

**CONTRACT WITH**

**REGISTERED MEDICAL PRACTITIONERS**

**FOR THE PROVISION OF A**

**PRIMARY CARE BASED CERVICAL SCREENING SERVICE**

**UNDER THE NATIONAL CERVICAL SCREENING**

**PROGRAMME**

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**This Contract is made between:**

- (1) The Health Service Executive (“**HSE**”); and
- (2) The Registered Medical Practitioner whose name appears on the National Cervical Screening Contractor Details and Acceptance Form to this Contract (“**the Contractor**”).

**RECITALS**

- A. The HSE is a statutory body created by the Health Act, 2004 to manage and deliver, or arrange to be delivered on its behalf, health and personal social services. Its object is to use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public. The HSE has the power, subject to its available resources and to any directions from the Minister for Health, to enter into arrangements for the provision of health or personal social services on its behalf.
- B. The Health Act 1970 (as amended) provides the legislative basis allowing for the provision of a National Cervical Screening Programme.
- C. The Contractor and, where applicable, the Contractor’s Staff and registered Qualified Person(s) will provide a primary care based Cervical Screening Service (the “**Services**” as more specifically detailed herein) in accordance with the provisions of this Contract.

**IT IS HEREBY AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATIONS**

- 1.1 In this Contract, the following terms will have the following meanings unless the context otherwise provides:

“**Act of 2007**” means the Medical Practitioners Act 2007 (as amended).

“**Authorised Representative(s)**” means the person(s) nominated by a Party duly and properly authorised to represent such Party for the purposes of signing the Contractor Details and Acceptance Form and/or applying the terms and conditions of this Contract.

“**Chief Executive of the NSS**” means the Chief Executive of the National Screening Service.

“**Contract**” means the terms and conditions of this document, including the Schedules and the Contractor Details and Acceptance Form hereto.

“**the Contractor**” means the Registered Medical Practitioner who has entered into this Contract with the HSE and who is therefore the signatory to the Contractor Details and Acceptance Form.

“**Contractor Details and Acceptance Form**” means the form following the Table of Contents page, which must be completed by the Contractor as a condition precedent to entering this Contract to provide the Services and which is signed by both the Contractor and the HSE (or an Authorised Representative thereof) wherein each Party accepts the terms of this Contract.

**“Designated Laboratory”** means any of the Laboratories designated by the HSE for the purpose of receiving Cervical Screening Test Samples and associated Cervical Screening Forms from the Contractor for processing in accordance with the Programme.

**“Eligible Client”** means any Eligible Client, resident in Ireland, who meets the age and screening history criteria of the published Eligibility Framework for Cervical Screening and who attends with a Registered Medical Practitioner being the Contractor or Qualified Person engaged by the Contractor for the purpose of providing the Services during the Contractors absence or a Qualified Person engaged by the Contractor for the purpose of providing the Services and who is registered with the Screening Programme either at the invitation of the HSE or at such permitted intervals as may be advised by the HSE to the Contractor, in accordance with Programme Policy and who consents to take part in the Cervical Screening Programme.

**“Fees”** means the fees payable to the Contractor for the provision of the Services in accordance with **Clause 10** herein.

**“Health Act”** means the Health Act, 1970 (as amended).

**“Health Professionals Registration Form”** means the form completed by the Contractor providing relevant details of each Qualified Person providing the Service on behalf of the Contractor.

**“Indemnity”** means a policy of medical indemnity insurance or other indemnity arrangement against losses arising from claims in respect of civil liability arising from the provision of the Services.

**“Irish Medical Council”** means the Body which regulates the medical profession in Ireland under the Act of 2007.

**“Minister”** means the Minister for Health.

**“National Screening Service” or “NSS”** means that part of the HSE responsible for the delivery of National Screening Services.

**“Nursing and Midwifery Board of Ireland”** means the Statutory Body which regulates the Nursing and Midwifery Profession in Ireland.

**“NSS Designated Person”** means any person designated by the Chief Executive of NSS to whom, from time to time, a function of the Chief Executive of the NSS has been delegated or sub-delegated as part of the Service.

**“NSS Standards for Quality Assurance in Cervical Screening”** (hereinafter referred to as the Standards) means the quality assurance standards and requirements which are grouped under the principal components of the cervical screening pathway – Programme Operation, Primary Care & other settings, Laboratories Providing HPV testing Cytology & Histopathology Services and Colposcopy, as may be amended and/or up-dated from time to time by the NSS. These standards were revised in 2020 and are designed to support the service providers to the Cervical Screening Programme and to provide a means to monitor and continually support the provision of the Services.

**“Practice Premises”** means the premises at which the Services will be provided under the Contract, as specified by the Contractor in the Contractor Details and Acceptance Form or as thereafter notified by the Contractor to the HSE and agreed by the HSE.

**“Parties”** means the HSE and the Contractor, and **“Party”** means either one of them.

**“the Programme”** means a national population based Cervical Screening Programme (CervicalCheck) operated by the National Screening Service including the following elements: a population register, a system for inviting Eligible Clients to make appointments for screening and/or issuing direct appointments, contracts with Registered Medical Practitioners and Clinics for direct access by Eligible Clients, 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.

**“Qualified Person”** means a Registered Medical Practitioner (including locum Registered Medical Practitioner) or Registered Nurse listed on the Health Professionals Registration Form signed by the Contractor and deemed by the Contractor to be suitable, competent and qualified to carry out the Service.

**“Registered Medical Practitioner”** means a Medical Practitioner:

- (a) who is listed on the Contractor Details and Acceptance Form;
- (b) whose Irish Medical Council registration is not under suspension pursuant to Section 60 or 71(e) of the Act of 2007;
- (c) who has not had conditions attached to her registration by the Irish Medical Council pursuant to Section 71(c) of the Act of 2007 (including restrictions on the practice of medicine that may be engaged in by the practitioner);
- (d) who does not hold any contract with the HSE that is under suspension or has been terminated by the HSE for cause;
- (e) who has not had a Contract for the Provision of the Cervical Screening Service terminated by the HSE in accordance with **Schedule 2**.

**“Records”** means the records created and/or maintained by the Contractor, whether in paper or electronic form, as further described in **Clause 8** herein.

**“Representative Bodies”** means bodies that may be recognised by the HSE as being a representative body for Registered Medical Practitioners.

**“Services”** means the provision of a Cervical Screening sample taking service to Eligible Clients and referral of same to the designated laboratories and any and all follow up care/referrals, as appropriate, as further described in **Clause 4** herein.

**“Staff”** means persons, who may provide support to the Contractor in the provision of the Services in accordance with this Contract. Staff may include, without limitation Qualified Persons, other Practice Nurses and Practice Secretaries.

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

- 1.2 Save as otherwise provided herein, references to clauses and schedules are to those contained in this Contract. The schedules form an integral part of this Contract and reference to this Contract includes reference thereto. Headings are inserted for convenience only and do not affect the construction of this Contract.
- 1.3 Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- 1.4 Unless the context requires otherwise words importing the feminine gender will include the masculine gender and vice versa.
- 1.5 Reference to the words “include” or “including” are to be construed without limitation to the generality of the preceding words.
- 1.6 References to any statute, enactment, order, regulation or other similar instrument, including the Health Act, will be construed as a reference to the statute, enactment, order, regulation or instrument as amended or replaced by any subsequent enactment, modification, order, regulation or instrument. References to any statute, enactment, order, regulation or other similar instrument will include reference to any regulations made thereunder.
- 1.7 Any performance and compliance obligations imposed on the Parties include the obligation to meet such obligations at their own cost.
- 1.8 Any obligation on the Parties to keep records, data or information includes the obligation to keep them up to date and accessible.

## **2. RELATIONSHIP BETWEEN THE PARTIES**

- 2.1 This Contract is a contract for the provision of services. The Contractor is an independent provider of services and is not an employee, partner or agent of the HSE.
- 2.2 Neither Party to this Contract will be the authorised agent of the other Party or have the right or authority, either express or implied, to create or incur any liability against or on behalf of any other party, other than those obligations and liabilities set out hereunder. In particular, the Contractor will not hold themselves out, nor permit any other persons to hold themselves out, as being authorised to bind or pledge the credit of the HSE in any way and will not do any act that might reasonably create the impression that they are so authorised.
- 2.3 Nothing in this Contract and no action taken by the Parties under this Contract will constitute a partnership, association, joint venture or other cooperative entity between the Parties.
- 2.4 The HSE does not by entering into this Contract and will not as a result of anything done by the Contractor in connection with the performance of this Contract, incur any contractual liability to any other person.

- 2.5 The Contractor does not by entering into this Contract, and will not as a result of anything done by the HSE in connection with the performance of this Contract, incur any contractual liability to any other person.
- 2.6 This Contract does not create any right enforceable by any person not a Party to it.
- 2.7 In complying with this Contract, in exercising its rights under this Contract, and in performing its obligations under this Contract, the Contractor must act reasonably and in good faith at all times.
- 2.8 In complying with this Contract, in exercising its rights under the Contract, and in performing its obligations under this Contract, the HSE must act reasonably and in good faith as a responsible public body required to discharge its functions under the Health Act 2004 (as amended) at all times.
- 2.9 The National Cervical Screening Programme is a public health programme and as such does not receive results from private laboratories, other than those designated laboratories contracted by the NSS. The Programme will only have access to results and recommendations for tests taken with the laboratories contracted by the Programme.

### **3. PRINCIPAL OBLIGATIONS ON THE HSE**

The HSE shall;

- 3.1 invite Eligible Clients to participate in the Programme, both initially and thereafter, at intervals recommended by the Designated Laboratory and the HSE/NSS;
- 3.2 inform the target population of the benefits and limitations of Cervical Screening insofar as possible to the public in line with the HSE materials provided;
- 3.3 (at its own expense) procure or provide to the Contractor disposable speculae and Screening Test kits, comprising of vials, brushes and packaging, solely for the use in provision of the Services under this Contract and not for any other purpose;
- 3.4 provide the Contractor with relevant literature (including Cervical Screening Forms) in relation to the Programme, for distribution to Eligible Clients and potential Eligible Clients, such materials should explain both the benefits and limitations of cervical screening as defined by the Programme;
- 3.5 provide on-line e-learning modules, videos and guidance notes for the Contractor and the Contractor's Qualified Persons;
- 3.6 facilitate (at the Contractor's expense) Cervical Screening training to Registered Medical Practitioners and Qualified Persons who request same;
- 3.7 list the Contractor (and Qualified Persons registered by the Contractor) relevant contact and access details (as provided on the Contractor's Health Professionals Registration Form or as otherwise notified to the NSS by the Contractor) on a website operated by the NSS;
- 3.8 procure the return of results from the Designated Laboratory to the Contractor and to do so in a timely fashion;

- 3.9 procure the return of results from the Designated Laboratory to the Contractor in electronic format via the National Healthlink system;
- 3.10 keep to a minimum Cervical Screening Forms being returned, rejected or queried (either by the laboratory or by the programme office) due to completeness, accuracy or legibility deficiencies in line with good laboratory practice;
- 3.11 provide access to support for the Contractor to facilitate a self-assessment of adherence to quality standards described in NSS Standards for Quality Assurance in Cervical Screening;
- 3.12 provide signage, posters and other programme materials for practices to display and promote awareness.

#### 4. PRINCIPAL OBLIGATIONS OF THE CONTRACTOR

- 4.1 In consideration of being appointed and being paid the Fees, subject to **Clause 10**, the Contractor will provide the Services to Eligible Clients at the Practice Premises in accordance with the terms and conditions of this Contract.
- 4.2 Without prejudice to the generality of the foregoing, the Contractor agrees to:
  - 4.2.1 accommodate any Eligible Client, by arranging an appointment for the Services with a Registered Medical Practitioner or a Qualified Person as early as reasonably possible;
  - 4.2.2 adhere to the recommended screening intervals as defined in the Eligibility Framework: Reference Guide;
  - 4.2.3 provide the Services (and ensure that any Qualified Persons provides the Services) in strict accordance with the terms of this Contract and in particular, but without limiting the foregoing, with the Standards, with particular reference to the chapter pertaining to primary care;
  - 4.2.4 provide to the HSE's Authorised Officer a lead contact name and phone number to facilitate effective communication channels with CervicalCheck;
  - 4.2.5 ensure all registered Qualified Persons understand both the benefits and the limitations of Cervical Screening and be able to apply such understanding in advising Eligible Clients and promoting their informed choice;
  - 4.2.6 in accordance with the obligations as set out in **sub-clause 4.2.5** above ensure that every reasonable effort is made to work collaboratively with the Programme using materials provided to promote the Eligible Client's understanding of both the benefits and limitations of Cervical Screening;
  - 4.2.7 ensure that each Eligible Client provides their informed consent in accordance with Programme Policy regarding their participation in the Programme for every Screening Test;
  - 4.2.8 ensure that Qualified Persons are made aware of and comply with all relevant provisions of this Contract;

- 4.2.9 ensure that all identifying details to accurately identify the Eligible Client and all relevant information related to the Eligible Client's screening history is recorded and correct at the time of the Screening Test on the Cervical Screening Form (as defined in the Standards);
- 4.2.10 ensure that all identifying details to accurately identify the clinically responsible Registered Medical Practitioner and the Qualified Persons is recorded and correct at the time of the screening test on the cervical screening form (as defined in the Standards);
- 4.2.11 ensure that the mandatory single-use disposable specula are used at all times. Ensure single-use disposable specula are opened just prior to carrying out the test and ensure its proper disposal after (single) use. Ensure single-use disposable specula and cervix brushes are disposed of as clinical waste;
- 4.2.12 ensure each sample vial and accompanying Cervical Screening Form must be accurately matched for the same Eligible Client;
- 4.2.13 provide Screening Test Samples and associated Cervical Screening Forms only to such Designated Laboratories or Designated Laboratories' collection point(s) in Ireland as the NSS may determine from time to time and within 3 Working Days, of conducting the Screening Test and to cooperate fully with any such laboratory or laboratories;
- 4.2.14 ensure that, on receipt of results from a Designated Laboratory which recommends the referral of an Eligible Client to a colposcopy clinic, refer that Eligible Client to such clinic in a timely manner in accordance with NSS Standards for Quality Assurance in Cervical Screening;
- 4.2.15 ensure that, in conducting the Screening Tests, comply (and ensure compliance of all Qualified Persons providing the Services under this Contract) with any relevant EU sterilisation standards for equipment;
- 4.2.16 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 Contractor and/or a Qualified Person and Eligible Clients are given such advice and guidance as they may require;
- 4.2.17 ensure that where the Contractor and/or a Qualified Person is advised by a Designated Laboratory that an Eligible Client requires further investigation, ensure that the Contractor and/or a Qualified Person make every effort to contact the Eligible Client and advise the Eligible Client as to the further investigation that is required as soon as possible;
- 4.2.18 provide advice to an Eligible Client, if required by the Eligible Client, following receipt of Screening Test results;
- 4.2.19 in the event of an abnormal result, provide a follow up consultation to the Eligible Client to discuss such result and ensure that such consultation will detail and explain the subsequent actions to be taken with regard to testing and the clinical pathway;
- 4.2.20 inform the NSS of those Eligible Clients in the target screening population who would meet the criteria to be excluded from the Programme (e.g. death or absence of cervix), as advised by the NSS from time to time, and inform the NSS of the reason for an Eligible Client's exclusion. The Contractor, save in circumstances where the reason for exclusion from the Programme is the death of the patient, shall obtain the patient's consent to the NSS being given such information. Such information will be provided in accordance with relevant Data Protection requirements;

- 4.2.21 act (and ensure that any Qualified Person acts) in a thoroughly competent and efficient manner and in the best interests of Eligible Clients, the NSS and the Programme in general so as to give any such Eligible Clients the full and complete benefit of the Contractor's (or Qualified Person's) clinical experience and expertise;
- 4.2.22 ensure that the Cervical Screening Services are provided in accordance with any reasonable safety and security requirements of the NSS, as notified to the Contractor from time to time;
- 4.2.23 generally promote the Programme to Eligible Clients within the Contractor's practice catchment area;
- 4.2.24 acknowledge on the Contractor's behalf and on behalf of the Qualified Persons providing the Services under this Contract that, from initial invitation, through screening and treatment of every individual involved in every step of the screening process will adhere to the highest standards set by the Programme;
- 4.2.25 ensure that the Registered Medical Practitioner(s) or Qualified Person(s) providing the Services under this Contract will respond to, investigate where necessary and provide information requested by the NSS as part of the cervical cancer clinical audit process within the quality assurance framework of the Programme;
- 4.2.26 inform the NSS promptly and in writing of any of the following:
- (a) the retirement of the Contractor or any Qualified Person;
  - (b) the Contractor or any Qualified Person ceasing to provide the Services;
  - (c) the Contractor's or any Qualified Person's failure to obtain or loss of:
    - (i) any of the Requisite Insurances; and/or;
    - (ii) full registration with a relevant professional body.
  - (d) any complaints, claims or legal correspondence of which the Contractor or Qualified Person(s) receives notice and which relate to the performance of the Services.
- 4.2.27 provide all personnel, equipment, facilities, materials, services and other resources necessary or appropriate for the safe, full and proper performance of the Services in accordance with NSS Standards for Quality Assurance in Cervical Screening;
- 4.2.28 ensure that each practice has current versions of relevant learning and reference resources available and accessible to all those engaged in Cervical Screening.
- 4.2.29 ensure that the Contractor and Qualified Persons participate in a CervicalCheck clinical update at least once every three (3) years. Clinical updates may be delivered through face-to-face meetings (National, Regional, Continuing Medical Education [CME] or CervicalCheck-led) or through the National Screening Service Learning Portal (online);
- 4.2.30 provide the NSS promptly with evidence that the Contractor and any Qualified Persons are fully registered with the relevant professional body and all Requisite Insurances are in place;

- 4.2.31 comply with all relevant laws and statutory regulations relating to the provision of the Services, including without limitation all relevant health and safety and data protection legislation;
  - 4.2.32 remain registered with the Irish Medical Council and ensure that all Qualified Persons registered by the Contractor remain registered with the Irish Medical Council or Nursing and Midwifery Board of Ireland, as appropriate;
  - 4.2.33 ensure that the HSE is forewarned of any developments that may have an adverse effect on the Contractor's ability to meet obligations under this Contract;
  - 4.2.34 promptly notify the NSS in writing of any changes to its business or practice which the Contractor reasonably believes would affect materially the provision of the Services;
  - 4.2.35 comply at all times, during the term of this Contract, with all reasonable requests of the HSE's authorised agents or nominees relating to the Contractor's obligations under this Contract;
  - 4.2.36 in the event that the annual unsatisfactory or inadequate rate of the Contractor or Qualified Person under this Contract exceeds that established in the Standards, undertake and/ or arrange for a Qualified Person(s) to undertake, at the HSE's request, remediation and/or retraining (at the Contractor's cost). Otherwise the HSE may initiate disciplinary procedures as set out in **Schedule 2** herein;
  - 4.2.37 be in a position at all times to demonstrate that the Contractor's English language competency (and that of any Qualified Persons providing the Services under this Contract), meets the minimum language requirements as determined by the Irish Medical Council or the HSE.
- 4.3 In the case of a Contractor who did not hold a contract with the HSE for the provision of a cervical screening sample taking service to Eligible Clients on the **31 August 2022** the Contractor will ensure that prior to commencing the provision of the Services as part of the Contract, both the Applicant Contractor and new registering Qualified Persons will undertake and complete an introductory module through online learning that outlines the requirements and operation of the Programme as part of their registration process (on-line, e-learning based). An application for a Contract will not be issued until evidence is provided that this module has been fully completed by the Applicant Contractor and their Qualified Persons listed on the Health Professionals Registration Form;
- 4.4 In the case of a Contractor who did hold a Contract with the HSE for the provision of a cervical screening sample taking service to Eligible Clients on the **31 August 2022**, the Contractor will ensure that both the Contractor and their Qualified Persons listed on the Health Professionals Registration Form will, where not already completed, have completed an introductory module through online learning that outlines the requirements and operation of the Programme (on-line, e-learning based) on or before the **31 August 2023**. Furthermore, the Contractor will ensure that any and all Qualified Persons (being Qualified Persons not listed on the Health Professionals Registration Form on the Contract commencement date) engaged by the Contractor to deliver the Services on or after **1 September 2022** will have completed an introductory module through online learning that outlines the requirements and operation of the Programme (on-line, e-learning based) prior to commencing the provision of the Services on behalf of the Contractor.

## **5. CONTRACT COMMENCEMENT & DURATION**

- 5.1 This Contract will come into force on the date on which the Parties have signed the Contractor Details and Acceptance Form and, subject to the provisions of **Clause 12** will continue in force until **31 August 2025**.
- 5.2 This Contract may be suspended or terminated for the reasons set out and in accordance with **Schedule 2** hereto.

## **6. PERSONS FOR WHOM SERVICES WILL BE PROVIDED**

- 6.1 The Services may only be provided to Eligible Clients.

## **7. PERSONS WHO MAY PROVIDE THE SERVICES**

- 7.1 The Services may only be provided by the Contractor or a Qualified Person listed on the Health Professionals Registration Form signed by the Contractor.
- 7.2 The Contractor will ensure that any Staff supporting them in provision of the Services have the requisite knowledge, competence and training to fulfil such role.
- 7.3 The Contractor will retain full responsibility for the proper care of all Eligible Clients in respect of the Services, whether provided personally or through a Qualified Person.
- 7.4 The Contract will be binding upon successors and assigns of the HSE and the name of the HSE appearing in the Contract will be deemed to include the names of its successors and assigns.
- 7.5 The HSE reserves the right to and will at all times be entitled to contract with other individuals and/or companies to provide the Services in accordance with the Programme.

## **8. RECORDS**

- 8.1 The Contractor will create and maintain comprehensive Records of all matters relating to the Services, and will ensure that such Records are dated, legible and demonstrate a full, accurate and contemporaneous record in respect of the Services requested and provided to Eligible Clients.
- 8.2 Without prejudice to the generality of **Clause 8.1**, the Records maintained by the Contractor must include:
- (a) the information required to be held pursuant to the Programme;
  - (b) the name, address and date of birth of the Eligible Client;
  - (c) details in respect of each consultation with an Eligible Client and the Services requested and provided to the Eligible Client;
  - (d) details of any referrals made by the Contractor or registered Qualified Person of any Eligible Client to another service such as Colposcopy Clinic;
  - (e) details of any amendments to the Records;

(f) an audit trail of all Records held on the GP Practice Management System (to include full history of all documents created).

8.3 The Contractor will comply with best practice and with all laws and regulations governing information security and record retention and will ensure that controls are in place to preserve the confidentiality, security, availability and integrity of information recorded.

## 9. AUDIT INSPECTIONS & CONFIDENTIALITY

9.1 The Contractor agrees to, on the request of the HSE, supply copies of Records to the HSE within fourteen (14) Working Days of receipt of such a request. All requested Records will be supplied in accordance with relevant Data Protection requirements.

9.2 The HSE will be entitled to carry out inspections of the Records for the purposes of the Contract:

9.2.1 where the HSE has concerns in relation to the manner in which the Contractor has discharged or is discharging their obligations under this Contract;

9.2.2 otherwise in relation to or for the purposes of or in connection with the Contract and/or the HSE's statutory functions;

9.2.3 Such inspections will ordinarily be by prior arrangement with the Contractor. However, the HSE may enter the Practice Premises for an inspection of the Records without prior arrangement if the HSE, in its sole discretion, deems such to be necessary.

9.3 The Contractor will facilitate any inspection of the Records as may be required by the HSE or its Authorised Representatives, including facilitating interviews with the Contractor, registered Qualified Person(s) and/or Staff.

9.4 The HSE will, subject to data protection legislation, be entitled to make copies (including electronic copies) of any Records during the course of an inspection and the Contractor will facilitate the taking of such copies.

9.5 Once the Contractor is notified or otherwise becomes aware of an inspection pursuant to this **Clause 9**, the Contractor will ensure that no Records or other information relating to their performance under or compliance with this Contract are removed from the Practice Premises or otherwise made unavailable to the HSE without the prior consent of the HSE.

9.6 In the event that an inspection conducted under this **Clause 9** reveals that the Contractor is failing to provide the Services, or part thereof, in accordance with the terms and conditions of this Contract, the HSE will be entitled to exercise any relevant rights or remedies available to it under this Contract, including the right to invoke the disciplinary process pursuant to **Schedule 2**.

9.7 If the Contractor considers it necessary, they will be entitled to the benefit of legal representation during the course of any inspections undertaken pursuant to this **Clause 9**. The cost of any such representation will be borne by the Contractor.

9.8 The HSE reserves the right to notify the Irish Medical Council or the Nursing and Midwifery Board of Ireland (as appropriate) of any matters which maybe of relevance to the Irish Medical Council or the Nursing and Midwifery Board of Ireland (as appropriate) and of which the HSE becomes aware during the course of an inspection. The HSE will inform the Contractor of any such notification as appropriate.

9.9 The provisions of this **Clause 9** will survive the termination of this Contract for whatever reason.

## **10. FEES**

10.1 The HSE will, in consideration of the Services provided by the Contractor pay or arrange payment of the Fees to the Contractor. The Fees are as set out in **Schedule 1** to this contract. The Minister for Health may, with the consent of the Minister for Public Expenditure and Reform, by regulation, set or vary the amount or the rate of payment to be made to Contractors in respect of the provision of the Services, as provided for in Section 42 of the Public Service (Pay and Pensions) Act 2017.

10.2 The Contractor will not demand or accept any payment or consideration whatsoever other than the Fees determined in accordance with this **Clause 10** in reward or payment for the Services provided by them under this Contract, or in respect of any expenses incurred by them in making the Services available. The Contractor will ensure that any Qualified Persons and/or Staff comply with the provisions of this **Clause 10**.

10.3 Any breach of **Clause 10.2** by the Contractor, Qualified Person(s) or Staff, or by anyone acting on behalf of the Contractor (whether with or without the knowledge of the Contractor) will be treated as a serious breach of the Contract and may be subject to the sanctions set out in **Schedule 2**.

10.4 Payments of Fees will be made on a monthly basis by the HSE's Primary Care Eligibility and Reimbursement Service following receipt of approved monthly payment details from the NSS;

10.5 Payment of Fees by the HSE will be without prejudice to any claims or rights which the HSE may have against the Contractor and will not constitute any admission by the HSE as to the validity of the Claims or the performance by the Contractor of their obligations hereunder.

10.6 Payments of Fees will be made in euro by electronic transfer to the bank account identified by the Contractor on the Contractor Registration Form (or otherwise notified by the Contractor in writing and in accordance with the Notification provisions at **Clause 16**).

10.7 The Contractor will provide a Tax Clearance Certificate to the HSE in the prescribed format. Payment of Fees will be subject to the Contractor holding and maintaining an up-to-date Tax Clearance Certificate.

10.8 Professional Services Withholding Tax will be deducted at the standard rate from any payments made by the HSE unless proof of exemption is provided by the Contractor.

## **11. CONTRACT SUSPENSION, SANCTION AND TERMINATION PROCEDURE**

11.1 Without prejudice to all other rights of the HSE under the Contract, in the event of a breach by the Contractor of any term or provision of the Contract, the HSE may have recourse against the Contractor as described and provided for under the provisions of **Schedule 2** to this Contract.

11.2 For the avoidance of doubt, the HSE will, in its discretion, be entitled to exercise its rights pursuant to **Schedule 2** to this Contract, notwithstanding the fact that the Dispute Resolution Procedure has been initiated in accordance with **Schedule 3** herein.

## 12. VARIATION

12.1 The HSE may vary the Contract (other than in respect of the Fees which are subject to variation as set out in **Clause 10.1** herein) where:

12.1.1 the HSE is reasonably satisfied that it is necessary to vary the Contract so as to meet its obligations under the Act or other legislation or regulations, or any direction given by the Minister;

12.1.2 upon a recommendation from the Quality Assurance Committee and/or amendment to the NSS Standards for Quality Assurance in Cervical Screening or, upon new clinical advice, guidance or evidence; and

12.1.3 the HSE notifies the Contractor in writing of the proposed variation (including the wording in respect thereof in relation to the Contract) and the date upon which that variation is to take effect.

12.2 Where reasonably practicable, the date that the proposed variation will take effect will be not less than thirty (30) working days after the date on which notice in accordance with **sub-clause 12.1.3** is served on the Contractor.

12.3 If the Contractor wishes to terminate the Contract following notice of any variation, the Contractor will be entitled to do so in accordance with **Clause 4** of **Schedule 2** and will be permitted to serve out the required three (3) months' notice on the pre-existing terms and conditions of the Contract (save in exceptional circumstances where the HSE requires immediate implementation of the variation where it is essential in order to protect health and safety).

## 13. PRACTICE PREMISES

13.1 The Contractor shall ensure that the Practice Premises and facilities are fit for purpose, suitable for the delivery of the Services and sufficient to meet the needs of Eligible Clients in line with the Standards for Quality Assurance in Cervical Screening.

13.2 Without prejudice to the generality of the foregoing, the Contractor shall ensure as a minimum that the Practice Premises meet the following requirements:

13.2.1 The Practice Premises shall have a waiting room with a reasonable standard of comfort and hygiene, sufficient in size to accommodate the normal demands of the Contractors practice with adequate seating accommodation;

13.2.2 The Practice Premises shall have a surgery sufficient in size for the requirements of normal general practice, with facilities including adequate lighting, hot and cold running water, adequate hand washing facilities, an examination couch and other essential needs of a practice, including adequate toilet facilities for patients;

13.2.3 A high standard of cleanliness shall at all times be maintained throughout the Practice Premises.

13.3 The Contractor shall not change the location of their Practice Premises or open additional centres of practice for the purpose of providing the Services under this Contract without the prior approval of the HSE.

13.4 The Contractor shall have in place at all times infection control procedures. Cervical Screening activity must adhere to these infection control procedures. Regular monitoring and review of infection control procedures must be in place to ensure their effectiveness.

#### **14. DATA PROTECTION**

14.1 The Contractor and the HSE shall comply with their respective obligations under applicable data protection law (including but not limited to the EU General Data Protection Regulation (EU Regulation 679/2016) and the Irish Data Protection Acts 1988 to 2018 and all regulations made thereunder, in the collection, storage and other processing of personal data pursuant to the Contract.

#### **15. FREEDOM OF INFORMATION**

15.1 The Contractor acknowledges that the HSE is subject to the provisions of the Freedom of Information Act 2014 (as may be amended) and that the HSE may be obliged to disclose information regardless of any representations made by the Contractor. However, where a request is made for information furnished by, or which concerns the Contractor and this Contract, the HSE will consult the Contractor in accordance with the provisions and requirements of the Freedom of Information Act 2014 before responding to such a request.

#### **16. NOTIFICATIONS**

16.1 Any notice, notification or other communication given or made by the Contractor under or in relation to this Contract will be in writing and signed by or on behalf of the Contractor and will be served by delivering it personally, via secure email or sending it by pre-paid recorded delivery or registered post or by sending it via email to the HSE at an address notified to the Contractor (which may be amended and notified to the Contractor from time to time).

16.2 Any notice, notification or other communication given or made by the HSE under or in relation to this Contract will be in writing via secure email or will be served by delivering it personally to the Practice Premises, sending it by pre-paid recorded delivery or registered post. All communications will be made to the Contractor using the contact details provided on the Contractor's Contractor Details and Acceptance Form, as may be updated by the Contractor and agreed by the HSE from time to time.

16.3 In addition to any requirements of notification set out above or elsewhere in this Contract or the Schedules, the Contractor will notify the HSE, as soon as is reasonably practicable of:

16.3.1 anything that in the reasonable opinion of the Contractor prevents or is likely to prevent the Contractor's performance of their obligations under the Contract;

16.3.2 any changes to their business or practice which the Contractor reasonably believes would materially affect the provision of the Services;

16.3.3 any proposed changes to the details supplied by the Contractor and included in this Contract, including but not limited to the Contractor's Practice Premises address, contact details, Qualified

Persons provided on the Contractor Details and Acceptance Form or Health Professionals Registration Form. Further:

- (a) where the Contractor proposes changes to the location of the Practice Premises, such proposed changes will not take effect unless the Practice Premises is deemed to be suitable by the HSE as per the terms and conditions of this Contract;
- (b) where the HSE does not consent to a proposed change in the location of the Practice Premises as provided on the Contractor Details and Acceptance Form, the HSE will provide a statement to the Contractor in writing of the reason(s) that consent is being withheld.

16.3.4 Following receipt of a notice in accordance with this **Clause 16**, the HSE may request such further information as appears to it to be reasonable and the Contractor must supply such information within fourteen (14) working days.

16.3.5 Failure by the Contractor to obtain the HSE's prior approval before implementing changes specified in **Clause 16.3.3** may cause the HSE to invoke the disciplinary process pursuant to **Schedule 2**.

16.4 The notifications and approvals effected in accordance with this **Clause 16** will form part of the Contract.

## 17. WARRANTIES, INDEMNITIES AND LIMITATIONS ON LIABILITY

17.1 The Contractor warrants that:

- 17.1.1 all information provided to the HSE in seeking to become a Party to this Contract was, when given, true and accurate in all material respects;
- 17.1.2 no information has been omitted which would make the information that was provided by the Contractor to the HSE materially misleading or inaccurate;
- 17.1.3 no circumstances have arisen which materially affect the truth and accuracy of such information;
- 17.1.4 the Contractor is not aware of anything within the Contractor's reasonable control which may or will materially adversely affect their ability to fulfil their obligations under this Contract.

17.2 The Contractor further warrants and undertakes to the HSE and it will be a condition of this Contract that;

- 17.2.1 the Contractor has the appropriate and necessary qualifications, licenses, competence, capacity, expertise, consents and authority as maybe necessary to carry out the Services and is compliant with professional registration requirements, as appropriate;
- 17.2.2 the Services will at all times be provided in a manner consistent with the provisions of this Contract;
- 17.2.3 the Contractor (and all Qualified Persons and Staff) has or is covered by the Requisite Insurances and indemnity cover;
- 17.2.4 all aspects of the provision of the Services will comply with all necessary safety precautions and safety legislation relevant to the provision of the Services.

- 17.3 The Contractor agrees to defend and hereby indemnifies the HSE from and against any loss, liability, claim or damage related to or arising out of a claim against the HSE arising directly or indirectly as a result of any breach by the Contractor or any of the Contractors Qualified Persons or Staff of any of the provisions of this Contract provided that the Contractor (or the Contractor's nominee) will conduct all negotiations in relation to any such claim or action and the HSE will not enter into any negotiations or settle or compromise such claim or action without the written consent of the Contractor, but will provide all reasonable assistance to the Contractor in relation to such claim or action.
- 17.4 The HSE will indemnify the Contractor 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, its officers and employees pursuant to this Contract; or (b) any breach of this Contract by the HSE, provided that the HSE will conduct all negotiations in relation to any such claim or action and the Contractor, and/or Qualified Persons and/or Staff will not enter into any negotiations or settle or compromise such claim or action without the written consent of the HSE, but will provide all reasonable assistance to the HSE in relation to such claim or action.

For the avoidance of doubt, the HSE will not be required to indemnify the Contractor 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 third parties engaged by the HSE for purposes of delivering the Services (if any)).

- 17.5 In no event will 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 aware of the possibility of such damages.
- 17.6 The limitations on liability set forth in this Contract will not exclude or limit either Party's liability in fraud or for the death or 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.

## **18. INSURANCE AND INDEMNITY**

- 18.1 The HSE is relying upon the judgment and expertise of the Contractor and/or the Contractor's Qualified Persons and/or their Staff in providing the Services and accordingly, the Contractor shall maintain in force at all times insurance policies or indemnity arrangements (including membership of a medical defence or protection organisation where there is provision for medical indemnity insurance or other indemnity arrangement for clinical negligence claims against the member) in respect of all customary liabilities and risks undertaken by the Contractor in connection with the provision of the Services or as may reasonably be required by the HSE or by law (including professional indemnity insurance or other indemnity arrangement, employer's liability insurance and public liability insurance). The arrangements must be adequate to cover the Contractor's liabilities under the Contract.
- 18.2 The Contractor undertakes to ensure that their Qualified Persons and/or their Staff (where applicable) are covered by equivalent professional indemnity insurance/cover. For the avoidance of doubt, this does not impose an obligation on the Contractor to procure directly or fund the cost of professional indemnity insurance/cover for the Contractor's Qualified Persons, Staff, Agents or Representatives employed for the purpose of providing the Services and it is acknowledged that the relevant Qualified Person, Staff, Agent

or Representatives may be required by the Contractor to procure such professional indemnity/insurance/cover and fund the cost thereof.

18.3 The Contractor shall not knowingly do or permit or suffer to be done any act or thing whereby the insurances or indemnity arrangements (as set out in **sub-clause 18.1**) required by this **Clause 18** may lapse or become in whole or in part void or voidable.

18.4 The Contractor shall comply with all terms and conditions of their insurance policies or indemnity arrangements (as set out in **sub-clause 18.1**) at all times. If cover under the said policies/arrangements shall lapse or not be renewed or changed in any material way the Contractor shall notify the HSE without delay.

## 19. COSTS

19.1 Each Party to this Contract will pay its own costs of and incidental to the consultation and execution of this Contract.

## 20. REMEDIES CUMULATIVE

20.1 The provisions of this Contract, and the rights and remedies of the parties under this Contract, are cumulative and are without prejudice and in addition to any rights or remedies a Party may have at law or in equity. No exercise by a Party of any one right or remedy under this Contract, or at law or in equity, will (save to the extent, if any, provided expressly in this Contract, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

## 21. FORCE MAJEURE

21.1 For the purposes of this **Clause 21**, the expression "Force Majeure" will mean fire, flood, pandemic or any disaster affecting or delaying the performance by a Party of its obligations. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of either Party to the Contract seeking to rely on it, or of that Party's agents or employees.

21.2 Neither Party to the Contract will in any circumstances be liable to the other for any loss of any kind whatsoever directly or indirectly caused or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each Party will use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

21.3 If either the HSE or the Contractor becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it will forthwith notify the other by the most expeditious method then available and will inform the other of the period which it is estimated that such failure or delay will continue.

21.4 Where the Force Majeure event is continuing for a period of at least one (1) month, the other Party will have the right to terminate this Contract upon fourteen (14) working days' notice.

21.5 It is expressly agreed that any failure by the Contractor to perform, or any delay by the Contractor in performing their obligations under this Contract, which results from any failure or delay in the

performance of their obligations by any person, firm or company with which the Contractor has a contract, supply arrangement or otherwise will be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company will itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or otherwise as a result of circumstances of Force Majeure.

21.6 For the avoidance of doubt, it is hereby expressly declared that the only events which will afford relief from liability for failure or delay will be events falling within the definition of Force Majeure set out in this **Clause 21**.

## **22. ENTIRE CONTRACT**

22.1 The Contract contains the entire agreement between the Parties and contains all the terms which the Parties have agreed with respect to its subject matter.

22.2 Neither Party has relied on any other written or oral agreement, representation, arrangement or understanding.

22.3 The Contractor acknowledges that they have not been induced to enter into the Contract by a statement or promise which the Contract does not contain. The HSE is not liable in equity, agreement or tort or in any other way for a representation that is not set out in the Contract.

22.4 Nothing in this **Clause 22** will have the effect of limiting or restricting any liability of a Party arising as a result of fraud.

## **23. SURVIVAL OF TERMS**

23.1 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract will remain in full force and effect, including but not limited to:

- (a) Clause 1 (Definitions & Interpretations) insofar as such are relevant to interpreting other surviving terms;
- (b) Clause 9 (Audit, Inspections & Confidentiality);
- (c) Clause 11 (Contract Suspension, Sanction & Termination Procedure);
- (d) Clause 14 (Data Protection);
- (e) Clause 15 (Freedom of Information);
- (f) Clause 17 (Warrants Indemnities & Limitations on Liability);
- (g) Clause 18 (Insurance & Indemnity);
- (h) Clause 23 (Survival of Terms);
- (i) Clause 26 (Assignment/Sub-contracting);

- (j) Clause 28 (Governing Law);
- (k) Clause 29 (Disputes & Jurisdiction);
- (l) Schedule 1 (Fees Payable to Contractors);
- (m) Schedule 2 (Contract Suspension, Sanction and Termination Procedure);
- (n) Schedule 3 (Dispute Resolution Procedure).

#### **24. SEVERABILITY**

All the terms and provisions of this Contract are distinct and severable, and if any term, provision, clause, or sub-clause is held unenforceable, illegal or void in whole or in part by any court, regulatory authority or other competent authority it will to that extent be deemed not to form part of this Contract, and the enforceability, legality and validity of the remainder of this Contract will not be affected.

#### **25. FURTHER ASSURANCES**

Each Party to this Contract will from time to time execute such further assurances and do such things and afford to the other Party such assistance as may reasonably be required for the purpose of giving full effect to the terms of this Contract.

#### **26. ASSIGNMENT/SUB-CONTRACTING**

The Contractor 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. For the avoidance of doubt and without prejudice to the foregoing, it is acknowledged and agreed that the Services may be carried out by a Qualified Person(s), as defined herein.

#### **27. FORBEARANCE AND WAIVER GENERALLY**

The rights of either Party to this Contract will not be prejudiced or restricted by any indulgence or forbearance extended to the other Party, and no waiver by a Party in respect of any breach will operate as a waiver in respect of any subsequent breach. No failure or delay by a Party in exercising any right or remedy will operate as a waiver thereof, nor will any single or partial exercise or waiver of any right or remedy prejudice its further exercise or the exercise of any other right or remedy.

#### **28. GOVERNING LAW**

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will in all respects be governed by and construed in accordance with Irish law.

## 29. DISPUTES AND JURISDICTION

- 29.1 The Parties agree to endeavour to resolve any dispute or claim arising out of or in connection with the Contract or its subject matter or formation in accordance with the Dispute Resolution Procedures set out in **Schedule 3** hereto.
- 29.2 Without prejudice to the foregoing, each Party hereby irrevocably submits to the nonexclusive jurisdiction of the Irish courts in relation to any disputes which may arise out of or in connection with this Contract or its performance or enforcement.

## SCHEDULE 1

### 1. FEES PAYABLE TO CONTRACTORS

Fees have been determined by the Minister for Health with the consent of the Minister for Public Expenditure and Reform pursuant to Section 42 of the Public Service Pay and Pensions Act 2017 and are set out in Statutory Instrument 406 of 2022.

| Services rendered by the contractor to or on behalf of the Health Service Executive under Section 70 of the Health Act for the purpose of providing a Primary Care based Cervical Screening Service in accordance with the Programme. |  |        |
|---|--|--------|
| Reference Number  | Description  | Amount |
| 1.  | Payment in respect of the provision of the Services under the National Cervical Screening Programme. | €65.00 |

## SCHEDULE 2

### CONTRACT SUSPENSION, SANCTION AND TERMINATION PROCEDURE

#### 1. COMPLAINTS PROCEDURE

- 1.1 The rules of natural justice and fair procedure will apply to this Contract. It is a fundamental and underlying principle of the procedure set out hereunder that any Contractor who is the subject of a complaint/investigation will have the right to be heard and to set out the Contractor's own defence. A Contractor will be entitled to be legally represented or to be represented by their own Representative Body. For the avoidance of doubt, this does not impose an obligation on the HSE to either procure or fund legal representation on behalf of any Contractor.
- 1.2 For the purposes of this **Schedule 2** reference to "the HSE" shall mean the HSE acting through the Chief Officer of the National Screening Service ("NSS") or such other person as the HSE may designate from time to time.
- 1.3 Where the HSE has reason to believe that the Contractor has failed to comply with any of the terms of the Contract, it will notify the Contractor in writing of the reasons for such belief **by registered post** and inform the Contractor that it will consider any representations in regard to the matter which may be received by it from the Contractor, or on behalf of the Contractor, within one (1) month of the issue of the notification, or such longer period as determined by the HSE on foot of a request from or on behalf of the Contractor.
- 1.4 The HSE will not consider a complaint relating to an individual living Eligible Client except where:
- 1.4.1 it is made by the Eligible Client, by a member of the Eligible Clients family, or by another person with the written consent of the Eligible Client and is in writing and signed by the person making it; and
- 1.4.2 it is made within six (6) weeks of the event or alleged event, or within such longer period as the HSE may determine.
- 1.5 The HSE may, if it is satisfied after consideration of any representations which the Contractor (or someone on the Contractors behalf) has made in regard to the matter and following the conduct of an investigation into the matter, form a view that:
- 1.5.1 there is no basis for proceeding with the complaint; or
- 1.5.2 the Contractor has not complied with the terms of the Contract and if the HSE so thinks fit, either:
- (a) issue a verbal or written warning to the Contractor or otherwise communicate appropriately with them; or
- (b) request the NSS Designated Person to establish a Committee pursuant to **Clause 1.7** of this **Schedule 2** for the purpose of examining a complaint or alleged failure to comply with the terms of this Contract.

- 1.6 A Contractor in respect of whom the HSE has issued a verbal or written warning pursuant to **sub-clause 1.5** of this **Schedule 2** may appeal the decision of the HSE to the NSS Designated Person to review the matter and issue a final determination.
- 1.7 The Committee established by the NSS Designated Person to examine a complaint or alleged failure to comply with the terms of this Contract will consist of;
- 1.7.1 one person who will be legally qualified (being Chairman of the Committee) who will be nominated by the Minister; and
  - 1.7.2 two persons selected by the Chief Executive of the NSS in person; and
  - 1.7.3 two persons nominated by the Contractor which may include nominations from the Contractor's Representative Body.
- 1.8 A Committee established in accordance with **Clause 1.7** of this **Schedule 2**, will act in accordance with the following rules;
- 1.8.1 subject to the provisions of **sub-clause 1.8.2** of this **Schedule 2**, the Committee may act notwithstanding any vacancy among its members.
  - 1.8.2 the Committee may not act unless the Chairman and at least one of the persons selected by the Chief Executive of the NSS in person and one of the persons nominated by the Contractor are present.
  - 1.8.3 the Chairman of the Committee will convene the first meeting of the Committee not less than ten (10) working days after the Committee is established.
- 1.9 During the conduct of the Committee's proceedings, the Chairman will have discretion as to the conduct of the proceedings and in particular will;
- 1.9.1 decide the order of appearance of persons appearing before the Committee;
  - 1.9.2 permit both the Contractor concerned and the NSS Designated Person to appear in person or to be represented and/or assisted by other person(s), which may include legal representation or representation by the Contractor's Representative Body;
  - 1.9.3 hear any relevant person(s) who is/are not a party to the proceedings; and
  - 1.9.4 grant the Contractor the right to be represented and have prior sight of all allegations and any evidence against the Contractor and the right to adduce evidence and call witnesses on the Contractor's own behalf.
- 1.10 Any questions arising before the Committee will be decided by the majority of the members of the Committee who are present and vote and, in case of an equality of votes on any question, the Chairman will have a second or casting vote.
- 1.11 The Committee will make its recommendations in writing to the NSS Designated Person who will notify in writing (within seven (7) working days) the Contractor concerned of the recommendations.

- 1.12 A Committee will complete its examination of a complaint with all practicable speed. It will ordinarily conclude its deliberations and issue its recommendations within six (6) months of the date of its inaugural meeting unless, in the opinion of the Chairman, exceptional circumstances exist that warrant extending the period of examination. A decision to extend the period of examination is made by the Chairman following consultation with at least one member of the Committee nominated by the Chief Executive of the NSS in Person and one member of the Committee nominated by the Contractor.
- 1.13 Where a Committee upholds a complaint, it may:
- 1.13.1 Recommend to the HSE that the Contractor should be admonished; and/or
  - 1.13.2 Recommend to the HSE that the Contractor and/or their registered Qualified Person(s) should undergo specific periods of educational training and/or supervised practice, the cost of which will be borne by the Contractor;
  - 1.13.3 Recommend to the HSE that a deduction of a specified sum of money should be made from Fees due to the Contractor under this Contract;
  - 1.13.4 Recommend termination of the Contract between the HSE and the Contractor.
- 1.14 Where the Committee recommends the termination of the Contract, the NSS Designated Person will notify in writing (within seven (7) working days of receipt of the Committee's recommendation) the Contractor concerned that the Contract will be terminated on behalf of the HSE after the expiration of a period of fifteen (15) working days. The NSS Designated Person may, where appropriate, notify in writing the Registrar of the Irish Medical Council of the recommendation of the Committee and will on request from the Registrar supply such particulars as may be necessary for the Council to consider the matter.
- 1.15 The Contractor in relation to whom a recommendation has been made under **Clause 1.14** of this **Schedule 2** may request the Chief Executive of the NSS to issue a direction to the NSS Designated Person in relation to that recommendation as detailed in **Clauses 1.17** of this **Schedule 2**.
- 1.16 A request under **Clause 1.15** of this **Schedule 2** will be submitted in writing to the Chief Executive of the NSS either by the Contractor concerned or on the Contractor's behalf and shall specify the grounds on which the Contractor requests the Chief Executive of the NSS to issue a direction to the NSS Designated Person. The Chief Executive of the NSS shall notify the NSS Designated Person of the receipt of such request. All such requests must be received by the Chief Executive of the NSS within seven (7) working days of receipt by the Contractor of the notification from the NSS Designated Person setting out the Committee's decision as outlined in **Clause 1.14** of this **Schedule 2**.
- 1.17 Where a request is made to the Chief Executive of the NSS under **Clause 1.15** of this **Schedule 2**, the Chief Executive of the NSS may consult with two members of the NSS Executive Team and one of whom being a Registered Medical Practitioner. The Chief Executive of the NSS may give to the NSS Designated Person a direction (being a direction to comply with the recommendation of the Committee) or such other direction (being a direction to reduce the severity of sanction or overturn the recommendation of the Committee) as the Chief Executive of the NSS considers appropriate. The NSS Designated Person shall comply with any such direction.

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## **2. SUSPENSION OF CONTRACT**

Where the Chief Executive of the NSS, following consultation with two members of the NSS's Management Team, other than the Chief Executive of the NSS, and one of whom being a Medical Practitioner, is satisfied that the care of Eligible Client(s) is placed in jeopardy, the Chief Executive of the NSS in person may, in accordance with this **Clause 2**, suspend the operation of a Contractor's Contract pending investigation of a complaint under the preceding paragraphs. In such circumstances, the Committee referred to in **Clause 1.7** to this **Schedule 2** will in all cases meet to consider the matter on a date not later than three (3) weeks from the date of the suspension.

## **3. AUTOMATIC TERMINATION**

For the avoidance of doubt, the Contract will terminate on the expiration of the Contract's duration and, in any event, on the Contractor reaching the age of seventy two (72) Years.

## **4. TERMINATION BY CONTRACTOR ON NOTICE**

The Contractor may terminate this Contract on giving three (3) months' notice in writing of intention to terminate (or such shorter period as may be accepted by the HSE).

## **5. TERMINATION BY HSE FOR DEFAULT**

5.1 The Chief Executive of the NSS will be entitled to terminate this Contract without consequential liability to the Contractor with immediate effect if the Chief Executive of the NSS is satisfied that it is appropriate to do so if;

5.1.1 it has been established on foot of a determination by a competent Medical Practitioner nominated by the HSE, following consultation with the Contractor, that the Contractor is suffering from permanent infirmity of mind or body that impedes the Contractor's ability to carry out the Services. Where a dispute exists as to the findings of the medical examiner or where a conflicting medical opinion is provided to the HSE by a competent medical examiner on behalf of the Contractor, the HSE will refer the Contractor to an independent medical examiner and will take the findings of this medical examiner into consideration in arriving at its final conclusion.

5.1.2 the Contractor is removed from the register maintained by the Irish Medical Council or from the register of an equivalent authority in any jurisdiction.

5.1.3 the Contractor, or a Qualified Person, who is a Registered Medical Practitioner has had conditions attached to their registration by the Irish Medical Council pursuant to Section 71(c) of the Act of 2007 (including restrictions on the practice of medicine that may be engaged in by the Registered Medical Practitioner) or similar restrictions attached to the registration of a Qualified Person, who is a Registered Nurse, by the Irish Midwifery and Nursing Board.

5.1.4 the Contractor, or a Qualified Person, who is a Registered Medical Practitioner, has had their registration suspended pursuant to Section 60 or 71(e) the Act of 2007 or a Qualified Person, who is a Registered Nurse, has had their registration suspended pursuant to Section 58 of the Nurses and Midwives Act, 2011, or otherwise;

5.1.5 the Contractor has been found guilty by a court of law or has pled guilty to committing any fraudulent act or any indictable offence or gross negligence.

- 5.1.6 the Contractor takes up full-time employment with the HSE or within the wider public sector, and the HSE, following a review of the circumstances, decides in its sole discretion that a conflict of interest situation exists.
- 5.2 A Contractor in respect of whom a decision has been made by the Chief Executive of the NSS in accordance with **Clause 5.1** of this **Schedule 2** will be entitled to request a referral of this decision to a Committee. The composition of the Committee will be as outlined in **Clause 1.7** of this **Schedule 2**. Where applicable, the rules governing the Committee are as outlined in **Clauses 1.8, 1.9** and **1.10** of this **Schedule 2**.
- 5.3 The Committee will give full consideration to the matter and issue a final written determination to the Parties.

## SCHEDULE 3

### DISPUTE RESOLUTION PROCEDURE

#### 1. DISPUTE RESOLUTION GENERALLY

- 1.1** Disputes relating to routine or minor administrative matters should be capable of being resolved without recourse to a formal Dispute Resolution Procedure.
- 1.2** The Parties to this Contract will use their best endeavours to communicate and cooperate with each other with a view to resolving in good faith any matters in dispute arising between them concerning the operation of this Contract or provision of the Services.

#### 2. SCOPE OF SCHEDULE 3

- 2.1** The procedure set out in this **Schedule 3** (in particular under Section 3 hereunder) will apply to the operation of this Contract as it impacts on the rights and obligations of the Parties thereto only and will not apply to;
- 2.1.1 any matter the subject of an investigation under and in accordance with **Schedule 2**.
  - 2.1.2 any matter in respect of which any part of this process has already been invoked or in respect of which judicial proceedings are being pursued by either Party;
  - 2.1.3 any matter in respect of which a mediation process, third party arbitration or judicial proceedings are being pursued by either Party;
  - 2.1.4 any matter that gives rise to a dispute in respect of which:
    - (a) the Parties have previously been involved in a mediation process where an agreed outcome was reached; or
    - (b) either Party has had the matter in dispute determined through a third party arbitration or similar dispute resolution processes, or through judicial proceedings.
  - 2.1.5 Any matter in respect of which this process was not invoked within three (3) years of the matter in dispute arising.

#### 3. DISPUTE RESOLUTION PROCEDURE

##### 3.1 Informal Discussions

Every effort will be made by the Parties to resolve the matter in dispute through an informal process to obviate the need for the formal dispute resolution procedure described hereunder.

##### 3.2 Senior Manager Review

Where informal attempts have not resolved the matter in dispute, details should be submitted in writing by the Contractor to a Designated Manager of the NSS. The Designated Manager will, within four (4) weeks from receipt of correspondence, review the matter in dispute and issue a response in writing to

the Contractor. Where the Designated Manager is unable to complete this review within four (4) weeks, they will, before the end of the specified four (4) weeks, write to the Contractor explaining the reason for the delay and indicating when the review will be completed. Such delays will not be for a period greater than four (4) weeks, save where the Parties agree otherwise.

### 3.3 Delegated Officer Review.

- 3.3.1 Where, in the opinion of the Contractor, the matter in dispute has not been resolved to their satisfaction by the Designated Manager, the Contractor may then submit comprehensive details of their complaint or dispute to the Officer nominated specifically under the escalation procedure to manage such matters (hereinafter referred to as the “Delegated Officer”). The Delegated Officer will in all instances be senior in grade to the Designated Manager who carried out the initial formal review of the matter in dispute and will not have had any direct prior involvement in the matter in dispute. The referral to the Delegated Officer will be accompanied by all relevant documentation, including copies of all correspondence between the Contractor and the HSE in relation to the matter in dispute.
- 3.3.2 The Delegated Officer will, within five (5) working days of the matter in dispute being received by them, confirm in writing to both Parties, that the review has commenced. The Delegated Officer may interview the Contractor (or, as applicable, the Contractor’s registered Qualified Person(s) or Staff, HSE staff or other individuals, as appropriate. The Delegated Officer will generally notify the Contractor and the HSE Officer(s) of their determination within four (4) weeks from the date that the Delegated Officer informed the Parties that the review has commenced, which will in all cases be within five (5) working days of the matter in dispute being referred to them. Where the Delegated Officer is unable to complete this review within this timeframe, the Delegated Officer will, before the expiration of the four (4) week period, write to the Contractor explaining the reason for the delay and indicating when the review will be completed.
- 3.3.3 If a matter in dispute is resolved by the Delegated Officer, a written memorandum, (a “**Memorandum of Resolution**”), will be prepared jointly and signed by both the HSE and the Contractor. The Memorandum of Resolution will confirm that the resolution is in full and final settlement of the dispute, will record all matters in issue and all material factual details of the dispute and the terms of resolution. A copy of the Memorandum of Resolution will be supplied to both the Contractor and the HSE.

### 3.4 Third Party Dispute Resolution.

- 3.4.1 If the matter in dispute has not been resolved in accordance with the procedures outlined in **Clauses 3.1, 3.2 and 3.3** of this **Schedule 3** the Contractor may refer the dispute to an agreed independent disputes resolution panel member (the “**Panel Member**”) by way of a written referral (the “**Referral to Third Party**”).
- 3.4.2 The Panel Member will be appointed in any given case from a panel maintained by the HSE unless the Contractor wishes to nominate an alternative third party to review the matter in dispute. Any such alternative appointment will be agreed between the Contractor and the HSE and the referral to Third Party process outlined in **sub-clauses 3.4.3 and 3.4.4** of this **Schedule 3** will also apply in such instances.

- 3.4.3 The Referral to Third Party by the Contractor will be accompanied by all relevant documentation including copies of all correspondence between the Contractor and the HSE in relation to the matter in dispute. A copy of the Referral to Third Party and accompanying documentation will be sent to the HSE at the same time that the referral is lodged.
- 3.4.4 The HSE will be entitled to respond to the Contractor's referral to the Panel Member. The HSE will forward to the Contractor a copy of its response to the Panel Member on the same date.
- 3.4.5 The reasonable fees, costs and expenses of the Panel Member will be borne by the HSE. For the avoidance of doubt, in all other respects, each Party will bear its own costs and expenses of its participation in the Third Party Dispute Resolution process.
- 3.4.6 In the interest of cost effectiveness, the proceedings will be hosted on HSE premises. In the event that a HSE premises is not available to host proceedings, the HSE will be responsible for sourcing suitable alternative facilities and the costs of same will be borne by the HSE.
- 3.4.7 Disputes will be disposed of by way of hearing, unless otherwise determined by the Panel Member following consultation with both Parties, and the Panel Member will consider all written and oral submissions made to them by the Parties (including in the case of the Contractor their representative(s)). Having considered all such submissions, the Panel Member will endeavour to issue a written recommendation to both parties within six (6) weeks from commencement of the review of the matter in dispute by the Panel Member.
- 3.4.8 The recommendation of the Panel Member will be binding on the Parties, except where either side complains that the decision goes outside the terms of the Contract.
- 3.4.9 In circumstances where either Party complains that the Panel Member's decision goes outside the terms of the Contract, either Party may, within four (4) weeks of receipt of the Panel Member's recommendation, apply to the President of the Institute of Chartered Arbitrators to appoint an Arbitrator (not being a Panel Member) to determine the matter. The findings of the Arbitrator will be binding on both parties. The Arbitrator will endeavour to deliver such findings within six (6) weeks of referral.
- 3.4.10 The reasonable fees, costs and expenses of the Arbitrator will be borne by the HSE.