

This **Agreement** is made on the _____ day of _____, 20__

By and between:

- (1) **NATIONAL TREATMENT PURCHASE FUND BOARD**, a body set up under Statute, of Ashford House, Tara Street, Dublin 2 (hereafter referred to as **"the NTPF"** which expression shall where the context so admits or requires include its successors in title and assigns); and
- (2) [INSERT NAME OF PROPRIETOR] of [*Insert address or, in the event the Proprietor is a company, the registered address*] (hereafter referred to as the **"Proprietor"** which expression shall where the context so admits or requires include its successors and assigns).

each a **"Party"** and together the **"Parties"**.

WHEREAS:

- (A) The Proprietor is the registered provider within the meaning of Section 2 of the Health Act 2007 of the nursing home, or the person who is carrying on the business of the nursing home pursuant to Section 69 of the Health Act 2007 (as amended).
- (B) It is a function of the NTPF to negotiate agreements with persons carrying on the business of a nursing home relating to the maximum price at which Long-term Residential Care Services (as defined below) will be provided to persons requiring such services and who are in receipt of financial State support under the Act (as defined below) and to inform the Health Service Executive (**"HSE"**) of the negotiated agreements and agreed maximum prices.
- (C) In order for the Proprietor's nursing home to be an approved nursing home for the purposes of the Scheme (as defined below), there must, amongst other things, be a pricing agreement in place between the Proprietor and the NTPF with respect to the maximum weekly prices to be charged in the nursing home under the Scheme.
- (D) The Parties have reached an agreement in relation to Maximum Weekly Prices (as defined below), subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

- 1.1 The following terms shall have the following meanings for the purposes of interpreting this Agreement unless the context otherwise provides:

"the Act"	the Nursing Homes Support Scheme Act, 2009 (as amended);
"Approved Nursing Home"	shall have the meaning assigned to it by the Act;

“Control”	means a transfer of or change to the legal and/or beneficial ownership of more than 50% of the issued share capital of a company operating a Nursing Home or, in the case of a Nursing home operated by individuals, a change in ownership resulting in a change to the legal power to direct or cause the direction of the management of the Nursing Home. The expression change of Control shall be construed accordingly;
“Long-term Residential Care Services”	shall have the meaning assigned to it by the Act and shall, without prejudice to the generality of the foregoing, include: - o Bed and board; - o Nursing and personal care appropriate to the level of care needs of the person; - o Bedding; - o Laundry service; and - o Basic aids and appliances necessary to assist a person with the activities of daily living. For the avoidance of doubt, Long-term Residential Care Services shall not include, amongst other things: - o Daily delivery of newspapers; - o Social programmes; - o All therapies; - o Incontinence wear - o Chiropody; - o Dry cleaning; - o Ophthalmic and dental services; - o Transport (including care assistant costs); - o Specialised wheelchairs; and - o Hairdressing and other similar services.
“Maximum Weekly Price”	the maximum price which a Nursing Home can charge per week for Long-term Residential Care Services provided to a Resident as set out in Column C of the table included at Clause 3.2.
“Nursing Home”	the nursing home (within the meaning of the Act) at which the Proprietor provides the Long-term Residential Care Service located at [INSERT ADDRESS] ;

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| “Price End Date” | the end date during the Term in which a particular Maximum Weekly Price can be charged by the Proprietor as set out in Column B of the table included at Clause 3.2. |
| “Price Start Date” | the start date during the Term in which a particular Maximum Weekly Price can be charged by the Proprietor as set out in Column A of the table included at Clause 3.2. |
| “Proprietor’s Group” | including but not limited to the Proprietor, any subsidiary of the Proprietor, any holding company of the Proprietor or any subsidiary of such holding company or any entity that directly or indirectly controls, is controlled by, or is under common control with the Proprietor;

‘holding company’ and ‘subsidiary’ shall have the meanings set out in Sections 7 and 8 of the Companies Act 2014. |
| “Resident” | a person who has been approved by the HSE to receive State support (as defined in the Act) in accordance with the Act; and |
| “the Scheme” | the Nursing Homes Support Scheme set up under the Act. |
| “Term” | as defined in Clause 5.1. |
| “Working Days” | means any day other than a Saturday, Sunday or official public holiday in Ireland. |
- 1.2 Terms and expressions defined in Section 3 of the Act shall bear the same meanings where used in this Agreement save as otherwise expressly provided in this Agreement.
 - 1.3 Any reference to any provision of any legislation shall include any modification, re-enactment or extension thereof for the time being in force whether made before or after the date of this Agreement.
 - 1.4 The masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa and words importing persons shall include firms or companies unless the context clearly indicates the contrary.
 - 1.5 A reference to **writing** or **written** includes email but not fax.
 - 1.6 A reference to **this Agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document, in each case as varied from time to time.
 - 1.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
 - 1.8 For the avoidance of doubt, all prices quoted in this Agreement shall be in **euro (€)**.

2. SCOPE OF THE AGREEMENT

- 2.1 The Proprietor hereby declares itself to be a proprietor within the meaning of the Section 3 of the Act.
- 2.2 Subject to the terms and conditions of this Agreement (including without limitation those set out in Clause 3 hereof) and in consideration of the entry by the Proprietor into this Agreement, the NTPF hereby undertakes to notify the HSE that it has reached agreement with the Proprietor in relation to the Maximum Weekly Prices that will be charged for the provision of Long-term Residential Care Services in the Nursing Home to Residents under the Scheme.
- 2.3 The Proprietor hereby acknowledges and agrees that nothing in this Agreement constitutes a commitment or guarantee by either the NTPF or the HSE that the Nursing Home shall be utilised by Residents for Long-term Residential Care Services under the Scheme.
- 2.4 The Proprietor furthermore acknowledges that it does not enjoy any position of exclusivity and that the NTPF does on a continuing and ongoing basis, negotiate and agree maximum weekly prices with other nursing homes for the purposes of the Scheme and these maximum weekly prices may differ to those agreed by NTPF with the Proprietor.

3. CONDITIONS

Maximum Prices

- 3.1 In consideration of the mutual undertakings provided by the Parties to each other under this Agreement, which the Parties agree constitutes good and valuable consideration, the Parties agree that the Maximum Weekly Prices for Long-term Residential Care Services shall be as set out in Clause 3.2.
- 3.2 The Proprietor undertakes and agrees to charge no more than the following Maximum Weekly Price(s) for Long-term Residential Care Services provided to each Resident in the Nursing Home during each specified time period of the Term commencing on the Price Start Date and finishing on the Price End Date as set out in the table below:

A	B	C
Price Start Date	Price End Date	Maximum Weekly Price
[INSERT DATE]	[INSERT DATE]	€ XXXXXXXX
[INSERT DATE]	[INSERT DATE]	€ XXXXXXXX
[INSERT DATE]	[INSERT DATE]	€ XXXXXXXX
[INSERT DATE]	[INSERT DATE]	€ XXXXXXXX

- 3.3 The Proprietor agrees and acknowledges that the above Maximum Weekly Price(s) shall be fixed for the Term of this Agreement. The Maximum Weekly Prices shall apply and be payable only with respect to the maximum number of residents for which the Nursing Home is registered with the Health Information and Quality Authority (“HIQA”) and the Maximum Weekly Price does not cover any residents above this maximum registered number of residents.

- 3.4 The Proprietor agrees and undertakes that it shall not seek or be entitled to any increase in the Maximum Weekly Prices set out in Clause 3.2 for the Term of this Agreement (as set out in Clause 5.1).
- 3.5 The Proprietor shall not demand or accept, from or on behalf of a Resident or the HSE, any payment or consideration over and above those described in Clause 3.2 hereof in remuneration for the provision of Long-term Residential Care Services to any Resident. For the purpose of demonstrating that it has met the condition set out in this Clause 3.5, the Proprietor agrees to make clear in its contract with each Resident the full extent of the Long-term Residential Care Services that are included in the Maximum Weekly Price agreed with the NTPF under the Scheme.
- 3.6 The Parties agree that any permitted assignment of this Agreement or a change of Control of the Nursing Home or the Proprietor shall not entitle the Proprietor to a review of the Maximum Weekly Price set out in Clause 3.2 of this Agreement and the Maximum Weekly Price(s) as set out in Clause 3.2 shall apply for the duration of the Term notwithstanding any such assignment or change of Control.

Approved Nursing Home

- 3.7 This Agreement is subject always to the following conditions:
- (i) the Nursing Home is an Approved Nursing Home and remains on the register of nursing homes established under the Health Act 2007; and
 - (ii) the Proprietor has and maintains, for the duration of the Agreement, a valid tax clearance certificate.
- 3.8 In the event that the conditions set out in Clause 3.7 are not complied with at any point during the Term this Agreement may be terminated by the NTPF in accordance with Clause 5.

Financial information

- 3.9 The Proprietor acknowledges that for the purposes of carrying out its functions under the Act, the NTPF may periodically undertake analyses of the prices, underlying costs and value for money of the Long-term Residential Care Services provided under the Scheme. The Proprietor undertakes to comply with the NTPF's requests and to make available to the NTPF, within twenty Working Days from the date of receipt of the request, any and all information relating to the Proprietor and the Proprietor's Group, as the NTPF deems necessary for the purposes of such analyses (excluding, for the avoidance of doubt, information that may be requested during a negotiation process, which the Proprietor acknowledges may be required to be provided on an expedited basis in order to progress such negotiations efficiently). The Proprietor further undertakes to procure that all entities within the Proprietor's Group will provide all such information as may be required by the NTPF pursuant to this Clause 3.9.
- 3.10 The Proprietor shall, and shall procure that the Proprietor's Group shall, keep proper books of account and records in relation to the provision of the Long-term Residential Care Services, including but not limited to with respect to inter-company charges, payments and other transactions that may impact upon the prices, underlying costs and value for money of the Long-term Residential Care Services provided under the Scheme. The Proprietor shall ensure that all such accounts and records are retained by the Proprietor and the Proprietor's Group in a secure and accessible manner for the Term of this Agreement and shall be retained and made available

within a reasonable time period of a request being submitted by the NTPF to the Proprietor during the Term and for a period of seven (7) years after the completion, expiry or termination of this Agreement.

- 3.11 Without prejudice to the obligations referred to at Clauses 3.9 and 3.10 above, the Proprietor shall, within forty-five (45) days of approval of its annual financial statements provide the NTPF with complete and accurate financial statements for the immediately preceding financial year. Such financial statements shall include, at a minimum, an income statement, balance sheet and schedule of related party transactions (including transactions with any member of the Proprietor's Group), prepared in accordance with generally accepted accounting principles consistently applied, and shall be certified as accurate by an authorised officer of the Proprietor (or, if so required by the NTPF, audited by a reputable firm of chartered accountants). The Proprietor shall ensure that any additional information requested by the NTPF with respect to the Proprietor's financial condition and the statements provided (as relating to the provision of the Long-term Residential Care Services), is furnished within ten Working Days of such request.
- 3.12 Without prejudice to the obligations referred to at Clauses 3.9 to 3.11 above, the Proprietor shall, and shall procure that the Proprietor's Group shall, promptly upon request by the NTPF, provide full, transparent, accurate and not misleading information with respect to the corporate group structure of the Proprietor's Group.

4. LIABILITY AND INDEMNITY

- 4.1 The Proprietor shall indemnify and keep indemnified the NTPF in full against all liabilities, costs, expenses, damages and losses along with all associated costs and expenses (including legal and administrative costs) suffered or incurred by the NTPF as a result of a claim brought against the NTPF by the servants, agents, employees, customers, residents, visitors, invitees or licensees of the Proprietor in respect of any loss or damage whatsoever to person or property related to, and/or occurring in or upon, the Nursing Home.
- 4.2 The Proprietor will not do or permit or suffer to be done anything by reason whereof the policy or policies of insurance of the Nursing Home may be rendered void or voidable.
- 4.3 The Proprietor acknowledges that the NTPF shall not, under any circumstances, be liable to the Proprietor for the payment of fees due from any resident or the HSE (as applicable) in consideration of the provision of Long-term Residential Care Services or any other services.

5. COMMENCEMENT, DURATION AND TERMINATION

- 5.1 This Agreement shall commence on the earliest Price Start Date as set out in column A of the table at Clause 3.2 and it shall continue in force until the latest Price End Date as set out in column B of the table at Clause 3.2 (the **Term**) unless it is terminated earlier in accordance with Clauses 5.2 hereof or by mutual consent of the Parties.
- 5.2 This Agreement may be terminated by the NTPF, immediately upon notice to the Proprietor, in the event of any one of the following matters occurring;
- 5.2.1 any representation made by the Proprietor or the Proprietor's Group in connection with this Agreement or the Nursing Home shall in the opinion of the NTPF prove to be untrue, incorrect or misleading in a material respect;

- 5.2.2 there is evidence that, prior to the entering into this Agreement or at any point during the Term, the Proprietor or any member of the Proprietor's Group entered into an agreement (whether written, verbal or otherwise) or concerted practice with proprietors of other nursing homes in relation to the setting of maximum weekly (or other) prices for Long-term Residential Care Services, or that, either prior to entering into or during the Term of this Agreement, the Proprietor or any member of the Proprietor's Group shared with other proprietors of nursing homes information in relation to the pricing of Long-term Residential Care Services including the terms set out in this Agreement and any prior agreement between the Parties;
- 5.2.3 the Nursing Home no longer meets the conditions set out in Clause 3.7 or the Nursing Home is closed and ceases to operate as a nursing home;
- 5.2.4 the Proprietor has increased the number of residents in the Nursing Home beyond that for which it is registered with HIQA as a designated centre;
- 5.2.5 the Proprietor ceases to be a Proprietor within the meaning of the Act;
- 5.2.6 the Proprietor commits or causes to be committed a material breach of any term or condition of this Agreement, including but not limited to, the provisions of Clause 3; and/or
- 5.2.7 the Proprietor becomes insolvent or has committed an act of bankruptcy or has a receiver or liquidator appointed over any part of its assets or a petition to wind it up or is adjudicated bankrupt.
- 5.3 The NTPF shall notify the HSE of the expiration or termination of this Agreement, and the Proprietor acknowledges that the Nursing Home shall not constitute an Approved Nursing Home for the purposes of the Act where there is no Agreement in force between it and the NTPF.
- 5.4 The Proprietor acknowledges that, on the expiry or termination of the Agreement, it shall have no automatic entitlement to a further agreement with the NTPF on the terms and conditions contained therein and that the maximum prices specified in Clause 3.2 shall not (unless expressly agreed otherwise in writing), be accepted by the NTPF as the basis of any such future Agreement.

6. DISPUTE RESOLUTION

- 6.1 The NTPF and the Proprietor agree that any disputes in connection with this Agreement shall be resolved as follows:
 - 6.1.1 Any unresolved question, dispute or difference concerning this Agreement which may arise between the Parties hereto shall be and is hereby referred to a single arbitrator to be agreed between the Parties, or, failing such agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator to be appointed on the request of either Party by the President for the time being of the Law Society of Ireland. The decision of the arbitrator appointed under this condition shall be final and binding on the Parties. Such arbitration shall be governed by the Arbitration Act 2010 or any statutory variation, modification or re-enactment thereof for the time being in force.
- 6.2 For the avoidance of doubt the Parties acknowledge and accept that the dispute resolution procedure as set out in this Clause 6 will not apply to disputes or negotiations regarding the Maximum Weekly Price agreed by the Parties and reflected in Clause 3.2 nor to the negotiation

of any maximum weekly price for future agreements that may be entered into between the Parties.

7. GENERAL PROVISIONS

- 7.1 This Agreement contains the whole agreement between the Parties relating to the Maximum Weekly Prices that will be charged for the provision of Long-term Residential Care Services to Residents under the Scheme and supersedes any previous agreements between the Parties in respect of such matters. Each of the Parties to this Agreement acknowledges that in agreeing to enter into this Agreement it has not relied on any representations or warranties except for those contained in this Agreement and that any negotiations and discussions which occurred between the Parties prior to the execution of this Agreement shall not form part of this Agreement.
- 7.2 Subject to Clause 3.6, the Proprietor shall not assign, transfer, novate, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of NTPF, such consent not to be unreasonably withheld.
- 7.3 The Proprietor agrees that the terms and conditions of this Agreement, including but not limited to its duration, pricing and any related negotiations, shall be treated as strictly confidential. The Proprietor shall not disclose, communicate, or otherwise make available any information regarding the terms of this Agreement to any third party without the prior written consent of the NTPF except to the extent strictly required by law, regulation, or a valid order of a court or other governmental authority or where it is already in the public domain through no fault of the Proprietor. The NTPF undertakes to treat as strictly confidential all information provided by the Proprietor, including but not limited to any information provided pursuant to Clauses 3.9 to 3.12 of this Agreement (the “Proprietor Information”). The NTPF shall not disclose, communicate or otherwise make available any Proprietor Information to any third party without the prior written consent of the Proprietor, save as agreed or to the extent strictly required or permitted by law, regulation or a valid order of a court or other governmental or statutory authority as necessary for the NTPF to perform its functions. The NTPF shall use the Proprietor Information lawfully. These obligations of confidentiality shall survive the termination or expiry of this Agreement.
- 7.4 The following provisions shall survive termination or expiry of the Term of this Agreement and shall remain in full force and effect thereafter: Clause 1 (*Definitions and Interpretation*), Clause 4 (*Liability and Indemnity*) and Clause 7 (*General Provisions*) together with any other provision in this Agreement that expressly or by reasonable implication should survive termination or expiry.
- 7.5 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.
- 7.6 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Agreement.
- 7.7 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial

exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

- 7.8 This Agreement shall in all respects be governed by and construed in accordance with the laws of Ireland and the Parties hereto hereby submit to the exclusive jurisdiction of the courts of Ireland.
- 7.9 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement. This Agreement may be executed electronically by the Parties through the use of DocuSign or other electronic execution software as may be utilised by the NTPF ("**Electronic Execution Platform**"). No counterpart shall be effective until each party has executed at least one counterpart.
- 7.10 Transmission of the electronically or otherwise executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) or via the Electronic Execution Platform shall have the same force and effect as if it were the transmission of an executed "wet-ink" counterpart of this Agreement.

IN WITNESS whereof the Parties hereto have executed this Agreement the day and year first herein
WRITTEN.

Signed

for and on behalf of

**NATIONAL TREATMENT
PURCHASE FUND BOARD**

.....

Authorised Representative

Print Name

.....

Date

.....

Signed

for and on behalf of

THE PROPRIETOR

.....

Proprietor/Director/Authorised
Representative

Print Name

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Date

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