

DRAFT – FOR DISCUSSION PURPOSES

Revised draft of PL on 30/04/2021

MF Comments on 30/4/2021

Approved subject to mapping

PL Updated comments 10/3/22

Dated the day of 2022

HEALTH SERVICE EXECUTIVE

and

ST VINCENT'S HEALTHCARE GROUP

OPTION AGREEMENT

Re LEASE of NMH SITE

ST VINCENT'S CAMPUS

DUBLIN 4

OPTION AGREEMENT

THIS AGREEMENT is made day of 2022

BETWEEN

- (1) **HEALTH SERVICE EXECUTIVE** a statutory body whose address is Parkgate Street, Business Centre, Dublin 8 (the “**HSE**”)
- (2) **ST. VINCENT’S HEALTHCARE GROUP (CRO No. 338585)** of Elm Park, Dublin 4 (“**SVHG**” which expression shall include and be deemed to include its successors and assigns);

IT IS AGREED as follows:

1. Definitions and interpretations

1.1 In this agreement the following expressions shall unless the context otherwise requires have the following meanings:

“Agreement” means this Agreement and all Schedules hereto;

“Call Option Event” means any of the events described in the Second Schedule hereto;

“Campus” means the property known as St. Vincent’s University Hospital as more particularly set out in Part One of the First Schedule hereto and which is shown outlined in red on map numbered 1 appended hereto;

“Closing Date” means any Working Day after the expiration of twenty Working Days from the date of the Option Notices at the election of the HSE but not later than 4 months after the date of service of the Option Notice;

“**Covenant Lands**” has the same meaning as set out in a Deed of Covenant dated 14 October 2010.

“Expiry Date” the date of expiry of the term of the Lease;

“General Conditions” means the Law Society General Conditions of Sale 2019 Edition including the special conditions issued therewith;

“Good Marketable Title” means the title to the Property as demised by the Lease.

“Health Services” means the provision, for the benefit of public, or medical, surgical, nursing services and accommodation for the treatment of sick persons and for the relief, cure, rehabilitation and prevention of sickness and disability, both physical and mental;

“**Lease**” means the 299 years lease of the Property entered into on the date hereof between SVHG and the HSE;

SVHG's Solicitors" means McCann FitzGerald or such other solicitors as may be appointed from time to time provided that written notification of such appointment is furnished to the HSE:

“Option Fee” means €10.00 (Ten Euro);

“Option Price” means €100 (one hundred Euro).

“Option Notice” means the notice served pursuant to Clause 3.1 of this Agreement;

“Option” means the option to purchase the Property granted by HSE to SVHG described in clause 2 of this Agreement;

“Pharmacy Facility” means a facility which stores, prepares and dispenses medicine to the hospital on the Campus;

“Property” means the lands demised in the Lease for the purpose of the construction of the National Maternity Hospital forming part of the Campus and is more particularly described in Part Two of the First Schedule hereto and which is shown outlined in red on map number 2 attached hereto HELD pursuant to the Lease;

“State Authority” a Minister of the Government of Ireland, the Commissioners of Public Works in Ireland, a state body of the Irish State or an agency of the Irish State.

“Working Day” means a day on which the banks are generally open in Dublin for business.

1.2 The provisions as to definitions and interpretation set out in the General Conditions shall apply to this option agreement.

1.3 Words importing one gender shall be construed as importing any other gender.

1.4 Words importing the singular shall be construed as importing the plural and vice versa.

1.5 The clause headings do not form part of this agreement and shall not be taken into account in its construction or interpretation.

1.6 Terms not otherwise defined herein shall have the meaning given to them in the Grant Agreement.

2. Agreement

In consideration of the payment of the Option Fee paid by SVHG to HSE (receipt of which HSE acknowledges) HSE hereby grants to SVHG an option whereby at any time before the Expiry Date, upon or following the occurrence of a Call Option Event, SVHG may require HSE to sell the Property to SVHG (or it's nominees) upon the terms of this Agreement in consideration of the Option Price.

3. Exercise of the Option

3.1 The Option may be exercised by service of notice (the **“Option Notice”**) in writing from SVHG to the HSE within 4 months after a Call Option Event. The exercise of the Option is without prejudice to any of the HSE or SVHG rights or remedies and to any rights of action which shall accrue or shall have already accrued to the HSE or SVHG.

3.2 The Option Notice shall be served in writing by registered post to HSE at its registered office with a copy to the HSE's Solicitors and the Option is deemed to be exercised on such delivery.

3.3 On the exercise of the Option HSE agrees to sell and SVHG agrees to purchase the Property free from any encumbrances, mortgages and/or charges entered into by the HSE (but not any encumbrances, mortgages and/or charges entered into by SVHG) for

the Option Price on the Closing Date in accordance with this Agreement and with the General Conditions. For the purposes of the General Conditions:

- a) the “**Conditions**” means this agreement and the General Conditions;
- b) the parties shall be deemed to have completed the “**Memorandum**” in accordance with the terms of this agreement;
- c) the “**Documents Schedule**” means the schedule of documents set out in the Third Schedule hereto;
- d) the “**Particulars**” means the description of the Property set out in the First Schedule hereto;
- e) the “**Date of Sale**” is the date of the service of the Option Notice, save for the purposes of General Conditions 13, 39 and 41, where the “**Date of Sale**” shall be the date hereof;
- f) save where the context otherwise requires or implies or the text hereof expresses to the contrary, the definitions and provisions as to interpretation set forth in the General conditions shall be applied for the purposes of this agreement;
- g) the General Conditions shall apply to the sale insofar as the same are not altered or varied by this agreement and this agreement shall prevail in case of any conflict between it and the General Conditions;

the General Conditions shall be read and construed without regard to any amendment therein, unless such amendment shall be referred to specifically in this agreement; and

- h) the Assurance of the Property shall include:
 - (i) a covenant on the part of SVHG to provide the Health Services and the Pharmacy Facility in the format of the draft set out at the Fourth Schedule;
 - (ii) a covenant on the part of the SVHG to use the Covenant Lands and the Property as a public hospital in the format of the draft appended at the Fourth Schedule;
 - (iii) an acknowledgement and undertaking by the HSE for the production of such of the original documents of title to the Property as are held by the HSE (including the Lease) and an undertaking to supply any additional information which it may reasonably be able to supply and produce and execute any documents such as will be necessary to the removal of the Lease as a burden on the title of SVHG to the Property. The HSE will also procure that for completion, a capital gains tax clearance certificate (or any similar certificate replacing same) together with any other tax clearances normally provided in sales of property in Ireland is obtained in relation to the sale of its interest in the Property.

3.4 The Completion of the sale shall be without prejudice to SVHG’s entitlement to require HSE to remove all or part of partially constructed buildings.

3.5 Where SVHG exercises the Option due to the occurrence of a Call Option Event and HSE has completed the construction and equipping of the National Maternity Hospital the

provisions of Clause 7.2 of the Lease with respect to the obligation of SVHG to enter into a capital grant agreement shall apply equally to this agreement as if such provision was fully set out here.

- 3.6. Notwithstanding any other provision of this Agreement, a deed of assurance shall only be required to be delivered in respect of the transfer of the Option Property when the Option Price is paid in full (save for any amount which SVHG is required by law to withhold).

4. Title

The HSE represents and warrants to SVHG that as the date of this agreement:

- 4.1 it has Good Marketable Title to the Property;
- 4.2 there are no mortgages charges or debentures (whether legal or equitable and whether fixed specific or floating), liens pledges or any other form of security or encumbrance entered into by the HSE (but not any encumbrances, mortgages and/or charges entered into by SVHG), easements or profit a prendre or agreements to create the same affecting or capable of affecting the Property or the documents of title, which have not been disclosed to the HSE prior to the date of this Agreement;
- 4.3 the Title Deeds to the Property are in the possession of the HSE; and
- 4.4 there are no actions disputes claims or demands between the HSE and any third party affecting or in respect of the Property or any part or any of the boundaries thereof nor is there any litigation threatened nor has any court order been made in relation to the Property or any part thereof or any of the boundaries thereof.

5. Assignment and alienation

- 5.1 Save where SVHG is

- (a) Disposing of its interest in the Property, then to such assignee
- (b) Creating security over its interest in this agreement as part of creating security over its interest in the Property as permitted pursuant to the Lease

SVHG shall not create any security over this agreement other than where it is permitted to create security over its freehold interest pursuant to landlord Covenant 6.4 in the Lease.

- 5.2 SVHG shall not be entitled to dispose of its interest in this agreement without the prior consent of the HSE which consent shall be determined in accordance with Covenant 6.5 of the Lease.
- 5.3 The HSE shall not be entitled to assign or part with the benefit of this agreement (or any part of it) save that the HSE may assign the benefit of this agreement to a State Authority that has simultaneously taken an assignment of the Lease.

6. Dispute Resolution

If any dispute, question, difference or controversy shall arise between the SVHG and the HSE, touching these presents or any clause, covenant, matter or thing herein contained then and in every or any such case the matter in difference shall be referred by either party to an Arbitrator to be appointed by the President for the time being of the Law Society of Ireland and any such reference shall be deemed to be a submission to Arbitration pursuant to the provisions in that behalf contained in the Arbitration Act, 2010, or any then subsisting statutory modification thereof.

First Schedule

Part One

(the "Campus")

ALL THAT AND THOSE part of the lands the lands and premises known as St. Vincent's University Hospital, Elm Park, Dublin 4 more particularly shown outlined in red and marked "**A**" on the map attached to the Deed of Conveyance dated 1 January 2002 between (1) Una O'Neill, Josephine McDonald and Catherine O'Brien and (2) St. Vincent's University Hospital Limited, which said map is also attached hereto as Map 1 (excluding, to avoid any doubt, the lands and premises outlined in red and marked "**B**" on the said map).

HELD in fee simple.

First Schedule

Part Two

**Particulars and Tenure
(the "Property")**

ALL THAT AND THOSE that part of the Campus as demised by the Lease shown outlined in red on map 2 attached hereto

HELD pursuant to the Lease but otherwise free from any encumbrances, mortgages and/or charges.

Second Schedule

The Call Option Event

1. Where a forfeiture event has occurred as provided for in clause 7.2(b) (c), and (d) of the Lease and the HSE fails to remedy any such breach within 180 days of written notice from SVHG;
2. Where the HSE seeks to vary the covenants contained in the Lease other than with the consent of SVHG.
3. Where the term of the Lease is extended other than with the agreement of the SVHG.

Third Schedule
Documents Schedule

1. The Lease
2. All documentation pertaining to the construction of the National Maternity Hospital to evidence compliance with statutory consents
3. Such other documents as the HSE can procure and SVHG reasonably requires in relation to the Property.

FOURTH SCHEDULE

The Covenant to Provide the Health Services, Pharmacy Facility and to use the Property as a Public Hospital

1. SVHG for itself and its successor and assigns of the Campus **HEREBY UNDERTAKES, COVENANTS AND AGREES**

1.1 to use the Covenant Lands as a Public Hospital or uses ancillary thereto at all times;

1.2 to provide the Pharmacy Facility on the Covenant Lands at all times;

1.3 Where the Tenant has constructed and equipped the Property as the National Maternity Hospital and subject to the ongoing support of the Tenant by way of service level agreements, to use the Property as a Public Hospital at all times:

1.4 to ensure that such insurances that would be obtained and maintained by a reasonable and prudent person acting in the course of the provision of health services similar to the Health Services, are obtained and maintained in respect of the Covenant Lands and the Property (including such insurances as may be required by any law);

1.5 to furnish such evidence as often as the HSE may reasonably require of compliance with the obligations set out in clause 1.4;

1.6 to apply all insurance proceeds received under any physical damage policies to complete any such works as shall be necessary to repair, reinstate and/or replace the buildings or other structures on the Covenant Lands and the Property or any part thereof which is covered by the terms of a physical damage insurance policy.

TO THE INTENT that the burden of such covenants shall run with and bind the Covenant Lands and the Property and every part thereof and that the benefit thereof may be annexed to the Property and every part thereof.