



National
Cancer
Screening
Service

Contract for the provision
of smearing 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) (HSE/NSS); and
- (2) **THE GENERAL PRACTITIONER IN A PRIMARY CARE SETTING** (the “**General Practitioner**”).

BACKGROUND

- (A) The HSE/NSS is part of the HSE Directorate of Health and Wellbeing, it 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 general practitioners to carry out cervical smear 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 General Practitioner has represented to the HSE/NSS that he/she (and any person such as locum doctors, nurses and assistants acting under his or her supervision and control in carrying out tests pursuant to this Contract) is fully registered with an appropriate professional body, has the Requisite Insurances in place and is competent to supply the Smear Services.
- (D) In reliance upon these representations and the General Practitioner’s skill, knowledge and expertise in the practice of general medicine, the HSE/NSS wishes to engage the General Practitioner in accordance with the terms and subject to the conditions set out below and the General Practitioner 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 Cytology 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;

“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 collect Smear Samples taken pursuant to this Contract;

“Eligible Client” means any woman, resident in Ireland, aged between 25 and 60 (inclusive) who consents to take part in the Programme by signing a Cervical Cytology Form and who attends with the General Practitioner (or a Qualified Person) either at the invitation of the HSE/NSS or at such permitted intervals as may be advised by the HSE/NSS to the General Practitioner 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 General Practitioner engaged in providing services similar to the Smear 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 screening register, a system for inviting women to make appointments for screening and/or issuing direct appointments, contracts with smear takers for direct access by eligible women, designated accredited cytology laboratories, a clinical results/history register, a referral pathway for colposcopy and cytology, a referral pathway for 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, Primary Care, Cytopathology, 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 General Practitioner 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 General Practitioner and deemed by the General Practitioner to be suitable, competent and qualified to carry out Smear Tests under the Programme;

“Registration Form” means the registration form completed by the General Practitioner in order to enter this Contract and participate in the Programme;

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

“Smear Service” means a cervical smearing service to be provided by the General Practitioner (and/or Qualified Persons) 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 Smear Test and the taking of a Smear Sample from an Eligible Client; and
- the provision of the Smear Sample to a Designated Laboratory’s collection point in Ireland, and
- providing the Smear 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 general practitioners,

and any other services agreed by the Parties from time to time;

“Smear Sample” a liquid based cytology sample taken by a General Practitioner or a Qualified Person in the course of a Smear Test;

“Smear Test” means a cervical smear test carried out by a General Practitioner 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 General Practitioner to provide Smear 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 Smear Services also. The General Practitioner hereby agrees to provide the Smear Services in consideration for payment of the Fees and subject to the terms and conditions set out in this Contract.
- 2.2 The Smear Services may only be provided by the General Practitioner or, on the General Practitioner's behalf, by other Qualified Persons. It is the responsibility of the General Practitioner 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 An Bord Altranais) 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 General Practitioner 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 2017. Nothing in this Contract precludes the renewal of this Contract or its replacement by a successor contract although any such renewal or replacement shall be subject to the approval of the HSE/NSS.

3 Principal Obligations of the HSE/NSS

The HSE/NSS shall:

- 3.1 (at its own expense) procure or provide to the General Practitioner disposable speculae and Smear Test kits, each comprising a vial, brush and packaging, solely for the use in provision of Smear Services under this Contract and not for any other purpose;
- 3.2 provide the General Practitioner with relevant literature (including Cervical Cytology Forms) in relation to the Programme, for distribution to Eligible Clients and potential Eligible Clients;
- 3.3 facilitate (at the General Practitioner's expense) cervical smear test training to General Practitioners and Qualified Persons who request same;
- 3.4 list the General Practitioner (and Qualified Persons if desired by the General Practitioner) 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 smearing 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 General Practitioner in a timely fashion; and
- 3.8 provide access to support for the contracted doctor 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 General Practitioner

- 4.1 The General Practitioner agrees:
 - (a) to accommodate any Eligible Client by arranging an appointment for Smear Services with the General Practitioner or a Qualified Person as early as reasonably possible;
 - (b) to provide the Smear Services (and ensure that any Qualified Persons provides the Smear 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. The parties agree and acknowledge that the guidelines and standards developed were thoroughly evaluated and approved by an international panel of experts in the area of cervical screening. Quality assurance is the foundation on which a successful programme is built. 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 undoubted confidence.

- (c) that the General Practitioner or Qualified Person shall ensure that each Eligible Client signs a Cervical Cytology Form regarding their participation in the Programme and all relevant information is completed;
- (d) to provide Smear Samples 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 Smear Test and to cooperate fully with any such laboratory or laboratories;
- (e) that, on receipt of results from a Designated Laboratory which recommends the referral of an Eligible Client to a colposcopy clinic, the General Practitioner or Qualified Person shall refer that Eligible Client in a timely manner to a clinic designated by the HSE/NSS in accordance with NSS Guidelines for Quality Assurance in Cervical Screening;
- (f) that, in conducting the Smear Tests, he/she and all Qualified Persons shall comply with any relevant EU sterilisation standards for equipment;
- (g) to ensure that the results of Smear Tests and any management recommendations offered by a Designated Laboratory are provided to Eligible Clients and followed up by the General Practitioner and/or a Qualified Person and Eligible Clients are given such advice and guidance as they may require;
- (h) where the General Practitioner and/or a Qualified Person is advised by a Designated Laboratory that an Eligible Client requires further investigation, that General Practitioner 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;
- (i) to provide counselling to an Eligible Client, if required by her, following receipt of Smear Test results;
- (j) to inform the HSE/NSS of those women in the target age group (25-60 years) 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;
- (k) 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 General Practitioner's (or Qualified Person's) clinical experience and expertise;

- (l) to ensure that the Smear Services are provided in accordance with any reasonable safety and security requirements of the HSE/NSS, as notified to the General Practitioner from time to time;
- (m) to generally promote the Programme within his or her primary care area;
- (n) to inform the HSE/NSS promptly and in writing of any of the following:
 - (i) the retirement of the General Practitioner or any Qualified Person;
 - (ii) the General Practitioner or any Qualified Person ceasing to provide Smear Services;
 - (iii) the General Practitioner's 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 General Practitioner or Qualified Person receives notice and which relate to the performance of the Smear Services;
- (o) to provide all personnel, equipment, facilities, materials, services and other resources necessary or appropriate for the safe, full and proper performance of the Smear Services in accordance with NSS Guidelines for Quality Assurance in Cervical Screening;
- (p) to endeavour to attend a CervicalCheck smeartaker 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);
- (q) at the request of the HSE/NSS, to provide the HSE/NSS promptly with evidence that the General Practitioner and any Qualified Persons are fully registered with the relevant professional body and all Requisite Insurances are in place;
- (r) to comply with all relevant laws and statutory regulations relating to the provision of the Smear Services, including without limitation all relevant health and safety and data protection legislation;
- (s) to ensure that Qualified Persons are made aware of and comply with all relevant provisions of this Contract; and
- (t) to remain registered with the Irish Medical Council.

4.2 The General Practitioner recognises the importance for the HSE/NSS to be forewarned of any developments that may have an adverse effect on his/her ability to meet obligations under this Contract. The General Practitioner shall promptly notify the HSE/NSS in writing of any changes to its business or practice which the General Practitioner reasonably believes would affect materially the provision of the Smear Services.

- 4.3 The General Practitioner 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 General Practitioner's obligations under this Contract.
- 4.4 In the event that the annual unsatisfactory or inadequate reporting rate of the General Practitioner 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 General Practitioner or Qualified Person to undergo remediation and/or retraining (at the General Practitioner's cost).

5 Information, Audit and Confidentiality

- 5.1 The General Practitioner shall keep adequate records of all matters relating to the Smear Services and the General Practitioner 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 Smear 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 General Practitioner a single fee of forty nine euro and ten cents (€49.10) per Eligible Client (the “Fee”) in consideration for the Smear 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 that General Practitioner 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 General Practitioner.
- 6.3 The General Practitioner shall not charge or impose any additional fee on the Eligible Client for the Smear Service.
- 6.4 The HSE/NSS shall not pay any Fee where the Smear 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).
- 6.5 Fees shall be paid to the General Practitioner at monthly intervals in arrears following notification to the HSE/NSS by the Designated Laboratory that it has received a Smear Sample (taken by the General Practitioner or a Qualified Person) and a Cervical Cytology Form relating to an Eligible Client.
- 6.6 Payment shall be made in euro by electronic transfer to the bank account identified by the General Practitioner on the Registration Form (or otherwise notified by the General Practitioner 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 General Practitioner and shall not constitute any admission by the HSE/NSS as to the performance by the General Practitioner of its obligations hereunder.
- 6.8 The General Practitioner 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 General Practitioner represents and warrants to the HSE/NSS that:
- (a) he/she has full capacity, expertise and all necessary authorisations, licences and consents to enter into and to perform the Smear Services and other duties and obligations in accordance with this Contract;
 - (b) he/she is (and all Qualified Persons are) experienced in providing services comparable in type, scope, complexity and purpose to the Smear Services and that he/she has exercised and will continue to exercise in the performance of the Smear Services that standard of skill, care and diligence reasonably expected of a properly qualified general practitioner experienced in providing services comparable in type, scope, complexity and purpose to the Smear Services;
 - (c) he/she (and all Qualified Persons) shall perform the Smear Services in accordance with: (i) NSS Guidelines for Quality Assurance in Cervical Screening and (ii) Good Medical Practice;
 - (d) he/she (and each Qualified Person) is fully registered with his/her relevant professional body; and
 - (e) he/she (and each Qualified Person) has or is covered by the Requisite Insurances.
- 7.2 The General Practitioner 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 General Practitioner or any Qualified Person of any of the provisions of this Contract.

8 Insurance and Limitation of Liability

- 8.1 The General Practitioner 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 General Practitioner (or any Qualified Person or the General Practitioner'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 Smear Samples (if any)) or on the part of the HSE/NSS.
- 8.2 The HSE/NSS shall indemnify the General Practitioner 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 General Practitioner 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 General Practitioner 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 Smear 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 General Practitioner undertakes 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 General Practitioner, the General Practitioner shall procure that such Qualified Persons take out their own equivalent Professional Indemnity Insurances during the term of this Contract.
- 9.3 The General Practitioner shall use his/her 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 General Practitioner or the Qualified Person (as the case may be) 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 General Practitioner of his/her 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 Smear Services, the General Practitioner 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 Smear Services and the General Practitioner shall co-operate fully with any such team. The HSE/NSS may suspend the provision of the Smear Services for the duration of such investigation without liability or compensation to the General Practitioner 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 General Practitioner 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 General Practitioner of such suspension and the reasons for it by registered post. The General Practitioner 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 General Practitioner 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 General Practitioner;
 - (b) require the General Practitioner to recoup to the HSE/NSS any overpayment or incorrect payment made to him or her;
 - (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 General Practitioner or any Qualified Person provides Smear Services, the General Practitioner shall, on fourteen (14) days written notice, allow any suitably qualified representative of the HSE/NSS access to the General Practitioner's premises during normal business hours for the purpose of carrying out a visit in connection with the provision of the Smear Services at those premises. The General Practitioner agrees that he/she shall provide, and shall ensure that Qualified Persons and other personnel provide, all reasonable assistance to persons carrying out such visits.

- 10.4 If the General Practitioner is aggrieved by specific action taken against him/her by the HSE/NSS pursuant to this Contract he/she may (but shall not be obliged to) request the HSE/NSS to establish a panel, to be known as the 'General Practitioner'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 General Practitioner's Appeals Tribunal, which shall consist of:
- (a) one person nominated by the General Practitioner's representative body (for example, the IMO or any other representative body chosen by the General Practitioner) who may be an employee, servant or agent of that body;
 - (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 General Practitioner's Appeals Tribunal.
- 10.5 The General Practitioner's Appeals Tribunal, if convened, shall hear the appeal by the General Practitioner, taking account of the views expressed by the General Practitioner 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 General Practitioner 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 General Practitioner may if he/she so wishes, be assisted by his/her representatives during any dispute resolution process.

12 Assignment/Sub-contracting

- 12.1 The General Practitioner 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 Smear 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 General Practitioner 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. Until the HSE/ NSS otherwise advises notices to the HSE/ NSS should be sent to the Head, 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.

