

Report to the Minister for Health

Simon Harris, T.D.

on the

Terms of Agreement

between the

National Maternity Hospital (Holles St.)

and

St. Vincent's Hospital Group

regarding the

Future Operation of the New Maternity Hospital –

“The National Maternity Hospital at Elm Park DAC”

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Mediator

November 21st 2016

Section A: Context/Issues/Process

1.0 Preamble and Context

1.1 On May 26th I was requested by the Minister for Health Simon Harris T.D. following a joint meeting with representatives of the National Maternity Hospital (NMH) and St. Vincent's Hospital Group (SVHG), to act as a Mediator between the parties. The purpose of these discussions was to seek agreement on the re-location of NMH to the St. Vincent's University Hospital (SVUH) campus.

1.2 The Minister set out the following Terms of Reference for this task;

- Confidentiality of the process.
- Both sides should be open to compromise, the purpose of which is to have the maternity services relocated to the Elm Park site / campus.
- Underpin the intent and delivery of the National Maternity Strategy 2016 – 2026, including the tertiary role of the NMH.
- Find a model of overall governance that will work for both hospitals into the future.
- Both hospitals to realise that this mediation process represents the final opportunity to reach agreement on the Project.

2.0 Background

2.1 The Government, through the Minister of Health has proposed, as part of National Maternity Policy, to re-locate the NMH to the SVUH campus at Elm Park.

2.2 This policy decision is in furtherance of the implementation of the country's first "National Maternity Strategy: Creating a Better Future Together 2016 – 2026."

The Strategy provides that, inter alia,

"Governance and Workforce;

- Maternity networks will be established within each Hospital Group as a priority.
- Networks will have robust governance arrangements, clear roles and responsibilities and a strong accountability framework.
- The new model of maternity care is implemented in each network within the context of robust evaluation and clinical governance frameworks.

2.3 The proposed re-location of the current NMH to SVUH campus represents a significant and important development of the above Strategy.

2.4 Both voluntary hospitals have an established international reputation for the provision of top quality clinical services and both hospitals will benefit significantly by this re-location and add considerably to their current medical co-operation in a multidisciplinary and university medical environment.

2.5 Both hospitals will be primary lead clinical / acute medical providers in the Ireland East Hospital Group.

3.0 The Challenges surrounding Re-Location, Operation and Construction

- 3.1** The re-location of the NMH on to the SVUH campus presents major legal, corporate, clinical and operational challenges for both hospitals.

They both have distinct histories, legal and corporate governance arrangements.

The NMH has a unique tradition in the provision of maternity related services since its inception by Royal Charter in 1905. St. Vincent's itself has developed a series of world class multi-disciplinary medical facilities on the Elm Park site.

- 3.2** These factors and related matters require to be addressed in an open, transparent and positive manner given the diverse nature of the legal, ownership and statutory standing of both voluntary hospital entities.

Both parties engaged constructively with me to address the challenges these complex matters presented in the course of the mediation process.

- 3.3** The central issues which required to be addressed related to future governance, identity, autonomy, ownership, shared services, clinical governance, operational management, site acquisition and construction management of the new facility.

- 3.4** A balance required to be agreed between the legitimate corporate interests of both parties and primarily that the delivery of a modern maternity and neonatal service that is women and infants centred and which is safe and world class is retained and developed to the highest international standards.

4.0 Guiding Principles for Agreement

- The efficient, effective and equitable operation of the entire campus / hospital facilities from both the NMH and SVHG perspectives.
- The recognition of the legitimate and distinct NMH / SVHG corporate concerns.
- The facilitation of clinical governance, synergies and quality standards across the hospital campus by co-operation and agreement.
- Creating the structures / agreements for realising the clinical and non-clinical benefits of co-location for both hospitals.
- Clarifying the ownership and use of facilities of the existing NMH operation on the SVUH campus.
- Recognising the reciprocal views of St. Vincent's on the issue of ownership / facilities usage and corporate concerns.
- Legal autonomy of hospital operations that is recognised and accepted by NMH and SVHG.
- Clarity of discrete funding and financial management between the NMH / St. Vincent's.

- Retention of the Mastership Model in the context of the evolving governance and reporting structures outlined in Section 6.7- “Implementation of Maternity Networks”- National Maternity Strategy 2016-2026.
- Developing effective management of public / patient / employer liability and hospital(s) services.
- Protection of State investment and interests.
- Further development of the campus in future.
- Clarity on decision making for the overall campus and its services.
- Future relationship with the HSE and the Department of Health for each Hospital entity.
- Proceeds of sale from the NMH to be invested in the new facility.

5.0 The Mediation Process

5.1 The parties have met jointly on several occasions. In addition I had several individual engagements with both the NMH / SVHG representatives, including visits to the National Maternity Hospital and St. Vincent's University Hospital.

5.2 Both parties made a number of comprehensive submissions during the mediation process outlining the issues / views on the matters which required to be addressed and their respective views on potential solutions to those matters.

5.3 I reported to the Minister and Department Officials throughout the process.

5.4 In order to streamline the process, I undertook to review the viewpoints expressed by the parties, and with their agreement, forwarded a draft outline for future discussion on June 11th, a draft of "Outline Proposals" on June 29th and a proposed "Draft Outline Agreement" on July 12th, which was updated on August 1st. Between September and October various proposals for a draft "Terms of Agreement" were discussed with both Hospitals.

5.5 The following final "Terms of Agreement" have been concluded and endorsed by the respective Executive Boards of both Hospitals.

Section B: Terms of Agreement

1.0 Establishment of New Company

1.1 Both parties recognise and agree that a New Company should be established in order to operate the new hospital. The Board of the New Company should be established and operational six months prior to the date of transfer of patient services to the new hospital, or earlier if agreed by the parties.

1.2 A Designated Activity Company (DAC), limited by shares, to be established under the Companies Act 2014 (reference Part 16 Companies Act 2014). This DAC will be a 100% subsidiary of SVHG and which will allow for an objects clause and facilitate charitable status.

1.3 The Company shall be titled as follows:

[“The National Maternity Hospital at Elm Park DAC \(limited by shares\)”](#)

2.0 The Memorandum and Articles of Association to include the following:

2.1 **“Principal Objectives”**

- a) To provide a range of health services by the establishment and operation of a new maternity, obstetrics, gynaecology and neonatal hospital at Elm Park, Dublin, in succession to the objectives and services and heretofore provided by the current NMH established and operated by the Chartered Trust (1903).

- b) to provide a range of health services in the community as heretofore, such operation and provision to be conducted in accordance with the newly agreed clinical governance arrangements for the National Maternity Hospital at Elm Park, (as set out in the diagram and as elaborated in Section 6 entitled “Corporate/Clinical Governance”) by providing as far as possible, by whatever manners or means from time to time available, for the health, happiness and welfare of those accepted as patients, without religious or ethnic or other distinction and by supporting the work of all involved in the delivery of care to such patients and their families or guardians, including research or investigation which may further such work.

2.2 Subsidiary Objectives

The subsidiary objectives should include;

- a) The acquisition of all current assets and resources, human and capital, of the NMH, (with the exception of the existing hospital building at Holles St).
- b) The acquisition of all the appropriate commitments, obligations, liabilities and any other consideration (actual or contingent) of the NMH.
- c) To provide finance, facilities, staff and any other resources to ensure the maintenance that are required and conducive to the Principal Objectives of the Company.
- d) To take over from the NMH any further activities/ services / trusts / educational and research activities currently associated with the Chartered Trust (where so desired).
- e) To agree annual / multi-annual service arrangements / agreements with the HSE.
- f) To monitor and assess the performance of the “NMH at Elm Park DAC (limited by shares)” against the objectives / targets as set out in the business plans and / or HSE SLA requirements.
- g) To review and advise on any matters that affect NMH operations or developments in the wider healthcare environment.

2.3 “Reserved Powers”

2.3.1 The Parties agreed to provisions in the Memorandum / Articles of Association for “Reserved Powers” exclusive to The National Maternity Hospital at Elm Park DAC (limited by shares) and the Board with a “Golden Share” (Section 3) to be provided in regard to autonomy of the Board.

2.3.2 The following are the agreed “Reserved Powers” of The National Maternity Hospital at Elm Park DAC (limited by shares) in furtherance of the Principal / Subsidiary Objectives of The National Maternity Hospital at Elm Park DAC (limited by shares).

These “Powers” to be exercised in an undiluted manner by all of the Directors of The National Maternity Hospital at Elm Park DAC (limited by shares) and in a manner that is designed to preserve the autonomy of The National Maternity Hospital at Elm Park DAC (limited by shares) in specific clinical and operational matters.

- a) Clinical and operational independence in the provision of maternity, gynaecology, obstetrics and neonatal services (without religious, ethnic or other distinction) in the hospital at Elm Park, Dublin and the provision of medical, surgical, nursing, midwifery and other health services at Elm Park, Dublin, including strategic planning in relation to the development of such services in the future in accordance with developing best practice.
- b) Control, utilise and protect all financial and budgetary matters as they relate to The National Maternity Hospital at Elm Park DAC (limited by shares).

- c) The retention and utilisation of any moneys received through the disposal of assets, gifts and bequests on the sale of Holles Street and any ongoing specific gifts, bequests and donations for the sole use of maternity services.
- d) To agree the annual SLA with the HSE in regard to budgets, staffing (including Consultant numbers), targets and performance criteria.
- e) Retention of the role of the Mastership model in the context of the evolving governance and reporting structures outlined in Section 6.7 “Implementation of Maternity networks” - National Maternity Strategy 2016 - 2026.
- f) To appoint the Master / CEO, Secretary / Chief Financial Officer/ Director of Midwifery and other senior personnel.
- g) To control and appoint other professional* and operation staff and their terms and conditions.

[*This provision does not apply to Medical Consultant Staff appointed under existing dual appointment arrangements.]
- h) The right to the protected use of the new maternity hospital facility and the identity / branding of the facility.

3.0 The “Golden Share”

3.1 The parties are agreed that the creation of a special golden share in the DAC is the best mechanism to provide legal protection to the inviolability of the “Reserved Powers” arrangement.

3.2 This can be best achieved by;

(i) Including in the Memorandum / Articles a specific provision along the following lines;

“These reserved powers shall not be capable of amendment save with the prior written and unanimous approval of all the Directors of the Board and with the consent of the Minister for Health.”

and by stating that;

(ii)

“Either group of the respective Hospital Nominees may consult with the Minister for Health on any matter on which they may feel aggrieved in relation to the exercise or any limitation of these “Reserved Powers””

These provisions, alongside the “Reserved Powers”, should ensure that the future Board of The National Maternity Hospital at Elm Park DAC (limited by shares) operates within both the spirit and legal intent of this Agreement.

I outline the Primary Governance requirements under which The National Maternity Hospital at Elm Park DAC (limited by shares) should operate, as follows:

4.0 Board Composition

I believe that the following compromise is the best way forward in order to recognise the respective positions of both parties and their respective strongly held views on the future structure/governance of the new hospital on the Elm Park campus.

4.1 There shall be Nine (9) Directors of the "National Maternity Hospital at Elm Park DAC (limited by shares)", one of whom shall be the nominated Chair.

- Four (4) Directors nominated by SVHG.

- Four (4) Directors nominated by the NMH Chartered Trust, two of whom shall sit on the SVHG Board (Section 6.2).

The Master shall be one of the Directors nominated to the Board of the NMH at Elm Park DAC.

- One Director* shall be an independent international expert in Obstetrics and Gynaecology.

*The independent international expert in Obstetrics and Gynaecology will be chosen from a list of candidates drawn up by SVHG and the NMH Trust. They will be assessed by a Selection Committee, chaired by the SVHG Clinical Director, and the other members will include the SVHG CEO and a representative from the NMH Trust. Any proposed nominee will be appointed by the Selection Committee after

consultation with the SVHG Nominations Committee, and the NMH Directors on the Board of NMH at Elm Park DAC (limited by shares).

It is my intention that the Board composition will deliver a sound corporate governance model and that the parties should view it in that context. I also believe that this composition represents a fair balance between the corporate/hospital interests of both entities, and that the following proposal on the initial rotation of the Chair, who will be nominated from the NMH Directors for the first Board, will assist considerably in the co-location process.

4.2 The Chairperson

In order to maintain the spirit and intent of this Agreement the Chairperson of the Board will operate on a three year rotational basis with the first rotation of Chairperson being one of the NMH nominated Directors.

5.0 Ownership

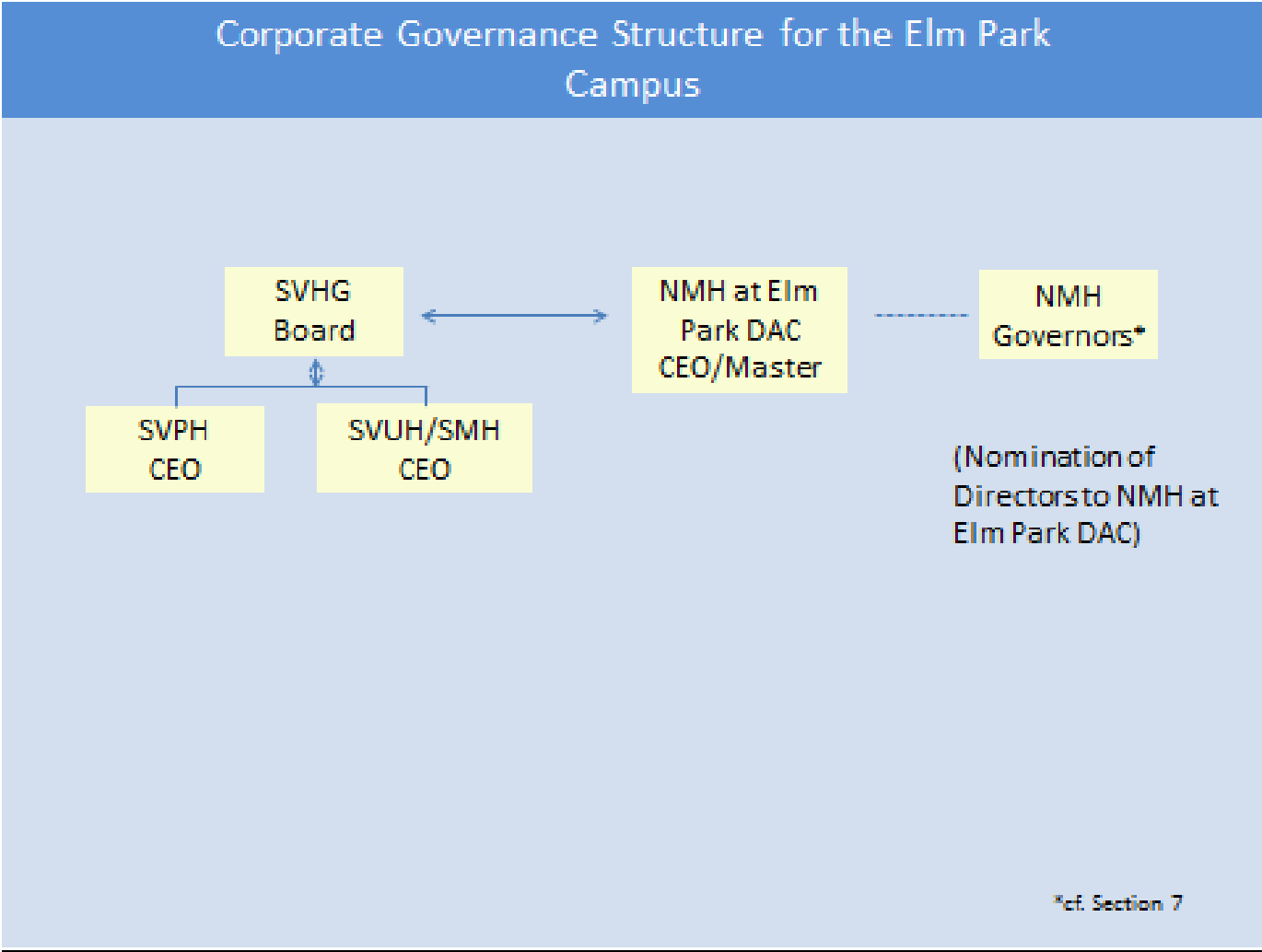
The SVHG will be the sole owner of the DAC (limited by shares), subject to the following:

- The Minister for Health will hold a “Golden Share” with powers that protect the “Reserved Powers” (Section 2.3), Constitution (Section 2.1) and Board Composition (Section 4.1).
- The State will require a “lien” on the Hospital in accordance with whatever funding agreements are in place by the State for such capital projects.

6.0 Corporate/Clinical Governance

The following Corporate/Clinical Governance structure was discussed at various meetings during the process and in the context of the integration / synergies of both corporate and clinical medical practices between the NMH and the SUVH within the Elm Park campus.

6.1 Corporate Governance Structure



6.2 Relationship of “NMH at Elm Park (DAC)” to main SVHG Board

The SVHG advances the valid point that it has overall responsibility for the effective and efficient operation of the totality of the hospital campus and which has many operational entities.

They require to retain a corporate unitary oversight of all campus utilities and services.

They refer also to their co-operative and oversight arrangements with SVPH and SVUH / SMH, Dun Laoghaire.

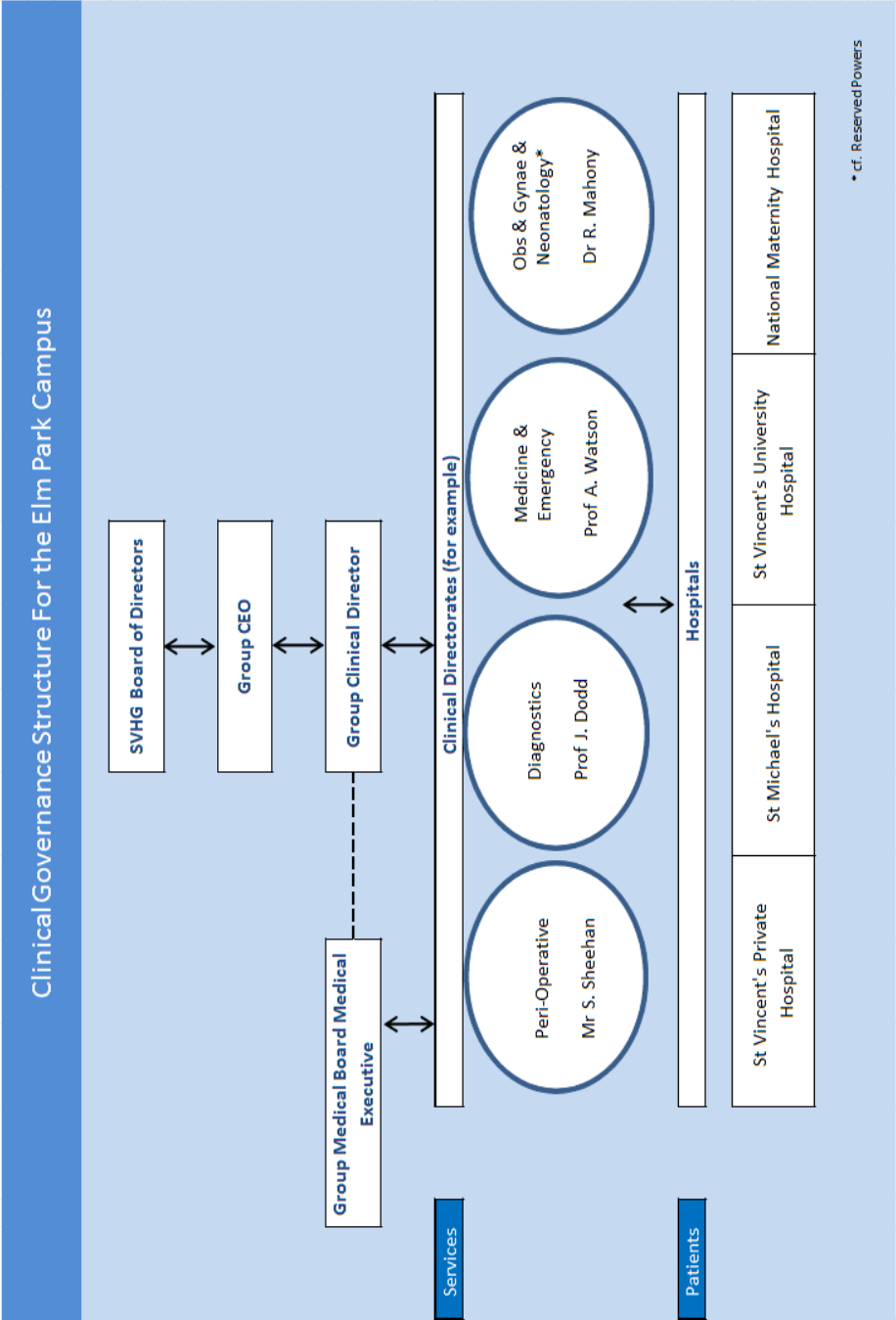
It is not unreasonable that some corporate “oversight”, or “integration” as they suggest, relates to all activities on the Hospital Campus whilst at the same time recognising the earlier stated “reserved powers” for the new maternity hospital.

To achieve this objective / intent, I believe that this can best be achieved by providing assurances to the SVHG Board that;

- Annual plans are prepared and implemented for the NMH in line with an SLA between the Boards or a “Memorandum of Understanding”.
- The operations at the NMH are being managed and run efficiently and effectively and in accordance with the SLA / HSE Agreement for the NMH.
- The appropriate legal, financial, regulatory and risk assessments are up to date and undertaken in accordance with statutory requirements.

In order to complete this “unitary and corporate oversight” I have recommended and it has been accepted that the Board of the SVHG should include two nominees from the NMH Chartered Trust and who shall also be Directors on the NMH at Elm Park Board.

6.3 Clinical Governance Structure



- 6.4** The agreed single system of Clinical Governance will operate for the primary benefit of patients on campus. In particular, the provision of care to Obstetrics and Gynaecology patients by the two hospitals will be seamless. The Consultant with primary responsibility for care of the patient will decide what care services are required and in which location these services should be provided. There will be no contractual or administrative requirement for the patient to be “transferred” from the care of one hospital to another in order for care to proceed as decided. The provision of care will be separate from the physical location of the patient, and will be decided by the Consultant in charge based on the needs of the patient. If any elements of service standard fall short of required levels then any questions of liability will be decided based on the performance of individual members of the care team.
- 6.5** This agreed single system of Clinical Governance will be supported by physical interconnectedness between the new maternity building and the main SVUH clinical building. This means that obstetric care and acute care can be provided to patients without delays or barriers, and any required movement of Consultants, nurses and patients can be carried out quickly and efficiently, in a manner that places patient care ahead of any other objectives.
- 6.6** This agreed single system of Clinical Governance will also be supported by a campus-wide implementation of JCI accreditation, on a schedule to be agreed between SVHG and NMH. This accreditation provides internationally-recognised benchmarks in corporate and clinical governance that are applied consistently across the SVHG hospitals.

7.0 NMH / Governors / Chartered Trust

The “terms of agreement” I recommend envisages the transfer of significant statutory powers from the existing Governance / Trust / Charter to the proposed National Maternity Hospital at Elm Park DAC (limited by shares).

There is however, considerable efficacy in retaining certain beneficial and educational activities undertaken by the Trust under the terms of the Charter and its legal identity, mission and ethos.

Retained activities of the Trust (or a Body specifically incorporated in succession to the Trust) should relate to;

- Nomination of Directors to the Board of the “National Maternity Hospital at Elm Park DAC (limited by shares)”
- Advisory and Educational role on the development of maternity services.
- Contribution to and membership of professional Bodies.
- Bursaries.
- Fund Raising.
- Teaching and Research.
- Academic and international links
- Involvement of Community Groups.
- Nomination of the Master for appointment by the “National Maternity Hospital at Elm Park DAC (limited by shares)”.

8.0 Co-Related and Ancillary Matters

A number of issues were raised during the course of the negotiations which related to matters directly pertaining to the building of the new hospital, information sharing and potential SLAs which may be required in the future.

I have addressed these as follows;

8.1 Project Design, Procurement and Construction

The project will proceed on the basis of the agreed design and brief, which is reflected in the current scheme design forming the basis of the SID planning application.

The role of St. Vincent's as host hospital will be recognised, particularly in relation to the likely impact on hospital activity during construction. In order to minimise any potential disruption to service delivery, mechanisms and processes will be agreed and implemented and these will be captured in the "Licence to Build". This will describe the structures, protocols and protective measures which will be put in place for SVUH to have an appropriate involvement in the construction and commissioning work of the project, as per the agreed brief and scheme design.

The identified additional car park facilities, required to support the relocation of the maternity hospital to the Elm Park Campus, will be funded from the project budget on the basis of equitable access, with such arrangements being described within the Grant Agreement.

All normal project costs will be borne by HSE as principal funder. It is intended that no additional costs to SVUH will result from the project.

The cost of providing catering facilities and appropriate clinical supports will be met by the HSE as per the agreed brief and scheme design in the context of equitable access, with such arrangements being described in the Grant Agreement.

The HSE is the Contracting Authority and therefore carries the risks associated with construction/commissioning/equipment for the project.

8.2 Information Sharing

The parties have agreed that various information regarding private clinical practice and arrangements will be shared at Senior Executive/ Consultant level in regard to the respective hospitals so as to provide for transparency on the specific roles and purposes of such entities and the relationship of these arrangements with the public hospital.

8.3 Ongoing "Oversight"

The parties have advanced the prospect of the continuing involvement of the Mediator in supporting / overseeing the;

- SVUH / NMH at Elm Park DAC Shared Services Agreement.
- Transfer of Undertakings (staff) to the new Designated Company.
- Delivery of the Agreement.

This proposal should be evaluated in the context of where such involvement is necessary at any particular stage and with the consent of the Minister/ Department of Health.

9.0 Drafting of Final Agreement and Understandings

It will be necessary for the appropriate legal mechanisms to be put in place regarding The National Maternity Hospital at Elm Park DAC (limited by shares) – structure, objectives, role and powers.

I will request the Department of Health to sanction whatever independent legal services which may be necessary for this purpose or to utilise the legal services of the Department / State in this regard.

Kieran Mulvey

Mediator

November 21st 2016