



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Service Provider Confidentiality Agreement



Version 1.5

THIS AGREEMENT is dated and made between:

- (1) **The Health Service Executive**, a body corporate with perpetual succession established by the Health Act 2004 (the **HSE**), 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 the *HSE Standard Terms for Services & Supplies* (and/or title of bespoke contract).

.....
.....
(title of bespoke contract (Block Capitals))

RECITALS

- A. In connection with a current or proposed Service between the HSE and the Service Provider, whereby the Service Provider is supplying, or proposes to supply, goods or services (the **Service**) to the HSE, the HSE 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.
- 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:

Information means any and all *Information*, (irrespective of the format - paper, electronic or otherwise) belonging to the HSE, including but not limited to the following:

- 1.1 Personal *Information* concerning the HSE’s clients, patients or staff, including confidential *Information* concerning the physical and mental health of the HSE’s clients, patients and staff;
- 1.2 *Information* regarding the business affairs of the HSE generally, and as regards the Service;

- 1.3 *Information* regarding the policies, procedures and work practices of the HSE;
- 1.4 Goods and services (including, without limitation, audit, consultancy and related services);
- 1.5 *Information* regarding the existence, content, progress or conclusion of any negotiations between the HSE and the Service Provider relating to the Service, and
- 1.6 Confidential codes or other *Information* concerning access to the HSE's computer networks and / or *Information* systems.

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.

2 **Obligations of the Service Provider:**

In consideration of the HSE directly making the *Information* available to the Service Provider, or the Service Provider otherwise acquiring the *Information*, the Service Provider shall:

- 2.1 Not take or remove any *Information* from HSE premises without having received the written authorisation of the HSE. Such written authorisation must be issued in advance of the first instance and will apply thereafter;
- 2.2 Manage and process any *Information* which they acquire from the HSE in accordance with the instructions of the HSE and the obligations of the *Data Protection Acts 1988 and 2003* and (when effective) *EU General Data Protection Regulation (EU Regulation No. 2016/679)* and the *European Communities (Electronic Communications Networks and Services) / (Privacy and Electronic Communications) Regulations 2011* in so far as these obligations apply to a data processor;
- 2.3 Maintain secret and confidential all *Information* furnished to it or otherwise acquired by its servants, employees, agents, subsidiaries or sub-contractors save and to the extent that such *Information* has been made available to the public by the HSE 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, subsidiaries or sub-contractors who have access to the *Information*;

The Service Provider must be in a position to provide the HSE with a named list of their servants, employees, agents, 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, 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;
- 2.6 Not disclose any *Information* to any third party without the prior written consent of the HSE;

- 2.7 Not use the *Information* directly or indirectly for any purpose other than in connection with the provision of services to the HSE regarding the Service;
- 2.8 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;
- 2.9 Not make any press announcement or otherwise publicise the business relationship with the HSE in any way including, without limitation, using the name of the HSE in any publicity material, unless authorised to do so by the HSE;
- 2.10 Only use the *Information* solely for the purposes of fulfilling the requirements of the Service.
- 2.11 Implement appropriate human, organisational and technological controls to protect against accidental loss, destruction, damage, alteration, or disclosure of the *Information*.
- 2.12 Take the necessary precautions for the prevention of unauthorised access to, the *Information* and in particular:
 - 2.12.1 Keep all *Information* obtained from the HSE or otherwise relating to the Service separate from all documents and other records of the Service Provider;
 - 2.12.2 Only make such copies of the *Information* as are necessary for the provision of services to the HSE regarding the Service; and
 - 2.12.3 Mark all documentation containing the *Information* as being subject to the terms of this Agreement and indicate that it is contrary to the terms of this Agreement to copy, disclose or use in any manner or fashion such documentation without the prior written consent of the HSE; and
 - 2.12.4 Have all necessary access controls to include authentication and authorisation for access to *Information* to ensure its security and confidentiality.
- 2.13 Ensure all documents and other tangible objects containing or representing *Information* which have been disclosed by the HSE to the Service Provider, and all copies thereof which are in the possession of the Service Provider, shall be returned to the HSE upon the completion of the Service. In addition, the Service Provider will confirm, in writing, at the completion of the Service that all electronic *Information* received from the HSE has been deleted from any of the Service Provider's devices which store *Information*.
- 2.14 Promptly inform the HSE of any actual or suspected breach in their security which could give rise to the actual or potential loss, theft, unauthorised release or disclosure of *Information* or any part thereof. In such an event the Service Provider will immediately supply the HSE with all the relevant facts surrounding the actual or suspected breach.
- 2.15 For the purposes of Freedom of Information the Service Provider shall:
 - 2.15.1 Procure that its servants, employees, agents, subsidiaries or sub-contractors shall assist the HSE, at no additional charge and within such timescales as the HSE may

- reasonably specify, in meeting any requests for *Information* which are made to the HSE under the *Freedom of Information Act 2014*, such assistance to include (but not be limited to) the provision of a copy of the requested *Information*.
- 2.15.2 Notwithstanding anything to the contrary in this Agreement, if the HSE receives a request for *Information* pursuant to the *Freedom of Information Act 2014*, the HSE shall be entitled to disclose all *Information* (in whatever form) as is necessary to comply with the *Freedom of Information Act 2014*.
- 2.15.3 If, at the request of the Service Provider, the HSE 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 the HSE for all costs (including but not limited to legal costs) incurred by the HSE in seeking to withhold such *Information* from a request under the *Freedom of Information Act 2014*.
- 2.15.4 Not (and shall procure that its servants, employees, agents, subsidiaries or sub-contractors do not) respond directly to a request for *Information* under the *Freedom of Information Act 2014* unless expressly authorised to do so by the HSE.
- 2.16 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, Blackberry enabled devices, 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).
- 2.16.1 Only in exceptional circumstances and with the written consent of the HSE, 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 the *Information* absolutely necessary for their purpose is stored in this format and that the *Information* is held on such devices only for the minimum amount of time necessary and furthermore, after such period that they will delete all *Information* from these devices.
- 2.16.2 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 or loss. As a minimum all mobile computing and removal storage devices must be protected by the use of strong complex passwords.
- 2.16.3 The Service Provider must ensure that all *Information* held on mobile computing and removal storage devices is secured by strong encryption. The encryption methods used must satisfy or better the requirements of the *HSE Encryption Policy*. (http://hse.ie/eng/services/Publications/pp/ict/Encryption_Policy.pdf) At any time during the term of this Agreement the HSE 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 the HSE, 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 the HSE. 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.
- 2.16.4 Under no circumstances encrypted or otherwise is the Service Provider sanctioned by the HSE to download or store *Information* on USB memory sticks/keys.
- 2.17 Ensure the security of the *Information* in transit. 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.
- 2.17.1 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.
- 2.17.2 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 the *HSE Encryption Policy*.
- 2.17.3 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 the *HSE Encryption Policy*. The 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.
- 2.18 Transfers of *Information* outside of the Republic of Ireland.
- 2.18.1 The Service Provider must seek the written consent of the HSE prior to the Service Provider sending *Information* outside the jurisdiction of the Republic of Ireland. The HSE may, at its discretion, prohibit the Service Provider from sending *Information* outside the jurisdiction of the Republic of Ireland.
- 2.18.2 Where the HSE 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:
- 2.18.2.1 A country within the European Economic Area;
- 2.18.2.2 A country outside the European Economic Area but approved for this purpose by the EU Commission;
- 2.18.2.3 The United States of America only when the *Information* transferee has agreed in writing to be bound by the EU-US Privacy Shield Framework.
- 2.19 If so requested by the HSE, the Service Provider shall:
- 2.19.1 Permit the HSE or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Service Provider's data

processing facilities and activities (and/or those of its agents, subsidiaries and sub contractors) and comply with all reasonable requests or directions by the HSE to enable the HSE to verify and/or procure that the Service Provider is in full compliance with its obligations under this contract.

2.19.2 Make available for audit by the HSE or its representatives, (subject to reasonable and appropriate confidentiality undertakings), all staff procedures, processes and instructions that the Service Provider employ for the management of *Information*

2.19.3 Permit the HSE or its representatives, (subject to reasonable and appropriate confidentiality undertakings), to inspect the contracts (Model Contracts), that the service provider has in place, governing the transfer of any *Information* from the Service Provider to legal entities located outside the European Economic Area

2.19.4 Forthwith return to the HSE (or as it directs) all written material, photographs, *Information* and documentation obtained from the HSE together with all copies and reproductions made by the Service Provider; and

2.19.5 Forthwith destroy all notes, memoranda and *Information* kept in electronic form containing copies or abstracts of the *Information*

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 the HSE of such requirement prior to any disclosure and, unless prohibited by law, to supply the HSE 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 the HSE 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 the HSE 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 the HSE 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 the HSE as to the accuracy of any of the *Information*, and the HSE 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 the HSE 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 the HSE 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 the HSE 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 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 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 the
Health Service Executive

In the presence of

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Signature

.....
Signature

.....
Name (printed)

.....
Name (printed)

.....
Title

.....
Title

SIGNED on behalf of

In the presence of

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

.....
Signature

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Signature

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Name (printed)

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Name (printed)

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Title

.....
Title

Date:

Date: