



An tSeirbhís Náisiúnta Scagthástála  
National Screening Service

Contract for the provision  
of cervical screening services  
as part of the  
National Cervical Screening Programme



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**THIS CONTRACT** is made **BETWEEN**

- (1) **THE HEALTH SERVICE EXECUTIVE (HSE) NATIONAL SCREENING SERVICE (NSS)** (the “**HSE/NSS**”); and
- (2) **THE CLINIC IN A PRIMARY CARE SETTING** (the “**Clinic**”).

## **BACKGROUND**

- (A) The HSE National Screening Service (NSS) is part of the Health and Wellbeing Division of the Health Service Executive (HSE) and encompasses BreastCheck – The National Breast Screening Programme, CervicalCheck – The National Cervical Screening Programme, Bowelscreen – The National Bowel Screening Programme and Diabetic RetinaScreen – The National Diabetic Retinal Screening Programme.
- (B) The HSE/NSS wishes to engage Medical Directors to carry out cervical screening tests in the Primary Care Setting on Eligible Clients and to submit those tests for screening to a laboratory (or laboratories) designated by the HSE/NSS.
- (C) The Clinic and its Medical Director have represented to the HSE/NSS that they (and any person such as locum doctors, nurses acting under his or her supervision and control in carrying out tests pursuant to this Contract) are fully registered with an appropriate professional body, have the Requisite Insurances in place and are competent to supply the Cervical Screening Services.
- (D) In reliance upon these representations and the Medical Director's skill, knowledge and expertise in the practice of general medicine, the HSE/NSS wishes to engage the Clinic in accordance with the terms and subject to the conditions set out below and the Clinic accepts this engagement.

## IT IS HEREBY AGREED AS FOLLOWS:

### 1. Definitions and Interpretation

1.1 In this Contract (including the recitals above) the following words and phrases shall have the following meanings unless the context requires otherwise:

**“Cervical Screening Form”** means a form (in a format prescribed by the HSE/NSS) to be completed in respect of (and signed by) an Eligible Client in order to participate in the Programme;

**“Cervical Screening Service”** means a cervical screening service to be provided by the Clinic’s Medical Director (and/or Qualified Persons registered with the Medical Director) in accordance with the terms of this Contract (including NSS Guidelines for Quality Assurance in Cervical Screening) comprising essentially the following elements:

- the conduct of a Screening Test and the taking of a Sample from an Eligible Client; and
- the provision of the Screening Test Sample to a Designated Laboratory’s collection point in Ireland, and
- providing the Screening Test results to Eligible Clients and (where necessary) providing follow up and counselling services to Eligible Clients; and
- (where necessary) the referral of Eligible Clients to other medical practitioners, or to colposcopy services,
- and any other services agreed by the Parties from time to time;

**“Confidential Information”** means any information disclosed by one party to the other party pursuant or in relation to this Contract in any form that is marked “Confidential,” “Company Secret,” or disclosed under circumstances that reasonably indicate that the information is confidential. Confidential Information may also include information disclosed orally by one party to the other party pursuant to this Contract under circumstances that reasonably indicate that the information is confidential;

**“Contract”** means this agreement and any schedules or appendices thereto;

**“Designated Laboratory”** means such laboratory or laboratories as may be designated by the HSE/NSS from time to time to process Screening Test Samples taken pursuant to this Contract;

**“Eligible Client”** means any woman, resident in Ireland, who meets the age and screening history criteria of the published Eligibility Framework for Cervical Screening and who attends with a Medical Director (or a Qualified Person) registered with the screening programme either at the invitation of the HSE/NSS or at such permitted intervals as may be advised by the HSE/NSS to the Clinic in accordance with Programme policy;

**“Fee”** means the fee referred to in clause 6.1;

“**Good Medical Practice**” means the exercise of that degree of skill, diligence, prudence and foresight which would ordinarily be expected from a skilled and experienced Medical Practitioner engaged in providing services similar to the Cervical Screening Services;

“**IMO**” means the Irish Medical Organisation;

“**Ireland**” means the island of Ireland excluding Northern Ireland;

“**National Cervical Screening Programme**” or the “**Programme**” means a national population based cervical screening programme operated by the National Screening Service including the following elements: a population register, a system for inviting women to make appointments for screening and/or issuing direct appointments, contracts with doctors and clinics for direct access by eligible women, designated accredited sample analysis laboratories, a screening results/history register, a referral pathway for colposcopy and further treatment, quality assurance and audit processes, marketing and screening promotion, public information materials, a national screening information line, programme performance evaluation and analysis, and an annual report;

“**NSS Guidelines for Quality Assurance in Cervical Screening**” means the manual produced through a collaborative process undertaken between representatives of each step of the cervical screening process: Programme Administration, Cervical Screening settings including Primary Care, Cytopathology, HPV Testing, Colposcopy and Histopathology; it is equivalent in meaning to the NCSS Guidelines for Quality Assurance in Cervical Screening;

“**Parties**” means the HSE/NSS and the Clinic and ‘**Party**’ shall be construed accordingly;

“**Primary Care Setting**” means the setting within a health care system (usually in the patient’s own community) in which the first contact with a health professional occurs and excludes secondary care equivalent services;

“**Professional Services Withholding Tax**” means a tax deducted from payments made by certain bodies in respect of professional services. Professional Services, under the Taxes Consolidation Act 1997, includes a service of a medical, dental, pharmaceutical, optical, aural or veterinary nature. The rate at which Professional Services Withholding Tax is deducted is the standard rate of income tax in force at the date on which the payment is made;

“**Qualified Person**” means a person listed as such on a Registration Form by the Medical Director and deemed by the Medical Director to be suitable, competent and qualified to carry out Cervical Screening Tests under the Programme;

“**Registration Form**” means the registration form completed and signed by the Clinic (Medical Director and Clinic Manager) in order to enter this Contract and participate in the Programme;

“**Requisite Insurances**” means those insurances referred to in Clauses 8 and 9;

“**Screening Test Sample**” means a liquid based cytology sample taken by a

Medical Director or a Qualified Person in the course of a Cervical Screening Test;

“**Screening Test**” means a cervical screening test carried out by a Medical Director or a Qualified Person pursuant to this Contract and in accordance with NSS Guidelines for Quality Assurance in Cervical Screening;

“**Working Days**” means any day other than a Saturday or Sunday or bank or public holiday in Ireland; and

“**Year**” means a period of twelve calendar months.

## 1.2 In this Contract:

- (a) unless the context otherwise requires all references to a particular Clause, paragraph or Appendix shall be a reference to that Clause, paragraph or Appendix, in or to this Contract as the same may be amended from time to time pursuant to this Contract;
- (b) a table of contents and headings are inserted for convenience only and shall be ignored in construing this Contract;
- (c) unless the contrary intention appears words importing the masculine gender shall include the feminine and vice versa and words in the singular include the plural and vice versa;
- (d) unless the contrary intention appears words denoting persons shall include any individual, partnership, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality;
- (e) reference to the words “include” or “including” are to be construed without limitation to the generality of the preceding words; and
- (f) reference to any statute or regulation includes any modification or re-enactment of that statute or regulation.

## 2. Scope and Term

- 2.1 The HSE/NSS hereby appoints the Clinic to provide Cervical Screening Services for the term of this Contract in a Primary Care Setting. The HSE/NSS reserves the right to appoint other medical practitioners to provide Cervical Screening Services also. The Clinic hereby agrees to provide the Cervical Screening Services in consideration for payment of the Fees and subject to the terms and conditions set out in this Contract.
- 2.2 The Cervical Screening Services may only be provided by the Medical Director or, on the Medical Director’s behalf, by other Qualified Persons. It is the responsibility of the Medical Director to ensure that all Qualified Persons are registered with a relevant professional body (which in the case of doctors, shall be the Irish Medical

Council and in the case of nurses, shall be the Nursing and Midwifery Board of Ireland) and have the requisite insurance cover in accordance with Clauses 8 and 9.

- 2.3 This Contract shall come into force on the date of receipt by the Clinic of a copy of the Acceptance of Contract Form duly signed by a representative of the HSE/NSS and shall, unless terminated earlier in accordance with the provisions herein, continue in force until 31 July 2020. Nothing in this Contract precludes the renewal of this Contract or its replacement by a successor or alternative contract although any such renewal or replacement shall be subject to the approval of the HSE/NSS and of the Clinic.

### **3. Principal Obligations of the HSE/NSS**

The HSE/NSS shall:

- 3.1 (at its own expense) procure or provide to the Clinic disposable speculae and Screening Test kits, each comprising a vial, brush and packaging, solely for the use in provision of Cervical Screening Services under this Contract and not for any other purpose;
- 3.2 provide the Clinic with relevant literature (including Cervical Screening Forms) in relation to the Programme, for distribution to Eligible Clients and potential Eligible Clients;
- 3.3 facilitate (at the Clinic's expense) cervical screening training to the Medical Director and Qualified Persons who request same;
- 3.4 list the Medical Director (and Qualified Persons registered and indicated by the Clinic) and relevant contact and access details (as provided on the Registration Form or as otherwise notified to the HSE/NSS) on a website operated by the HSE/NSS;
- 3.5 appoint an Access Officer as described in the Disability Act, 2005 to facilitate cervical screening services for women with special needs;
- 3.6 invite Eligible Clients to participate in the Programme, both initially, and thereafter, at intervals recommended by the Designated Laboratory and the HSE/NSS;
- 3.7 use reasonable endeavours to procure the return of results from the Designated Laboratory to the Medical Director in a timely fashion; and
- 3.8 use reasonable endeavours to procure the return of results from the Designated Laboratory to the Medical Practitioner in electronic format via the National Healthlink system; and
- 3.9 provide access to support for the Clinic and the Medical Director to facilitate a self assessment of adherence to quality standards described in NSS Guidelines for Quality Assurance in Cervical Screening.



#### **4. Principal Obligations of the Clinic and Medical Director**

##### 4.1 The Clinic and Medical Director agree:

- (a) to accommodate any Eligible Client by arranging an appointment for Cervical Screening Services with the Medical Director or a Qualified Person as early as reasonably possible;
- (b) to provide the Cervical Screening Services (and ensure that any Qualified Persons provides the Cervical Screening Services) in strict accordance with the terms of this Contract and in particular, but without limiting the foregoing, with NSS Guidelines for Quality Assurance in Cervical Screening and Good Medical Practice.
- (c) that the Medical Director or Qualified Person shall ensure that every reasonable effort is made to manage the screening expectations of Eligible Clients by understanding and explaining both the benefits and limitations of cervical screening;
- (d) that the Medical Director or Qualified Person shall ensure that each Eligible Client provides her informed consent in accordance with Programme policy regarding their participation in the Programme for every Screening Test;
- (e) that the Medical Director or Qualified Person shall ensure that all identifying details to accurately identify the Eligible Client and all relevant information related to her screening history are recorded at the time of the Screening Test on the Cervical Screening Form;
- (f) to provide Screening Test Samples and associated Cervical Screening Forms only to such Designated Laboratory's or Designated Laboratories' collection point(s) in Ireland as the HSE/NSS may determine from time to time and within 5 Working Days of conducting the Screening Test and to cooperate fully with any such laboratory or laboratories;
- (g) that, on receipt of results from a Designated Laboratory which recommend the referral of an Eligible Client to a colposcopy clinic, the Medical Director or Qualified Person shall refer that Eligible Client in a timely manner in accordance with NSS Guidelines for Quality Assurance in Cervical Screening;
- (h) that, in conducting the Screening Tests, the Medical Director and all Qualified Persons shall comply with any relevant EU sterilisation standards for equipment;
- (i) to ensure that the results of Screening Tests and any management recommendations offered by a Designated Laboratory are provided to Eligible Clients and followed up by the Medical Director and/or a Qualified Person and Eligible Clients are given such advice and guidance as they may require;
- (j) where the Medical Director and/or a Qualified Person is advised by a Designated Laboratory that an Eligible Client requires further investigation, that

Medical Director or Qualified Person must make every effort to contact that person and advise them as to the further investigation that is required as soon as possible;

- (k) to provide counselling to an Eligible Client, if required by her, following receipt of Screening Test results;
- (l) to inform the HSE/NSS of those women in the target screening population who would meet the criteria to be excluded from the Programme (i.e. death or absence of cervix etc), as advised by the HSE/NSS from time to time, and inform the HSE/NSS of the reason for a woman's exclusion, if that woman consents to the HSE/NSS being given such information. Such information will be provided in accordance with relevant data protection requirements;
- (m) to act (and ensure that any Qualified Person acts) in a thoroughly competent and efficient manner and in the best interests of Eligible Clients, the HSE/NSS and the Programme in general and so as to give any such persons the full and complete benefit of the Medical Director's (or Qualified Person's) clinical experience and expertise;
- (n) to ensure that the Cervical Screening Services are provided in accordance with any reasonable safety and security requirements of the HSE/NSS, as notified to the Clinic from time to time;
- (o) to generally promote the Programme within the primary care area and population;
- (p) that the Medical Director or Qualified Person acknowledges that, from initial invitation, through screening and treatment every individual involved in every step of the screening process must adhere to the highest standards set by the Programme and that whereas no screening test is 100 per cent accurate, the parties must ensure that the service delivered to women in Ireland is one in which they can have confidence;
- (q) that the Medical Director or Qualified Person will respond to, investigate where necessary and provide information requested by the HSE/NSS as part of the cervical cancer clinical audit process within the quality assurance framework of the Programme;
- (r) to inform the HSE/NSS promptly and in writing of any of the following:
  - (i) the retirement of the Medical Director or any Qualified Person;
  - (ii) the Clinic, Medical Director or any Qualified Person ceasing to provide Cervical Screening Services;
  - (iii) the Clinic, Medical Director or any Qualified Person's failure to obtain or loss of:
    - (A) any of the Requisite Insurances; and/or
    - (B) full registration with a relevant professional body; and

- (iv) any complaints, claims or legal correspondence of which the Clinic, Medical Director or Qualified Person receives notice and which relate to the performance of the Cervical Screening Services;
- (s) to provide all personnel, equipment, facilities, materials, services and other resources necessary or appropriate for the safe, full and proper performance of the Cervical Screening Services in accordance with NSS Guidelines for Quality Assurance in Cervical Screening;
- (t) that prior to commencing cervical screening services as part of the Programme, new contracting Medical Practitioners and new registering Qualified Persons should undertake and complete a module on cervical screening provided by the HSE/NSS (online, e-learning-based);
- (u) to endeavour to attend a CervicalCheck screening training course during the first three to five years following contract start/registration (NSS Guidelines for Quality Assurance in Cervical Screening) and procure the attendance of Qualified Persons on clinical updates and training programmes approved by the HSE/NSS (at his/her own expense);
- (v) at the request of the HSE/NSS, to provide the HSE/NSS promptly with evidence that the Medical Director and any Qualified Persons are fully registered with the relevant professional body and all Requisite Insurances are in place;
- (w) to comply with all relevant laws and statutory regulations relating to the provision of the Cervical Screening Services, including without limitation all relevant health and safety and data protection legislation;
- (x) to ensure that Qualified Persons are made aware of and comply with all relevant provisions of this Contract; and
- (y) to remain registered with the Irish Medical Council and to ensure that all Qualified Persons registered by the Medical Director remain registered with the Irish Medical Council or Nursing and Midwifery Board of Ireland, as appropriate.

4.2 The Clinic and the Medical Director recognise the importance for the HSE/NSS to be forewarned of any developments that may have an adverse effect on their ability to meet obligations under this Contract. The Clinic shall promptly notify the HSE/NSS in writing of any changes to its business or practice which the Clinic reasonably believes would affect materially the provision of the Cervical Screening Services.

4.3 The Clinic shall at all times during the term of this Contract comply with all reasonable requests of the HSE/NSS or the HSE/NSS authorised agents or nominees relating to the Clinic and Medical Director's obligations under this Contract.

- 4.4 In the event that the annual unsatisfactory or inadequate reporting rate of the Medical Director or Qualified Person under this Contract exceeds that established in the NSS Guidelines for Quality Assurance in Cervical Screening, the HSE/NSS may require the Medical Director or Qualified Person to undergo remediation and/or retraining (at the Clinic's cost).

## **5. Information, Audit and Confidentiality**

- 5.1 The Clinic shall keep adequate records of all matters relating to the Cervical Screening Services and the Clinic shall on the request of the HSE/NSS supply copies of such records to the HSE/NSS within fourteen (14) days of receipt of such a request. Such information will be supplied in accordance with relevant data protection requirements.
- 5.2 By virtue of the Cervical Screening Services supplied under this Contract, each party may have access to and/or otherwise become aware of Confidential Information of the other party. The parties agree that any Confidential Information obtained from, or relating to, the other party, its servants or agents, is and shall remain the property of such party. The parties shall treat as confidential and neither party (nor its staff, agents or sub-contractors) shall disclose, or use, the Confidential Information of the other party, except to the extent necessary for the performance of this Agreement.
- 5.3 The provisions of clause 5.2 shall not apply to Confidential Information which:
- (a) is in or becomes part of the public domain (otherwise than by breach of this Contract);
  - (b) was in the lawful possession of the recipient prior to disclosure under this Contract and was not unlawfully obtained, either directly or indirectly;
  - (c) is lawfully disclosed to the recipient by a third party, without restriction on disclosure; or which is independently developed by the recipient, without dependence on, or reference to, such Confidential Information;
  - (d) is required to be disclosed by law or final mandatory order of a court or other competent authority, provided always that, the party whose Confidential Information is to be disclosed is promptly notified of such a requirement and afforded a reasonable opportunity to seek relief therefrom, where available;
  - (e) is required to be disclosed to the parties professional advisors, provided that such disclosure is to the extent necessary for such advisors to carry out their professional duties and upon conditions of confidentiality, no less onerous than set out in this clause 5.2; or
  - (f) is released from the provisions of clause 5.2, by the prior written consent of the party to which it relates.

## 6. Payment

- 6.1 With effect from 1 Nov 2010 the HSE/NSS shall pay the Clinic a single fee of forty nine euro and ten cents (€49.10) per Eligible Client (the "Fee") in consideration for the Cervical Screening Service (including, where necessary, all elements of the definition thereof – i.e. testing, providing sample to Designated Laboratory, advising the Eligible Client of screening results, following up and counselling the Eligible Client and referring the Eligible Client to colposcopy services if recommended) being provided to an Eligible Client by the Clinic's Medical Director and/or any Qualified Person acting under his or her supervision and control, in accordance with this Contract.
- 6.2 Changes to the Fee provided in 6.1 may be made from time to time by order of the Government (Minister). Any changes in the Fee amount will be communicated to the Clinic.
- 6.3 The Clinic shall not charge or impose any additional fee on the Eligible Client for the Cervical Screening Service.
- 6.4 The HSE/NSS shall not pay any Fee where the Cervical Screening Service is provided to a woman who is not an Eligible Client (for example, where she is tested or seeks to be tested otherwise than at the invitation of the HSE/NSS or at permitted intervals advised by the HSE/NSS in accordance with Programme policy in the published Eligibility Framework for Cervical Screening).
- 6.5 Fees shall be paid to the Clinic at monthly intervals in arrears following notification to the HSE/NSS by the Designated Laboratory that it has received a Screening Test Sample (taken by the Clinic's Medical Director or a Qualified Person) and a Cervical Screening Form relating to an Eligible Client.
- 6.6 Payment shall be made in euro by electronic transfer to the bank account identified by the Clinic on the Registration Form (or otherwise notified by the Clinic in writing).
- 6.7 Payment by the HSE/NSS shall be without prejudice to any claims or rights which the HSE/NSS may have against the Clinic and shall not constitute any admission by the HSE/NSS as to the performance by the Clinic of its obligations hereunder.
- 6.8 The Clinic shall provide a tax clearance certificate to the HSE/NSS in the event that payments under this Contract total €10,000 or more in any 12 month period.
- 6.9 Professional Services Withholding Tax shall be deducted at the standard rate from any payments made by the HSE/NSS pursuant to this Contract unless proof of exemption is obtained.

## **7. Representations, Warranties and Indemnity**

7.1 The Clinic and Medical Director represent and warrant to the HSE/NSS that:

- (a) they have full capacity, expertise and all necessary authorisations, licences and consents to enter into and to perform the Cervical Screening Services and other duties and obligations in accordance with this Contract;
- (b) the Medical Director is (and all Qualified Persons are) experienced in providing services comparable in type, scope, complexity and purpose to the Cervical Screening Services and that he/she has exercised and will continue to exercise in the performance of the Cervical Screening Services that standard of skill, care and diligence reasonably expected of a properly qualified medical practitioner experienced in providing services comparable in type, scope, complexity and purpose to the Cervical Screening Services;
- (c) the Medical Director (and all Qualified Persons) shall perform the Cervical Screening Services in accordance with: (i) NSS Guidelines for Quality Assurance in Cervical Screening and (ii) Good Medical Practice;
- (d) the Medical Director (and each Qualified Person) is fully registered with his/her relevant professional body; and
- (e) the Clinic and Medical Director (and each Qualified Person) have or are covered by the Requisite Insurances.

7.2 The Clinic hereby agrees to defend and indemnify the HSE/NSS from any loss, liability, claim, or damage related to a claim against the HSE/NSS arising directly or indirectly as a result of any breach by the Clinic, Medical Director or any Qualified Person of any of the provisions of this Contract.

## **8. Insurance and Limitation of Liability**

8.1 The Clinic and Medical Director shall at all times, for the purposes of this Contract (and for 3 years thereafter in respect of personal injury claims only and for 6 years thereafter in respect of contract claims only), maintain appropriate professional indemnity insurance with an indemnity insurance provider approved by the HSE/NSS. The Clinic (or Medical Director or any Qualified Person or the Clinic's employees, servants or agents) shall not be liable for any loss, damage, or injury or breach of contract or breach of statutory duty arising from or in connection with any negligent act or default or omission or breach of contract or from breach of statutory duty on the part of the Designated Laboratory (or a company engaged for the purposes of transporting the Screening Test Samples (if any)) or on the part of the HSE/NSS.

8.2 The HSE/NSS shall indemnify the Clinic in respect of any damages or costs arising from any claim or action by a third party and which arises directly from (a) any negligent act or default or omission of the HSE/NSS, its officers and

employees pursuant to this Contract or (b) any breach of this Contract by the HSE/NSS, provided that the HSE/NSS shall conduct all negotiations in relation to any such claim or action and the Clinic, Medical Director or any Qualified Person shall not enter into any negotiations to settle or compromise such claim or action without the written consent of the HSE/NSS but shall provide all reasonable assistance to the HSE/NSS in relation to such claim or action. For the avoidance of doubt, the HSE/NSS shall not be required to indemnify the Clinic for any loss, damage or injury arising from any acts, omissions or defaults (including negligent acts, omissions or defaults) or any breach of contract or duty (or statutory duty) of any other person whatsoever (including any Designated Laboratory or any company engaged for the purposes of transporting the Screening Test Samples (if any)).

8.3 In no event shall either party be liable to the other party in any manner, under any theory of liability, whether in contract, tort (including negligence), breach of warranty or other theory, for any indirect, consequential, incidental, exemplary, punitive, statutory or special damages, including, without limitation, lost profits and loss of data, regardless of whether such party was advised of or was aware of the possibility of such damages.

8.4 The limitations on liability set forth in this agreement shall not exclude or limit either party's liability for fraud or for death or for personal injury arising from its negligence or for any other damage to the extent the same may not be excluded or limited as a matter of law.

## 9. Insurance Details

9.1 The Clinic and/or Medical Director undertake(s) and agrees to take out and maintain the following insurances with insurers approved by the HSE/NSS during the term of this Contract:

(a) Employer's liability insurance for an amount not less than €12,600,000 per annum; and

(b) Public liability insurance for an amount not less than €2,600,000 per annum

(collectively, together with the insurance cover referred to in clause 8 above, the "**Requisite Insurances**").

9.2 Where Qualified Persons are not covered by the Professional Indemnity Insurances taken out by the Clinic and/or Medical Director, the Clinic shall procure that such Qualified Persons take out their own equivalent Professional Indemnity Insurances during the term of this Contract.

9.3 The Clinic shall use its best endeavours to ensure that any such Requisite Insurance policies do not include any terms or conditions to the effect that any liability must be discharged before being able to recover from the insurers.

- 9.4 The Clinic shall be liable to pay the full amount of any deductibles or excess amounts payable under any of the Requisite Insurance policies in the event of a claim pursuant to this Agreement.
- 9.5 Neither failure to comply nor full compliance with this clause 9 shall limit or relieve the Clinic of its liabilities, duties and obligations under this Contract.
- 9.6 The provisions of this Clause 9 shall survive the termination of this Contract for whatever reason.

## **10. Investigations and Disciplinary Proceedings**

- 10.1 Upon becoming aware of any complaints, claims or legal correspondence relating to the performance of the Cervical Screening Services, the Clinic shall immediately conduct a full and comprehensive internal investigation into such complaint, claim or legal correspondence. The HSE/NSS may appoint a formal investigation team to investigate any complaints, claims or legal correspondence relating to the Cervical Screening Services and the Clinic shall co-operate fully with any such team. The HSE/NSS may suspend the provision of the Cervical Screening Services for the duration of such investigation without liability or compensation to the Clinic, Medical Director or any Qualified Persons.
- 10.2 Where the HSE/NSS has reason to believe that the care or well-being of any Eligible Client is being or has been placed at risk or that the Clinic is in material breach of any provision of this Contract, the HSE/NSS may suspend the operation of this Contract with immediate effect to enable it to carry out such investigation as may be warranted in the circumstances. The HSE/NSS or such person as may be authorised by it shall notify the Clinic of such suspension and the reasons for it by registered post. The Clinic may make representations to the HSE/NSS within 21 days of such notification. If, after due consideration of such representations, the HSE/NSS is satisfied that an Eligible Client is or has been placed at risk or that the Clinic is in material breach of or has materially breached any provision of this Contract, the HSE/NSS may take any of the following actions (as it considers is appropriate):
- (a) issue a warning letter to the Clinic and Medical Director;
  - (b) require the Clinic to recoup to the HSE/NSS any overpayment or incorrect payment made to it;
  - (c) impose a temporary suspension of this Contract; or
  - (d) terminate this Contract forthwith by written notice.
- 10.3 Where a complaint has been made concerning the adequacy of the premises at which the Clinic provides Cervical Screening Services, the Clinic shall, on fourteen (14) days written notice, allow any suitably qualified representative of the HSE/NSS access to the Clinic's premises during normal business hours for the



purpose of carrying out a visit in connection with the provision of the Cervical Screening Services at those premises. The Clinic agrees that it shall provide, and shall ensure that the Medical Director, Qualified Persons and other personnel provide, all reasonable assistance to persons carrying out such visits.

- 10.4 If the Clinic is aggrieved by specific action taken against the Clinic by the HSE/NSS pursuant to this Contract the Clinic may (but shall not be obliged to) request the HSE/NSS to establish a panel, to be known as the 'Clinic's Appeals Tribunal', by writing to the HSE/NSS within 21 days of the date on which the action giving rise to the grievance occurred. In this event the Parties shall, as soon as practicable thereafter, convene a Clinic's Appeals Tribunal, which shall consist of:
- (a) one person nominated by the Clinic's representative body (for example, the IMO or any other representative body chosen by the Clinic) who may be an employee, servant or agent of that body or the Clinic;
  - (b) one person nominated by the HSE/NSS (who may be an employee, servant or agent of the HSE/NSS); and
  - (c) one person, who shall be agreed by the persons nominated under (a) and (b) above (or if they cannot agree, by the President of the Law Society of Ireland (or his nominee)) and who shall act as an independent Chairman of the Clinic's Appeals Tribunal.
- 10.5 The Clinic's Appeals Tribunal, if convened, shall hear the appeal by the Clinic, taking account of the views expressed by the Clinic and the HSE/NSS, and shall (based on the view of the majority of the members of the panel) recommend either endorsing, varying or rescinding the action of the HSE/NSS which has given rise to the appeal. Any such recommendation shall be final and binding on the Parties.
- 10.6 Clauses 5, 8, 9, 10 and 11 and any other clauses which expressly or impliedly survive the termination of this Contract shall remain in full force and effect following the termination of this Contract.
- 10.7 Termination of this Contract shall be without prejudice to any other rights or remedies a Party may be entitled to exercise in law and shall not affect any accrued rights or liabilities of either Party arising in any way out of this Contract as at the date of termination and, in particular but without limitation, the right to recover damages against the other Party.
- 10.8 Either Party may terminate this Contract provided that three (3) months written notice is given to the other Party.

## **11. Arbitration**

- 11.1 The Parties to this Contract shall seek to resolve any dispute between them arising out of or relating to this Contract, promptly, amicably and in good faith.
- 11.2 In the event that the Clinic does not wish to use the process referred to in

Clause 10.4, and the dispute cannot be resolved pursuant to clause 11.1, either Party may refer the matter to arbitration for full and final settlement. In this event, the Parties shall agree and appoint a suitable arbitrator (or in default of agreement and appointment within a reasonable period, by an arbitrator nominated by the President of the Law Society of Ireland (or his nominee)). The arbitration shall be held in Dublin, Ireland and the language of the arbitration shall be English. The arbitrator's decision shall be final and binding upon the Parties and the Arbitration Act 2010 shall apply.

11.3 The Clinic may if it so wishes be assisted by representatives during any dispute resolution process.

## **12. Assignment/Sub-contracting**

12.1 The Clinic shall not assign, transfer, sub-contract or in any other manner make over to any third party any benefit and/or burden of this Contract without the prior written consent of the HSE/NSS. For the avoidance of doubt and without prejudice to the foregoing, it is acknowledged and agreed that the Cervical Screening Services may be carried out by Qualified Persons.

## **13. General**

13.1 This Contract embodies and sets forth the entire Contract and understanding between the Parties and supersedes all prior oral or written contracts, understandings or arrangements relating to its subject matter. Neither of the Parties shall be entitled to rely on any understanding or arrangement which is not expressly set forth in this Contract.

13.2 This Contract shall not be amended, modified, varied or supplemented except in writing signed by the Parties, save that the HSE/NSS may, upon a recommendation from the Quality Assurance Committee, amend the NSS Guidelines for Quality Assurance in Cervical Screening and notify the Clinic and its Medical Director of any such amendment at any time.

13.3 No failure or delay on the part of either Party to exercise any right or remedy under this Contract shall be construed or operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy. The rights and remedies provided in this Contract are cumulative and are not exclusive of any rights or remedies provided by law.

13.4 Nothing in this Contract and no action taken by the Parties under this Contract shall constitute a partnership, association, joint venture or other co-operative entity between the Parties.

13.5 Any notice or other document to be given under this Contract shall be in writing and shall be deemed to have been duly given if left at or delivered by hand, or if sent by express courier, registered post with return receipt, facsimile transmission or electronic mail. Notices sent by express courier or registered

post shall be deemed to be served upon the business day following the day of despatch. Notices sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before 1600 hours on a business day, but otherwise on the next business day provided that confirmation is received within three business days of despatch of the facsimile. Notices sent by electronic mail shall be deemed to be served on the day of transmission if transmitted before 1600 hours on a business day but otherwise on the next business day. In all other cases, notices and other communications will be deemed to have been served on the day they are actually received. Unless the HSE/NSS otherwise advises notices to the HSE/NSS should be sent to the Head of Screening, National Screening Service.

- 13.6 If any provision of this Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 13.7 This Contract shall be governed by and construed in accordance with the laws of Ireland and, subject to the provisions of clause 11, shall be subject to the exclusive jurisdiction of the courts of Ireland.

