



**Tallaght
University
Hospital**

An Academic Partner of Trinity College Dublin

Ospidéal
Ollscoile
Thamhlachta

Service Provider Confidentiality Agreement

Procurement Sourcing Contracts Division

Tender / Contract Title: Request for Tender for the Provision of a Catering Nutrition Software System

Tender Reference: TUH788

Contract Reference (insert at Award): TUH788

Version History

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07.02.17	Review and Update	David Wall	N/A
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Director of ICT	David Wall	07.02.17	07.02.17
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Distribution for Information

Approval Authority	Name	Version Date	Approval Date
Director of ICT	David Wall	07.02.17	07.02.17
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Document Purpose

This purpose of this document is as a confidentiality agreement in connection with a current or proposed Service between Adelaide and Meath Hospital, a body corporate with perpetual succession established under the Health Act 1970 (*also known as Tallaght University Hospital (TUH)*) and a Service Provider, whereby the Service Provider is supplying, or proposes to supply, goods or services (the **Service**) or whereby the Hospital is supplying, or proposes to supply, goods or services, or works (the **Service**) to a Service Provider. The Hospital may directly make available to the Service Provider from time to time the *Information* (as defined below), or the Service Provider or its servants, employees, agents, subsidiaries or sub-contractors may indirectly acquire or have access to the *Information* by virtue of the Service.

A confidentiality agreement must be signed prior to any Service Provider supplying, or proposing to supply, goods or services, or works (the **Service**) or whereby the Hospital is supplying, or proposes to supply, goods or services, or works (the **Service**) to a Service Provider which involves information.

THIS AGREEMENT is dated and made between:

(1) Adelaide and Meath Hospital, a body corporate with perpetual succession established under the Health Act 1970 (*also known as Tallaght University Hospital (TUH)*) and

(2)
(the **Service Provider's** name (Block Capitals))

.....
(the **Service Provider's** registration number (Block Capitals))

.....
(the **Service Provider's** registered office (Block Capitals))

This Agreement is an addendum to TUH ***Standard Terms for Services & Supplies*** (and/or title of bespoke contract).

.....

.....
(Title of bespoke contract, the "Tender Contract" (Block Capitals))

RECITALS

- A. In connection with a current or proposed Service between the Hospital and the Service Provider, whereby the Service Provider is supplying, or proposes to supply, goods or services, or works (the **Service**) to TUH, TUH may directly make available to the Service Provider from time to time the *Information* (as defined below), or the Service Provider or its servants, employees, agents, affiliates, subsidiaries or sub-contractors may indirectly acquire or have access to the *Information* by virtue of the Service.
- B. It is intended that this Agreement will govern the terms and conditions applying to the Service Provider's use of the *Information* and other related matters.

NOW IT IS HEREBY AGREED by and between the parties hereto as follows:

1 Definitions:

In this Agreement, unless the context otherwise requires:

Contact Data means personal data limited to the business contact details of any employee of TUH or a TUH Agency who will communicate with Service Provider personnel regarding the Service;

Data Breach has the same meaning as "personal data breach" as set forth in Article 4 of the GDPR;

Data Controller or Controller has the meaning given to that term in Article 4 of the GDPR;

Data Processor or Processor have the meaning given to these terms in Article 4 of the

GDPR;

Data Protection Acts means the Data Protection Act 2018, the EU General Data Protection Regulation (Regulation (EU) 2016/679), the European Communities (Electronic Communications, Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. 336/2011) and every statutory modification, re-enactment, replacement and/or amendment thereof for the time being in force (or, where the context so admits or requires, any one or more of such Acts) and all orders and regulations/statutory instruments made thereunder;

Data Subject has the meaning given to this term in Article 4 of the GDPR;

Delete for the purposes of this agreement means removing all Information which is electronically held in such a way that it can never be retrieved from the device on which it is held;

FOIA 2014 means the Freedom of Information Act 2014 and any amendments to or replacements thereof, including by means of directly effective EU Regulation;

GDPR means the EU General Data Protection Regulation, Regulation (EU) 2016/679, the effective date of which is 25th May 2018;

Information means all information, (irrespective of the format, paper, electronic or otherwise) that is provided to the Service Provider by or on behalf of TUH in connection with the *Service*. *Information* may include *Personal Data* concerning TUH and TUH Agency clients, patients and staff, and confidential codes or any other information concerning the security of TUH's ICT infrastructure, but shall exclude Contact Data;

Personal Data has the meaning given to that term in Article 4 of the GDPR, and relates only to personal data, or any part of such personal data, of which TUH is the Data Controller or joint Data Controller and in relation to which the Service Provider is providing the *Service*;;

Processing and Process have the meaning given to these terms in Article 4 of the GDPR;

Pseudonymisation, Pseudonymised and like words, have the meaning given to these terms in Article 4 of the GDPR;

Special Categories of Personal Data has the meaning given to this term and/or such Personal Data as referred to in Article 9(1) of the GDPR.

Any reference to **third party** in this Agreement includes, for the avoidance of doubt, subcontractors.

2 **Obligations of the Service Provider:**

In consideration of TUH directly making the *Information* available to the Service Provider, or the Service Provider otherwise acquiring the *Information*, and in consideration of the award of the Tender Contract, the Service Provider shall:

- 2.1 Not take or remove any *Information* from TUH premises without having received the written consent of TUH. Such written consent must be issued in advance of the first instance and will apply thereafter;
- 2.2 Manage and *Process* any *Information* which they acquire from TUH in accordance with the documented instructions of TUH as set out in this Agreement and the obligations of the *Data Protection Acts* in so far as these obligations apply to a *Data Processor*, including with regard to transfers of *Personal Data* to a third country or an international organisation, unless required to do so by European Union or Irish law to which the Service Provider is subject; in such a case, the Service Provider shall inform TUH of that legal requirement before *Processing*, unless that law prohibits such information on important grounds of public interest;
- 2.3 Maintain secret and confidential all *Information* furnished to it or otherwise acquired by its servants, employees, agents, affiliates, subsidiaries or sub-contractors save and to the extent that such *Information* has been made available to the public by TUH or by any third party lawfully in possession thereof and entitled to make such disclosure without restriction;
- 2.4 Take appropriate measures to ensure the reliability of the Service Providers servants, employees, agents, affiliates, subsidiaries or sub-contractors who have access to the *Information*;

The Service Provider must be in a position to provide TUH with a named list of their servants, employees, agents, affiliates, subsidiaries or sub-contractors authorised to have access to *Information*.

- 2.5 Not disclose *Information* to any of the Service Provider's servants, employees, agents, affiliates, subsidiaries or sub-contractors unless and only to the extent that such persons need to know such *Information* for the purposes of providing services in connection with the *Service*, and provided that such person has been made aware of the restrictions in this Agreement on the disclosure of the *Information* and has agreed in writing to comply with such restrictions or materially similar restrictions;
- 2.6 Not disclose any *Information* to any third party without the prior written consent of TUH unless the Service Provider is legally required to do so (see Clause 3.0 of this Agreement);

- 2.7 Not engage any third party to process the *Information* or any part thereof on its behalf without the prior written consent of TUH. Should such consent be given, then the obligations of the Service Provider as set out in Clause 2 of this Agreement shall be imposed on that third party by way of a separate written agreement between the Service Provider and the third party, which agreement will terminate automatically upon termination of this Agreement for any reason. In the event that the third party fails to fulfil its obligations set out in Clause 2 of this Agreement, the Service Provider shall remain fully liable to TUH for the performance by the third party of those obligations;
- 2.8 Not use the *Information* directly or indirectly for any purpose other than in connection with the provision of services to TUH regarding the Service;
- 2.9 Not reverse engineer, de-compile or disassemble *Information* or attempt to use the *Information* in any form other than machine readable object code, or allow a third party to do any of the above;
- 2.10 Not make any press announcement or otherwise publicise the business relationship with TUH in any way including, without limitation, using the name of TUH in any publicity material, unless authorised to do so by TUH;
- 2.11 Only use the *Information* solely for the purposes of fulfilling the requirements of the Service.
- 2.12 Take the necessary precautions for the prevention of unauthorised access to, unauthorised disclosure of or other unauthorised processing of the *Information* and in particular:
 - 2.12.1 Keep all *Information* obtained from TUH or otherwise relating to the Service separate from all documents and other records of the Service Provider. TUH accepts that this requirement would be achieved by the Service Provider through logical electronic separation using role based access controls;
 - 2.12.2 Only make such copies of the *Information* as are necessary for the provision of services to TUH regarding the Service; and
 - 2.12.3 Ensure that any notices related to the confidentiality or privacy of the *Information* provided by TUH are not removed or altered; and
 - 2.12.4 Have all necessary access controls in place to include authentication and authorisation for access to *Information* to ensure its security and confidentiality; and
 - 2.12.5 Have all necessary systems in place to ensure the ongoing confidentiality, integrity, availability and resilience of *Processing* systems and services; and
 - 2.12.6 Have the ability to restore the availability and access to the *Information* in a timely manner in the event of a physical or technical incident; and
 - 2.12.7 Have a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the *Processing* of the *Information*;

- 2.13 Ensure, upon termination or the completion of this Agreement, that all documents, data, other records or tangible objects containing or representing *Information* which have been disclosed by TUH to the Service Provider (“**Information Records**”), and all copies thereof which are in the possession of the Service Provider and their subcontractors, shall at the written request and election of TUH, be returned to TUH or securely *Deleted*. Without prejudice to the generality of the foregoing:
- 2.13.1 Where TUH has requested that the Service Provider return *Information Records*, the *Information Records* shall be returned from the Service Provider to TUH in a commonly used electronic format;
- 2.13.2 Where TUH has requested that the Service Provider securely *Delete Information*, the Service Provider shall ensure the *Information* is permanently *Deleted* from any of the Service Providers systems or devices which were used to store the *Information* and from those of third parties to whom the Service Provider has disclosed and/or permitted access to the *Information* or *Information Records*;
- 2.13.3 Where the Service Provider is required for legal or regulatory compliance to retain a copy of any *Information*, the Service Provider shall provide TUH in writing with full details of any *Information* they are proposing to retain and the details of the legal and regulatory obligations governing this action.
- 2.13.4 Without prejudice to the obligations at Clause 2.13.3 above, in circumstances where European Union or Irish law requires the Service Provider to retain any *Personal Data* which TUH has shared with the Service Provider, the Service Provider shall provide TUH in writing with full details of any *Personal Data* they are legally required to retain and the details of the European Union or Irish legal obligations governing this action, and ensure the *Personal Data* retained by them is anonymised or *Pseudonymised* by them to TUH’s satisfaction and in a manner and to a standard which is satisfactory under European Union law (including, without limitation, the *GDPR*);
- 2.14 Implement appropriate technical and organisational controls in accordance with Article 32 of the *GDPR* and/or any legislative requirements of the *Data Protection Acts*, to keep the *Information* secure and to protect against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the *Information* transmitted, stored or otherwise processed by the Service Provider;
- 2.15 Provide reasonable assistance to TUH relating to its compliance with the provisions of Articles 33 to 36 of the *GDPR* and/or any legislative requirements of the *Data Protection Acts* or any guidance issued by the Data Protection Commission;
- 2.16 Notify TUH without undue delay after they or (as applicable) their subcontractors become aware of a *Data Breach*. In the event of a *Data Breach*, the Service Provider will (a) investigate the *Data Breach*, (b) provide TUH with all the relevant details surrounding the *Data Breach*, (c) provide TUH with details of the measures taken or proposed to be taken by the Service Provider to mitigate the effects and to minimise any damage resulting from the *Data Breach*, and (d) assist TUH in fulfilling its obligation to notify the relevant supervisory authority and *Data Subjects* of a *Data Breach* in accordance with Articles 33 and 34 of the *GDPR*;

- 2.17 Taking into account the nature of the processing, assist TUH by appropriate technical and organisational measures, insofar as this is possible, to enable TUH to fulfil its obligations to respond to requests from Data Subjects exercising their rights under Chapter III of the GDPR, (including the rights of access to, rectification of and erasure of their Personal Data), and shall promptly comply with any request from TUH to amend, transfer or Delete such Personal Data.
- 2.18 For the purposes of Freedom of Information / transparency obligations placed upon TUH (by *FOIA 2014* or otherwise):
- 2.18.1 Procure that it and its servants, employees, agents, subsidiaries or sub-contractors shall assist TUH, at no additional charge and within such timescales as TUH may reasonably specify, in meeting any requests for *Information* which are made to TUH under the *FOIA 2014*, such assistance to include (but not be limited to) the provision of a copy of the requested *Information*.
- 2.18.2 Notwithstanding anything to the contrary in this Agreement, if TUH receives a request for *Information* pursuant to the *FOIA 2014*, TUH shall be entitled to disclose all *Information* (in whatever form) as is necessary to comply with the *FOIA 2014*.
- 2.18.3 If, at the request of the Service Provider, TUH seeks to withhold *Information* protected by this Agreement and a competent authority determines, or the parties subsequently agree, that the *Information* is not exempt, then the Service Provider shall reimburse TUH for all costs (including but not limited to legal costs) incurred by TUH in seeking to withhold such *Information* from a request under the *FOIA 2014*.
- 2.18.4 Not (and shall procure that its servants, employees, agents, subsidiaries or sub-contractors do not) respond directly to a request for *Information* under the *FOIA 2014* unless expressly authorised to do so by TUH.
- 2.19 Ensure the security of Information stored on all fixed and mobile devices, including medical devices, desktop computers, servers and mobile computer devices (i.e. laptops, notes, tablets, personal data assistants, iPads, iPhones and other smart type devices etc.) and removal storage devices (i.e. CD, DVD, portable hard drives, Diskettes, ZIP disks, Magnetic tapes etc.).
- 2.19.1 Only in exceptional circumstances and with the written consent of TUH, should the Service Provider hold *Information* on mobile computing or removable storage devices. Should the business requirements necessitate the holding of *Information* on such devices then the Service Provider shall ensure that only *Information* absolutely necessary for their purpose is stored in this format. The Service Provider will *Delete* or return all copies of the *Information* after the business requirements have been fulfilled, or earlier upon the written request of TUH.
- 2.19.2 Where the use of mobile computing or removal storage devices is a necessity then the Service Provider will take all necessary precautions to ensure the safety of these devices from theft, loss and authorised access. As a minimum all mobile computing and removal storage devices must be appropriately secured including by means of strong encryption and protected by the use of strong complex passwords.

- 2.19.3 The encryption used by the Service Provider on the Service Providers laptops must satisfy or better the requirements of TUH *Encryption Policy*. The current TUH encryption standard for laptop devices is Advanced Encryption Standard (AES) 256. TUH will notify the Service Provider of any relevant changes to TUH *Encryption Policy*. At any time during the term of this Agreement TUH may request the Service Provider to set out in writing the current encryption measures used and the Service Provider will provide this information within 5 days. If, in the reasonable opinion of TUH, the encryption standard employed by the Service Provider is not sufficient, the Service Provider will implement, at their expense, whatever encryption standards are proposed by TUH. At no time should cipher keys be held on the mobile computing or removal storage device for the data which they secure. In addition, the Service Provider will at all times hold cipher keys in a secure fashion.
- 2.19.4 Under no circumstances encrypted or otherwise is the Service Provider sanctioned by TUH to download or store *Information* on USB memory sticks/keys.
- 2.20 Ensure the security of the *Information* in transit (including by way of electronic transit/ transit by way of electronic communication). Where it is necessary to transfer the *Information*, the Service Provider must take all necessary precautions to ensure the security of the *Information* before, during and after transit.
- 2.20.1 The Service Provider shall ensure that all transfers of the *Information* are legal, justifiable, and only the minimum *Information* absolutely necessary for a given purpose is transferred.
- 2.20.2 All transfers of *Information* should, where possible, only take place electronically via secure on-line channels or electronic mail. Where the Service Provider transfers *Information* electronically, in any form and by any means, the *Information* must be encrypted using strong encryption. The encryption methods used must satisfy or better the requirements of TUH *Encryption Policy*. The current TUH encryption standard for electronic transfer is SSL (Secure Socket Layer) and TLS (Transport Layer Security) and Advanced Encryption Standard (AES) 256 in the case of encrypted email. TUH will notify the Service Provider of any relevant changes to TUH *Encryption Policy*.
- 2.20.3 Where it is not possible to transfer the *Information* electronically, the *Information* may be encrypted and copied to a mobile storage device (with the exception of USB memory sticks/keys) and transported manually. The encryption methods used must satisfy or better the requirements of TUH *Encryption Policy*. The current TUH encryption standard for mobile storage devices is Advanced Encryption Standard (AES) 256. TUH will notify the Service Provider of any relevant changes to TUH *Encryption Policy*. Encrypted mobile storage media, should wherever possible, be hand delivered by the Service Provider to, and be signed for by, the intended recipient. If this is not possible, the use of registered post or some other certifiable delivery method must be used.

2.21 In relation to transfers of *Information* outside of the Republic of Ireland.

2.21.1 The Service Provider must seek the written consent of TUH prior to the Service Provider transferring *Information* outside the jurisdiction of the Republic of Ireland. TUH may, at its discretion, prohibit the Service Provider from transferring *Information* outside the jurisdiction of the Republic of Ireland.

2.21.2 Where TUH has consented to the transfer of *Information* outside the Republic of Ireland, the Service Provider may only transfer *Information* to a legal entity located in:

2.21.2.1 A country within the European Economic Area;

2.21.2.2 A country outside the European Economic Area but approved for this purpose by the EU Commission pursuant to Article 45(3) of the *GDPR*;

2.21.2.3 A country outside the European Economic Area but subject to the execution by TUH, the Service Provider and the transferee of standard contractual clauses adopted by the EU Commission in accordance with the examination procedure referred to in Articles 46 and 93(2) of the *GDPR*;

2.21.2.4 A country outside the European Economic Area but where the transferee of the *Information* is a parent or subsidiary company of the Service Provider, provided that the Service Provider and that parent or subsidiary company have adopted Binding Corporate Rules which have been approved by the relevant national Data Protection Authority under Article 47 of the *GDPR*;

2.22 Make available to TUH all information necessary to demonstrate the Service Providers compliance with the obligations laid down in Article 28 of the *GDPR* and allow for, and contribute to audits, including inspections, conducted by TUH or another auditor mandated by TUH. The Service Provider and TUH agree to negotiate in good faith the scope and implementation details of this provision at the time TUH decides to exercise its rights under this provision.

3 Disclosure Required by Law: In the event that the Service Provider is legally required to disclose any of the *Information* to a third party, the Service Provider undertakes to notify TUH of such requirement prior to any disclosure and, unless prohibited by law, to supply TUH with copies of all communications between the Service Provider and any third party to which such disclosure is made.

The Service Provider must co-operate with TUH in bringing any legal or other proceedings to challenge the validity of the requirement to disclose Information.

- 4 **Breach of Agreement:** The Service Provider hereby indemnifies and agrees to keep indemnified TUH against any costs, expenses, damages, harm or loss suffered or incurred by reason of any disclosure of the *Information* in breach of the terms and conditions of this Agreement and shall account to TUH for any moneys received by the Service Provider directly or indirectly arising out of the disclosure or use of any of the Information in breach of the terms and conditions of this Agreement.
- 5 **No Warranty:** Nothing in this Agreement shall constitute a warranty by TUH as to the accuracy of any of the *Information*, and TUH will not be liable to the Service Provider or to any other party to which any of the Information may be disclosed for any loss or damage howsoever caused, arising directly or indirectly out of the inaccuracy of any of the Information.
- 6 **No Licence:** The Service Provider acknowledges that the Information is of a special and unique character and that the *Information* and any patent, copyright or other intellectual property rights of whatever nature attaching thereto are and will remain the property of TUH and nothing in this Agreement will be construed as giving the Service Provider a licence in respect of such patent, copyright or other intellectual property rights.
- 7 **Survival of Obligations:** The non-disclosure obligations of this Agreement will survive and continue and will bind the Service Provider's legal representatives, successors and assigns notwithstanding that the Service may not be actually implemented by the parties.
- 8 **Waiver:** The rights of TUH under this Agreement will not be prejudiced or restricted by any indulgence or forbearance extended to the Service Provider or other parties, and no waiver by TUH in respect of any breach of the terms of this Agreement will operate as a waiver in respect of any subsequent breach.
- 9 **Variation:** This Agreement may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties hereto.
- 10 **Notice:** Any notice or other communication given or made under this Agreement shall be in writing and may be sent by email, delivered to the relevant party, or sent by pre-paid registered post airmail or fax to the address of that party specified in this Agreement or to that party's fax number thereat or such other address or number as may be notified hereunder by that party from time to time for this purpose and will be effective notwithstanding any change of address or fax number not so notified. Unless the contrary is proved, each such notice or communication will be deemed to have been given or made and delivered, if by email upon delivery, if by post 48 hours after posting, if by delivery when left at the relevant address or, if by fax upon transmission, subject to the correct code or fax number being received on the transmission report.
- 11 **Severance:** If any provision of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions of this agreement will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to make it valid, enforceable or legal.

- 12 Governing Law:** This Agreement will be governed by and construed in accordance with the laws of Ireland and the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the courts of Ireland.

IN WITNESS where of this Agreement has been entered into the day and year first herein written.

SIGNED on behalf of **TUH**

.....
Signature

.....
Name (printed)

.....
Title:

SIGNED on behalf of

.....
(the **Service Provider**)

.....
Signature

.....
Name (printed)

.....
Title

Date:

In the presence of

.....
Signature

.....
Name (printed)

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Title

In the presence of

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Signature

.....
Name (printed)

.....
Title

Date: