the proposed variation shall take effect shall be not less than thirty (30) days after the date on which notice in accordance with **Clause 27** is served on the Service Provider.
- 23.2 If the Service Provider wishes to terminate the Agreement following notice of any amendment, the Service Provider shall be entitled to do so in accordance with **Clause 2.1** of Schedule 2 and shall be permitted to serve out the required three (3) months' notice on the pre-existing terms and conditions of the Agreement (save in exceptional circumstances where immediate implementation of the variation is essential in order to protect health and safety.)

## 24 Independent Service Provider

- 24.1 Neither party to this Agreement shall be the authorised agent of the other party or have the right or authority either express or implied to create or incur any liability against or on behalf of any other party, other than those obligations and liabilities set out hereunder. In particular, the Service Provider shall not hold himself/herself out, nor permit any person to hold him/her out, as being authorised to bind or pledge the credit of the HSE in any way and shall not do any act that might reasonably create the impression that he/ she is so authorised.
- 24.2 It is acknowledged by both parties that the Service Provider will at all times be an independent Service Provider, and nothing in the Agreement will be construed (and the Service Provider will not hold out his/her relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between the HSE and the Service Provider. If, notwithstanding that intention, any such obligations are transferred to the HSE by operation of law (whether pursuant to the European Communities (Protection of Employee's Rights on Transfer of Undertakings) Regulations, 2003 or otherwise), the Service Provider shall indemnify the HSE on demand, against all demands, claims, proceedings, suits, judgments, losses, liabilities, costs, expenses, fees, penalties or fines which may be suffered or incurred by the HSE arising out of or in connection with any such transfer, or any contract of employment so transferred by the HSE subsequent to any such transfer (which the HSE shall be free in its absolute discretion to terminate without prejudice to its rights under this **Clause 24**).

## 25 Data Protection

- 25.1 The Service Provider shall comply with his/her obligations under the Data Protection Act 1988 and 2003 as may be amended and all regulations made thereunder (referred to as "Applicable Data Protection Legislation" for the purposes of this **Clause 25**), in the collection and storage of data pursuant to the Agreement. In particular, the Service Provider shall put in place safeguards sufficient to comply with his/her obligations under the Applicable Data Protection Legislation and must ensure that all Staff are aware of and comply with the obligations imposed by the Applicable Data Protection Legislation.
- 25.2 The Service Provider shall indemnify the HSE against all claims and proceedings and all liabilities, losses, costs, claims, actions, proceedings, demands by third parties and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the Service Provider's unauthorised or unlawful processing or the Service Provider's destruction of or damage to any personal data held by the Service Provider, his/her employees or agents or due to any failure by the Service Provider to comply with this **Clause 25**.

- 25.3 The Service Provider shall provide to the Authorised Representative of the HSE evidence that the registered purpose for which the data is kept includes facilitating the HSE in collecting and assimilating information in respect of and monitoring the prescribing of medicines by the Service Provider under the terms of this Agreement.

## 26 Freedom of Information

- 26.1 The Service Provider acknowledges that the HSE is subject to the provisions of the Freedom of Information Act, 1997 to 2003 (as amended) and that the HSE may be obliged to disclose information regardless of any representations made by the Service Provider. However, where a request is made for information furnished by, or which concerns, the Service Provider, the HSE shall, where appropriate, endeavour to consult the Service Provider before responding to such a request.

## 27 Notifications

- 27.1 Any notice, notification or other communication given or made under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party. In the case of communications to the HSE, such communications shall be addressed to the Authorised Representative of the HSE. In the case of the Service Provider, all communications shall be made to the Service Provider's last known address, or by sending it by fax or email to the fax number or email address notified by the relevant party to the other party.
- 27.2 Unless the contrary is proved, each such notice or communication will be deemed to have been given or made and delivered, if by post forty-eight (48) hours after posting, if by delivery when left at the relevant address or, if by fax upon transmission during normal business hours (otherwise on the next following Business Day), subject to the correct answerback code or fax number being received on the transmission report.
- 27.3 In addition to any requirements of notification set out above or elsewhere in this Agreement or the Schedules, the Service Provider shall notify the HSE in writing, as soon as reasonably practicable, of:
- 27.3.1 any serious incident that in the reasonable opinion of the Service Provider affects or is likely to affect the Service Provider's performance of his/her obligations under the Agreement; or
  - 27.3.2 any circumstances which give rise to the HSE's right to terminate the Agreement under **Clause 3** of Schedule 2.
- 27.4 The Service Provider shall immediately notify the HSE of any proposed changes in the details supplied in the Application Form and this Agreement and shall obtain the written approval of the HSE before implementing such changes. In particular, the Service Provider shall obtain the HSE's prior approval before making any of the following changes:
- 27.4.1 the proposed removal or addition of a Practice Premises from those listed in the Application Form;
  - 27.4.2 a proposed change in the hours of service listed on the Application Form for this Agreement; and
  - 27.4.3 any proposed change in the information supplied to the HSE in respect of the Service Provider.
- 27.5 Without prejudice to the generality of the foregoing, the Service Provider's hours of service shall have regard to patient needs in the community and the Service Provider shall prior to implementing any such change first obtain the HSE's approval and shall

at all times cooperate with the HSE in order to ensure that patient needs continue to be met.

- 27.6 For the avoidance of doubt, failure by the Service Provider to obtain the HSE's prior approval before implementing one of the changes specified in this **Clause** shall be a ground for termination by the HSE pursuant to **Clause 3** of Schedule 2.
- 27.7 The notifications and approvals effected in accordance with this **Clause 27** shall form part of the Agreement.

## 28 Warranties and Indemnities

- 28.1 Each of the parties to this Agreement warrants that it has the power to enter this Agreement and has obtained any necessary approvals to do so.
- 28.2 The Service Provider warrants that:
- 28.2.1 all information in writing provided to the HSE in seeking to become a party to this Agreement was, when given, true and accurate in all material respects;
- 28.2.2 no information has been omitted which would make the information that was provided by the Service Provider to the HSE materially misleading or inaccurate;
- 28.2.3 no circumstances have arisen which materially affect the truth and accuracy of such information;
- 28.2.4 he/she is not as at the date of this Agreement aware of anything within his /her reasonable control which may or will materially adversely affect his/her ability to fulfil his/her obligations under this Agreement.
- 28.3 The HSE is relying wholly and exclusively upon the judgment and expertise of the Service Provider and his/her Staff in providing the Services and accordingly the Service Provider shall be liable to the HSE for any loss or damage whatsoever, or howsoever or wherever caused arising directly in connection with the Agreement.
- 28.4 The Service Provider further warrants and undertakes to the HSE and it shall be a condition of this Agreement that:
- 28.4.1 the Service Provider and Staff have the appropriate qualifications, competence and authority to carry out the Services and are compliant with professional registration requirements as appropriate;
- 28.4.2 the Services shall at all times be provided in a manner consistent with the provisions of this Agreement;
- 28.4.3 the Services shall comply with all HSE safety requirements and all necessary safety precautions and safety legislation relevant to the provision of the Services including but without limitation the Safety, Health and Welfare at Work Act, 2005 and any amendments thereof and/or regulations rules or orders made pursuant thereto, including the Safety Health and Welfare at Work (General Applications) Regulations 1993, 2001, 2003 and 2012, the Confined Space Regulations 2001 and any amendments thereof;
- 28.4.4 the Service Provider shall not do anything to prejudice the name or reputation of the HSE.
- 28.5 The Service Provider shall be responsible for and shall release and indemnify and keep indemnified the Minister and the HSE, its agents, employees, officers,

subsidiaries, associated companies, assigns and, where the HSE is acting as an agent, the HSE's principal, on demand and in full against all liability for:

- 28.5.1 all claims, costs, proceedings, demands, losses, damages or liabilities arising directly or indirectly as a result of any material breach or non-performance by the Service Provider of any of the terms, conditions, representations, warranties, obligations or other terms contained in this Agreement or implied hereinto;
- 28.5.2 all actions, costs, damages, claims and demands of any kind arising out of or as a result of any error, omission, inaccuracy, negligence or misrepresentation of the Service Provider or his/her Staff, agents or sub suppliers;
- 28.5.3 all losses and/or expenses which result during proper use directly or indirectly from defective materials, supplies, workmanship or design used by the Service Provider in the carrying out of the Services;
- 28.5.4 any claim made by or on behalf of a third party arising out of any act, omission or default committed by the Service Provider or on his/her behalf in connection with:
  - (a) their employment or non-employment;
  - (b) the Service Provider's provision of, or failure to provide the Services or any professional services to any person;
  - (c) the Service Provider's failure to comply with legislation;
- 28.5.5 all costs and/or expenses incurred by the HSE by engaging alternative Service Providers in the event that the Service Provider is unable or unwilling to carry out his/her obligations under this Agreement and/or in the event that the engagement of alternative Service Providers by the HSE is necessary to remedy any damage arising as a result of a failure by the Service Provider to provide the Services in accordance with the Agreement;
- 28.5.6 any claims for loss of or damage to property or injury to any person by reason of the Service Provider's negligence, or any act or omission on the part of the Service Provider's staff, employees, sub-contractors, or agents arising out of the performance of the Agreement; and
- 28.5.7 any damage to HSE property (including any materials or documents sent to the Service Provider for any purpose).
- 28.6 Neither the HSE nor the Service Provider shall be liable for any indirect or inconsequential loss (that is to say loss not naturally or directly flowing from any negligent act, omission or breach) suffered by the other including, loss or diminution of earnings, loss or diminution of profit, loss of contract or loss of opportunity.
- 28.7 The Service Provider shall assign to the HSE the benefit of all warranties, indemnities and other covenants received by the Service Provider from any third party in connection with his/her obligations under this Agreement.
- 28.8 All representations, warranties and undertakings made pursuant to this **Clause 28** shall be deemed to be repeated on the date of this Agreement and on each day thereafter up to and including the date of termination of this Agreement.
- 28.9 The HSE shall give the Service Provider notice of any third party action or claim against it that is or may, in the opinion of the HSE, be the subject of the indemnification described in this **Clause 28**. The Service Provider shall defend any such actions or claim, following consultation with the HSE, who shall be kept fully

informed at all times of all such claims or proceedings arising from such actions or claims. The HSE shall not settle any such claim made against it without the prior written approval of the Service Provider, such approval not to be unreasonably withheld.

## 29 Insurance

- 29.1 The Service Provider shall maintain in force during the term of this Agreement full and comprehensive insurance policies in respect of all customary liabilities and risks undertaken by the Service Provider in connection with the provision of the Services or as may reasonably be required by the HSE or by law (including but not limited to professional indemnity insurance, employer's liability insurance and public liability insurance) adequate to cover the Service Provider's liabilities under the Agreement and commensurate with the full time nature of this Agreement. The insurance cover shall in any event, be for amounts of not less than the following unless otherwise agreed between the parties:
- 29.2 Public liability insurance with a limit of indemnity of €6,500,000 for any one claim;
- 29.3 Employers liability insurance with a limit of indemnity of €13,000,000 for any one claim; and
- 29.4 Professional indemnity insurance with a limit of indemnity of €6,500,000 for any one claim.
- 29.5 The Service Provider undertakes to ensure that his/her employees, agents or representatives employed for the purpose of providing the Services are covered by equivalent professional indemnity insurance.
- 29.6 The Service Provider shall produce evidence of being fully insured against claims arising from malpractice or negligence and shall so remain insured for the duration of the Agreement, and provide evidence of insurance to the HSE annually or as required.
- 29.7 The Service Provider shall not do or permit or suffer to be done any act or thing whereby the insurances required by this **Clause 29** may lapse or become in whole or in part void or voidable.
- 29.8 The Service Provider shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Service Provider is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Service Provider shall notify the HSE without delay.

## 30 Inspections

- 30.1 The Service Provider shall facilitate at all reasonable times such inspection of the Premises and the Records and all medical equipment, ICT and facilities used by the Service Provider for the purposes of the Agreement as may be required by the HSE at its discretion, which shall include allowing the HSE access to any information which is reasonably required by the HSE for the purposes of or in connection with the Agreement and/or the HSE's statutory functions.
- 30.2 The HSE's right to inspect pursuant to this **Clause 30** shall be subject to the jurisdiction of any other Relevant Body to carry out inspections. The HSE reserves the right to notify any Relevant Body of any matters which may be of relevance to that Relevant Body and of which the HSE becomes aware during the course of an inspection. The HSE shall inform the Service Provider of any such notification as appropriate.



- 30.3 The Service Provider shall and shall procure that his/her Staff shall comply in all respects with inspections conducted pursuant to this **Clause 30**, including, without limitation, facilitating interviews between the Service Provider and the Staff and the HSE or any Authorised Representatives of the HSE.
- 30.4 The HSE shall be entitled to make copies (including electronic copies) of any Records during the course of an inspection and the Service Provider shall facilitate the taking of such copies by making his/her photocopying facilities available.
- 30.5 Once an inspection is underway (or once the GP is notified of an inspection, whichever is earlier) pursuant to this **Clause 30**, the Service Provider shall not remove any information or document relating to his/her performance under or compliance with this Agreement from the Practice Premises without the prior consent of the HSE, unless its removal is required in the interests of a patient in which case the Service Provider shall keep a written record of what was removed, the reasons for its removal and shall provide to the HSE such record in the conduct of any inspection.
- 30.6 In the event that an inspection conducted under this **Clause 30** reveals that the Service Provider is failing to provide the Services, or part thereof, in accordance with the terms and conditions of this Agreement, the HSE shall be entitled to exercise any relevant rights or remedies available to it under this Agreement, including the right to impose a sanction or to suspend or terminate the Agreement pursuant to **Schedule 2**.

### **31 Intellectual Property Rights**

- 31.1 The Service Provider shall fully indemnify the HSE against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights by the provision of the Services and/or any product which is an output of the Services.
- 31.2 The Service Provider shall not be entitled, without the HSE's permission, to use the HSE's name or logo on any material, advertising, marketing, promotion or product owned or controlled by the Service Provider.

### **32 Confidentiality**

- 32.1 The HSE and the Service Provider acknowledge that it may be necessary from time to time, to disclose to each other their confidential and proprietary information, including industrial or intellectual property, inventions, drawings, patterns, models, trade secrets, specifications, plans, designs and other information relating to the goods, processes and supply of services of the disclosing party (referred to as "**Confidential Information**" for the purposes of this Clause).
- 32.2 Any Confidential Information disclosed by a party to another party shall be used by the receiving party exclusively for the purposes of fulfilling the receiving party's obligations under this Agreement and for no other purpose other than by the consent of the disclosing party.
- 32.3 Confidential Information shall be deemed not to include:
  - 32.3.1 Information that is in the public domain,
  - 32.3.2 Information that is made public by the disclosing party,
  - 32.3.3 Information that is published or otherwise becomes part of the public domain without any disclosure by the HSE, the Service Provider or by their employees, servants or agents,

32.3.4 Information that becomes available on a non-confidential basis, whether directly or indirectly from a source, which source, did not acquire this information on a confidential basis; and

32.3.5 Information which either party is required by law to disclose to a court or to a government body.

### **33 Assignment, Transfer and Sub-Contracting**

33.1 The Service Provider shall not be entitled to sub-contract, assign or transfer the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof.

33.2 The HSE may assign, transfer or sub-contract the Agreement, or any part thereof. The Service Provider shall, if requested by the HSE, provide all reasonable assistance to the HSE in relation to any such assignment, transfer or sub-contract and fully co-operate with any relevant third parties.

33.3 The Agreement shall be binding upon successors and assigns of the HSE and the name the HSE appearing in the Agreement shall be deemed to include the names of its successors and assigns.

### **34 Costs**

34.1 Each party to this Agreement will pay its own costs of and incidental to the consultation and execution of this Agreement.

### **35 Remedies Cumulative**

35.1 The provisions of this Agreement, and the rights and remedies of the parties under this Agreement, are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity. No exercise by a party of any one right or remedy under this Agreement, or at law or in equity, will (save to the extent, if any, provided expressly in this Agreement, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

### **36 Force Majeure**

36.1 For the purposes of this **Clause**, the expression "Force Majeure" shall mean any governmental decision, fire, flood, pandemic or any disaster affecting or delaying the performance by a party of its obligations. Any act, event, omission, happening or non-happening shall only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of either party to the Agreement seeking to rely on it, or of that party's agents or employees.

36.2 Neither party to the Agreement shall in any circumstances be liable to the other for any loss of any kind whatsoever directly or indirectly caused or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

36.3 If either the HSE or the Service Provider becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

36.4 In the event that the Force Majeure event is continuing for a period at least one (1) month, the other party shall have the right to terminate this Agreement upon seven (7) days notice.

- 36.5 It is expressly agreed that any failure by the Service Provider to perform, or any delay by the Service Provider in performing his/ her obligations under this Agreement, which results from any failure or delay in the performance of his/ her obligations by any person, firm or company with which the Service Provider has a contract, supply arrangement or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or otherwise as a result of circumstances of Force Majeure.
- 36.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be events falling within the definition of Force Majeure set out in this **Clause 36**, and therefore exclude such events as strikes, lock-outs or industrial disputes of the Service Provider and/or other service providers.

**37 Entire Agreement**

- 37.1 The Agreement contains the entire agreement between the parties and contains all the terms which the parties have agreed with respect to its subject matter.
- 37.2 Neither party has relied on any other written or oral agreement, representation, arrangement or understanding.
- 37.3 The Service Provider acknowledges that he/she has not been induced to enter into the Agreement by a statement or promise which the Agreement does not contain. The HSE is not liable in equity, agreement or tort or in any other way for a representation that is not set out in the Agreement.
- 37.4 Nothing in this **Clause 37** shall have the effect of limiting or restricting any liability of a party arising as a result of fraud.

**38 Non-Survival of Terms**

- 38.1 Unless expressly provided, no term of this Agreement shall survive expiry or termination of this Agreement. Express provision is made in relation to:
- 38.1.1 Clause 19 (Performance Reviews);
  - 38.1.2 Clause 30 (Inspections);
  - 38.1.3 Clause 25 (Data Protection);
  - 38.1.4 Clause 26 (Freedom of Information);
  - 38.1.5 Clause 31 (Intellectual Property Rights);
  - 38.1.6 Clause 32 (Confidentiality);
  - 38.1.7 Clause 43 (Governing Law);
  - 38.1.8 Clause 44 (Disputes and Jurisdiction);
  - 38.1.9 Schedule 1 (Fees and Claiming Procedures);
  - 38.1.10 Schedule 2 (Suspension, Sanction and Termination) and
  - 38.1.11 Schedule 3 (Mediation Procedure).

**39 Severability**

- 39.1 All the terms and provisions of this Agreement are distinct and severable, and if any term or provision is held unenforceable, illegal or void in whole or in part by any court,

regulatory authority or other competent authority it shall to that extent be deemed not to form part of this Agreement, and the enforceability, legality and validity of the remainder of this Agreement shall not be affected.

**40 Further Assurances**

40.1 Each party to this Agreement shall from time to time execute such further assurances and do such things and afford to the other party such assistance as may reasonably be required for the purpose of giving full effect to the terms of this Agreement.

**41 Forbearance and Waiver Generally**

41.1 The rights of either party to this Agreement will not be prejudiced or restricted by any indulgence or forbearance extended to the other party, and no waiver by a party in respect of any breach will operate as a waiver in respect of any subsequent breach. No failure or delay by a party in exercising any right or remedy will operate as a waiver thereof, nor will any single or partial exercise or waiver of any right or remedy prejudice its further exercise or the exercise of any other right or remedy.

**42 Waiver by the HSE**

42.1 Any waiver by the HSE of any of the terms or provisions of this Agreement or any failure or neglect by the HSE to enforce any of the terms or provisions of this Agreement and any indulgence granted by the HSE shall be deemed to be without prejudice to the HSE's entitlement hereunder and shall not be construed or deemed to be a waiver of the HSE's rights hereunder and shall not affect in any manner the entitlement of the HSE to strictly enforce any or all of the terms of this Agreement or the exercise at any time by the HSE of any or all of its rights and entitlements as set out in this Agreement or its remedies (whether arising under this Agreement, at law, in equity or otherwise) in respect thereof.

**43 Governing Law**

43.1 The Agreement and all relationships created hereby will in all respects be governed by and construed in accordance with the laws of Ireland.

**44 Disputes and Jurisdiction**

44.1 The parties agree to endeavour to resolve any disputes as to the operation of this Agreement in accordance with the provisions set out in **Schedule 3** hereto.

44.2 Without prejudice to the foregoing, each party hereby irrevocably submits to the non-exclusive jurisdiction of the Irish courts in relation to any disputes which may arise out of or in connection with this Agreement or its performance or enforcement.

**Schedule 1. Fees Payable to Service Providers under Agreement for the provision of services [cite legislation] [under 6 year olds]**

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## Schedule 2. Agreement Suspension, Sanction and Termination Procedure

### 1 Automatic Termination

- 1.1 For the avoidance of doubt, the Agreement shall terminate automatically on the End Date or on the Service Provider reaching the age of seventy years, whichever is the earlier. The Service Provider, if required by the HSE, shall, on entering into the Agreement, furnish evidence of his/her date of birth.

### 2 Termination by Either Party on Notice

- 2.1 Without prejudice to any other rights or remedies to which either party may be entitled, either party shall be entitled to terminate the Agreement forthwith on giving three (3) months' notice in writing of its intention to terminate.

### 3 Termination by HSE for Default

- 3.1 Without prejudice to either party's entitlement to terminate on notice pursuant to **Clause 2** of this Schedule 2, and without prejudice to any other rights or remedies to which the HSE may be entitled, the HSE shall be entitled to terminate this Agreement without liability to the Service Provider with immediate effect at any time if:-
- 3.1.1 in the opinion of the HSE, the Service Provider has failed to comply with the terms and provisions of the Agreement to a degree which the HSE considers to be material,
  - 3.1.2 the Service Provider has failed to provide the Services to any Child Patient without good reason;
  - 3.1.3 the Service Provider has failed in his/her obligation to ensure that only medical practitioners provide the Services, supported to the extent appropriate by suitably qualified Staff;
  - 3.1.4 the Service Provider has failed to ensure that the Service Provider's Practice Premises meet the requirements of **Clause 12**;
  - 3.1.5 the Service Provider has made a representation in connection with the Agreement that, in the opinion of the HSE, is untrue or incorrect in a material respect as of the date when made;
  - 3.1.6 the HSE is satisfied, on foot of a determination by a competent medical examiner nominated by the HSE that the Service Provider, and/or any medical practitioner providing the Services under the Agreement; and/or any partner where the Service Provider is a partnership; is suffering from permanent infirmity of mind or body that impedes the Service Provider's ability to carry out the Services. Where a dispute exists as to the findings of the medical examiner or where a conflicting medical opinion is provided to the HSE by a competent medical examiner on behalf of the Service Provider, the HSE shall refer the person in respect of whom there are concerns to an independent medical examiner and shall take the findings of this medical examiner into consideration in arriving at its final conclusion.
  - 3.1.7 the Service Provider; and/or any medical practitioner providing the Services under the Agreement; and/or any partner where the Service Provider is a partnership; has been found guilty by a court of law of committing any fraudulent act or any criminal activity or gross negligence;
  - 3.1.8 the Service Provider, and/or any medical practitioner providing the Services under the Agreement, and/or a partner where the Service Provider is a partnership; is removed from the register of General Practitioners maintained

by the Medical Council or from the register of an equivalent authority in any jurisdiction;

- 3.1.9 disciplinary measures (other than removal from the register of General Practitioners) are taken by the Medical Council or by an equivalent authority against the Service Provider and/or any medical practitioner providing the Services under the Agreement and/or a partner where the Service Provider is a partnership, considered sufficiently serious by the HSE, in its discretion, to justify termination of the Agreement;
  - 3.1.10 the Service Provider, pursuant to **Clause 6.7.3(a)** of this Schedule 2., receives three (3) warning or admonishment notices within a twenty-four (24) month period;
  - 3.1.11 the Service Provider and/or any medical practitioner providing the Services under the Agreement; and/or any partner where the Service Provider is a partnership fails to complete the periods of specified educational training or corrective development coaching in accordance with the provisions of **Clause 6.7.3(b)** of this Schedule 2 within thirty (30) days or such greater period as may be agreed with the HSE of such training or development coaching requirement being imposed,
  - 3.1.12 the Service Provider; and/or any partner where the Service Provider is a partnership is declared bankrupt;
  - 3.1.13 The Service Provider fails to supply to the HSE documentation necessary for on-going maintenance of the Agreement (such documentation to include evidence of insurance, evidence of current Irish Medical Council registration, up-to-date professional indemnification and tax clearance certification in respect of any medical practitioner carrying out the Services under the Agreement or the Service Provider as appropriate) within thirty (30) days of written notice requesting such documentation being issued to the Service Provider by the HSE;
  - 3.1.14 the Service Provider and/or a partner where the Service Provider is a partnership, takes up full-time employment with the HSE or with the Government and the HSE, following a review of the circumstances, decides in its discretion that a conflict of interest situation exists.
- 3.2 In the event of the termination of the Agreement pursuant to this **Clause 3**, the HSE may, at its sole discretion, also consider termination of such other agreements (of any nature) as the Service Provider may hold with the HSE.

#### 4 Effects of Termination

- 4.1 For the avoidance of doubt, when the Agreement terminates, any obligation of the HSE to make payment is subject to the HSE's right to set off against any amount payable by it to the Service Provider including any sums owed to the HSE by the Service Provider which shall include, in particular:
  - 4.1.1 any payment made by the HSE to the Service Provider in error; and/or
  - 4.1.2 any payment made by the HSE to the Service Provider which the HSE was not required to pay.
  - 4.1.3 any payment made by the HSE for claims subsequently found to be unsubstantiated or fraudulent.
- 4.2 Any provision of this Agreement which relates to or governs acts of the parties after the Agreement ends remains in full force and effect and is enforceable even though the Agreement has ended.

## 5 Suspension

- 5.1 Without prejudice to any other rights or remedies to which it may be entitled, the HSE shall be entitled to suspend the Agreement and order an inquiry to be conducted in accordance with **Clause 5** of this Schedule 2 and/or refer the matter to the Medical Council, An Garda Síochána or other Relevant Body where:
- 5.1.1 in the opinion of the HSE the Service Provider and/or a partner where the Service Provider is a partnership, has behaved in a fraudulent manner or other circumstances exist which are sufficiently serious to warrant such suspension in the public interest.
  - 5.1.2 pending a determination by a competent medical examiner, the HSE has reason to believe that the Service Provider, and/or any medical practitioner providing the Services under the Agreement; and/or any partner where the Service Provider is a partnership, is suffering from serious infirmity of mind or body, such as to render him/her incapable of providing the Services;
  - 5.1.3 the Service Provider and/or any medical practitioner providing the Services under the Agreement and/or a partner where the Service Provider is a partnership, for any reason, is temporarily removed from the register of General Practitioners maintained by the Medical Council or from the register of an equivalent authority;
  - 5.1.4 disciplinary measures (other than removal or temporary removal from the register of medical practitioners maintained by the Medical Council) are taken by the Medical Council or by an equivalent authority against the Service Provider and/or a partner where the Service Provider is a partnership, which are considered sufficiently serious by the HSE, in its discretion, to justify suspension of the Agreement;
  - 5.1.5 in the opinion of the HSE, the Service Provider has failed to comply with the terms and provisions of the Agreement, or has failed to provide the Services to any Child Patient in accordance with the terms and conditions of the Agreement.
  - 5.1.6 A suspension ordered under this **Clause 5** of Schedule 2 shall continue in full force and effect pending the outcome of the inquiry conducted under this **Clause 5** and/or pending the determination of the matter by the Medical Council, An Garda Síochána or other Relevant Body or such shorter period as may be determined by the HSE.
- 5.2 In the event of the suspension of the Agreement pursuant to this **Clause 5**, the HSE may, at its sole discretion, also suspend such other agreements (of any nature) as the Service Provider may hold with the HSE.

## 6 Inquiry

- 6.1 In circumstances where the HSE has reason to believe that the Service Provider has failed to comply with any of the terms or provisions of the Agreement or has failed to provide the Services to any Child Patient or where the HSE has suspended the Agreement in accordance with the provisions of **Clause 5** of this Schedule 2, the HSE shall notify the Service Provider in writing of the details of such matter and shall notify the Service Provider that it shall consider any representations made by the Service Provider or on the Service Provider's behalf and received within fourteen (14) days of such notification by the HSE.
- 6.2 The HSE shall conduct a fair and transparent inquiry into the matters referred to in **Clause 6.1** of this Schedule 2, having due regard to the principles of fair procedure and natural justice. Any inquiry conducted by the HSE shall be completed within a reasonable timeframe.



- 6.3 The Service Provider shall and shall procure that his/her Staff co-operate fully with the HSE and shall not in any way encumber the HSE in the conduct of an inquiry under this **Clause 6**.
- 6.4 During the course of an inquiry, the Service Provider shall permit the HSE to inspect all premises at which Services are provided.
- 6.5 For the purposes of an inquiry the Service Provider shall make all Records available to the HSE and shall allow the HSE to make copies of such Records where requested.
- 6.6 The Service Provider shall permit his/her Staff to be interviewed by the HSE or any Authorised Representative of the HSE.
- 6.7 Upon the determination of any inquiry conducted in accordance with the provisions of this **Clause 6**, the HSE may:
- 6.7.1 lift the suspension imposed pursuant to **Clause 5** of this Schedule 2;
  - 6.7.2 terminate the Agreement pursuant to **Clause 3** of this Schedule 2;
  - 6.7.3 impose one or more of the following sanctions on the Service Provider:
    - (a) issue a warning or admonishment to the Service Provider. If during any twenty-four (24) month period, a Service Provider receives three (3) warning or admonishment notices, then without prejudice to any other rights or remedies to which it may be entitled, the HSE shall be entitled to terminate this Agreement without liability to the Service Provider with immediate effect;
    - (b) Require the Service Provider and his/her Staff (including any medical practitioner carrying out the Services under the Agreement), at his/her own cost, to undergo periods of specified educational training or corrective development coaching and to furnish the HSE with evidence of successful completion of the prescribed training or development coaching and a report setting out the effectiveness of same. If the Service Provider fails to adhere to or to comply with this requirement within thirty (30) days of such requirement being imposed by the HSE or such greater period as may be agreed with the HSE, the HSE may terminate the Agreement without liability to the Service Provider with immediate effect;
    - (c) Preclude the Service Provider or a medical practitioner carrying out the Services under the Agreement from providing the Services for a specified period of time or until such time as any conditions that may be specified by the HSE are satisfied by the Service Provider. The HSE may, at its absolute discretion, enter into appropriate arrangements to enable another medical practitioner to provide the Services during the period in which the provisions of this **Clause 6** of Schedule 2 are in force;
    - (d) Require the Service Provider to demonstrate that it has met the standards and requirements necessary to continue to hold the Agreement;
    - (e) Require the Service Provider to re-pay to the HSE such Fees as may be deemed by the HSE to have been inappropriately claimed by the Service Provider. The HSE shall be entitled to set-off such re-paid Fees against any other sums owed to the Service Provider;

- (f) Preclude the Service Provider or a medical practitioner carrying out the Services under the Agreement from providing a specified treatment for a period of time or on a permanent basis;
- (g) Invoke special arrangements for claiming of Fees by the Service Provider for a period of time or on a permanent basis;
- (h) Require the Service Provider or a medical practitioner carrying out the Services under the Agreement to comply with specific performance management arrangements until such time as the HSE, in its discretion, is satisfied that special arrangements are no longer required;
- (i) Terminate the Agreement, specifying a period of time that must elapse before an Application Form submitted by the Service Provider for a new agreement shall be considered by the HSE. Any re-application accepted by the HSE may be subject to specific performance arrangements at the discretion of the HSE;
- (j) Terminate the Agreement, prohibiting any subsequent re-application for a new agreement by the Service Provider.

## 7 Appeal Procedure

- 7.1 Where a Service Provider and/or any medical practitioner providing the Services under the Agreement; and/or any partner where the Service Provider is a partnership, is successfully prosecuted through the courts for fraudulent behaviour or any criminal activity or is guilty of gross negligence, this Appeal Procedure shall not be available.
- 7.2 If the Service Provider is dissatisfied with any action of the HSE taken pursuant to **Clause 6.7.3** of this Schedule 2 other than the issue of a warning or admonishment notice in accordance with **Clause 6.7.3(a)**, the Service Provider may, by giving notice in writing to the HSE ("Notice of Appeal") within fourteen (14) days of the decision of the HSE to take such action, appeal against the action.
- 7.3 As soon as practicable after receiving a Notice of Appeal, the HSE shall establish a medical practitioner appeal committee (referred to as the "**Appeal Committee**" for the purposes of this Schedule) to process the Service Provider's appeal.
- 7.4 The Appeal Committee shall consist of three (3) suitably qualified persons comprising:
  - 7.4.1 the Chairman, who shall be a Barrister or Solicitor of not less than five (5) years standing, appointed by the HSE (from a panel maintained for this purpose by the HSE, following consultation with the Relevant Representative Bodies);
  - 7.4.2 a person nominated by the HSE; and
  - 7.4.3 a person nominated by the Service Provider;
- 7.5 The Chairman shall have discretion as to the conduct of the appeal proceedings and in particular shall:
  - 7.5.1 Establish the timetable and procedure for the proceedings;
  - 7.5.2 If required, direct the extent, form and time limits applying to any documentary submissions to be served in the proceedings;
  - 7.5.3 Decide the order of appearance of persons appearing before the Appeal Committee;

- 7.5.4 Permit the Service Provider or the HSE's representatives to appear in person, or to be represented, and/or assisted by another person;
- 7.5.5 Hear, if he/she thinks fit, any person who is not a party to the proceedings; and
- 7.5.6 Issue such other particular directions as are necessary for the efficient and orderly conduct of the proceedings.
- 7.6 Both parties shall have a right to legal representation during the appeal proceedings.
- 7.7 Any questions arising before the Appeal Committee shall be decided by the majority of the members of the Appeal Committee.
- 7.8 The Appeal Committee shall complete its deliberations with all practicable speed.
- 7.9 The Appeal Committee, shall, having considered the submissions made by both parties, issue its findings in writing simultaneously and by the same method to both parties. The Appeal Committee's findings may confirm, vary, alter or rescind the action proposed to be taken by the HSE under **Clause 6.7.3** of this Schedule 2.
- 7.10 Where a finding of the Appeal Committee is that the Agreement be terminated, the HSE shall notify in writing, within seven (7) days of receipt of the Appeal Committee's findings, the Service Provider that the Agreement shall terminate after the expiration of a further period of fourteen (14) days.
- 7.11 The reasonable fees, costs and expenses of the Appeal Committee and the costs of the venue for any hearing in the Appeal Committee proceedings shall be borne by the HSE. In all other respects, each party shall bear its own costs and expenses of its participation in the Tribunal proceedings.

**8 Discretion to Notify the Irish Medical Council**

- 8.1 The HSE may, in its discretion, notify the Irish Medical Council in writing of any sanction, decision or finding made or imposed under this **Schedule 2**.
- 8.2 The HSE may at the request of the Registrar of the Irish Medical Council, supply such particulars to the Registrar as may be necessary for the Medical Council to consider the matter further.

### **Schedule 3. Mediation Procedure**

#### **1 Scope of application**

- 1.1 This **Schedule 3** shall apply to matters of an operational nature. The HSE may, following consultation with the Relevant Representative Bodies, develop a list of such matters from time to time and such list shall be appended to this Agreement.
- 1.2 For the avoidance of doubt, the procedures set out in this **Schedule 3** shall not apply to:
  - 1.2.1. Any amendment by the HSE of the Services or any other amendment by the HSE of the Agreement pursuant to **Clause 23**;
  - 1.2.2. Any amendment by the Minister for Health of the Fees set out in **Clause 21**;
  - 1.2.3. Any matters concerning the eligibility of patients to receive the Services; and
  - 1.2.4. Any matter the subject of an Inquiry or Appeal Procedure pursuant to **Schedule 2**.

#### **2 Resolution through Liaison**

- 2.1 The parties shall use their best endeavours to communicate and co-operate with each other with a view to resolving in good faith any dispute or difference arising between them before referring the dispute for determination in accordance with the procedures set out below.
- 2.2 In the first instance, the parties shall submit any dispute to the personnel nominated specifically to participate in the escalation process and identified as such in the Annex to this **Schedule 3** in the order set out therein.
- 2.3 If any dispute is resolved pursuant to **Clause 2.2** of this Schedule, a written memorandum, (a "**Memorandum of Resolution**"), will be prepared jointly and signed by both the HSE and the Service Provider or his/her nominated Representative Body. The Memorandum of Resolution will confirm that the resolution is in full and final settlement of the dispute and will record all matters in issue and all material factual details of the dispute and the terms of resolution and a copy will be supplied to both the Service Provider and the HSE.

#### **3 Mediation**

- 3.1 If the parties cannot resolve any dispute within two (2) months of the commencement of negotiations to resolve the matter through liaison in accordance with **Clause 2** of this Schedule, or such period as the parties may subsequently agree, either party may refer the dispute to a mediator (the "Mediator") by way of a written referral (the "**Referral to Mediation**").
- 3.2 The Referral to Mediation shall be accompanied by all relevant documentation including copies of all correspondence between the Service Provider and the HSE in relation to the dispute as well as any factual or legal arguments in support of the relevant parties' position. The Referral to Mediation as well as a copy of the documentation which accompanied it shall be sent to the other party to the dispute at the same time that the referral is lodged.

#### **4 Appointment of Mediator**

- 4.1 Upon receipt of the Referral to Mediation, the HSE shall select the Mediator to be appointed in any given case from a panel of mediators maintained for this purpose by the HSE, following consultation with the Relevant Representative Bodies.

- 4.2 If a Mediator is unable to act or does not confirm his/her availability to act within seven (7) days of being requested to act by the HSE, the HSE shall select an alternative Mediator.
- 4.3 The Mediator shall have full power to determine the admissibility of any dispute to the Mediation Procedure.
- 4.4 The Mediator shall have exclusive jurisdiction to decide whether all good faith attempts to resolve the dispute in accordance with **Clause 2** have been adequately explored and exhausted by the parties and whether the matter is appropriate for Mediation. The Mediator may refer the matter back for further good faith negotiations between the parties where appropriate for such a period of time as the Mediator may deem to be appropriate.

## **5 Mediation Proceedings**

- 5.1 If the Mediator decides that the dispute shall proceed to Mediation, the other party shall within four (4) weeks of the Mediator notifying the parties of this decision prepare and lodge a reply to the Referral to Mediation (the "Reply") with the Mediator.
- 5.2 The parties shall, within fourteen (14) days of the appointment of the Mediator, or any such period as the parties may subsequently agree, meet or correspond with the Mediator to agree a programme for the exchange of any relevant information and documentation and the structure to be adopted for the Mediation.
- 5.3 The Mediation shall be held within four (4) weeks of the expiry of the deadline for receipt of the Reply, regardless of whether a Reply has been served.
- 5.4 The parties shall make any necessary arrangements for general administration in relation to the Mediation. If a hearing is required, the parties shall organise a suitable, mutually convenient venue and date for any meetings.
- 5.5 The Mediator shall, following consultation with the parties where appropriate:
  - 5.5.1 Chair the Mediation;
  - 5.5.2 Attend where appropriate meetings with either of the parties prior to the Mediation;
  - 5.5.3 Review the documents submitted by the parties without holding a hearing.
- 5.6 All proceedings relating to the Mediation shall be held in private.
- 5.7 If a hearing is required, both parties shall be entitled to bring representation to the Mediation and shall provide the other party with prior notice of the identity of any representatives.
- 5.8 Unless both parties and the Mediator otherwise agree, every person involved in the Mediation shall keep confidential and not use for any other purpose all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the Mediation, including the fact of any outcome, decision or recommendation and its terms, save for the fact that the Mediation is to take place or has taken place.
- 5.9 All information (whether oral, in writing or otherwise) arising out of, or in connection with, the Mediation shall be without prejudice, privileged and inadmissible as evidence or disclosable in any current or subsequent dispute resolution, litigation or any proceedings whatsoever. This does not apply to any information which would in any event have been admissible or disclosable in any such proceedings.
- 5.10 None of the parties will call the Mediator to act as a witness, consultant or expert in any litigation or proceedings whatsoever arising from, or in connection with, the matters at issue in the Mediation.

**6 Written Agreement to be Binding**

- 6.1 If the parties accept the Mediator's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be recorded in writing and, once signed by the Service Provider, or his/her nominated Representative Body and the HSE, shall be binding on the parties.

**7 Non-Binding Opinion**

- 7.1 If no agreement is reached, either party may invite the Mediator to provide both parties a non-binding opinion in writing. Such opinion shall not be used in evidence in any concurrent or subsequent proceedings, without the prior written consent of both parties.

**8 Costs of Mediation**

- 8.1 The reasonable fees, costs and expenses of the Mediator and the costs of the venue for any hearing in the Mediation process shall be borne by the HSE. For the avoidance of doubt, in all other respects, each party shall bear its own costs and expenses of its participation in the Mediation.
- 8.2 The HSE shall provide any necessary administrative support required for the Mediation.

Annex

**Escalation Procedure**

In the event of a dispute in relation to matters of an operational nature, the parties shall, in accordance with **Clause 2.2** of Schedule 3, submit the dispute to the following personnel in the order set out below:

1. HSE Designated Officer

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