Attachment 9 - Confirmation of Non-Disclosure of Confidential Information

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[Company Address - Company to Complete]

Date:

Dear [Company to Complete]

**1. INTRODUCTION**

* 1. [Company] whose registered office is [address] (“You”) have expressed an interest in the procurement for the provision of the Healthy Start Vitamins - Qualified Persons for Pharmacovigilance Services. For the purpose of this letter, this is referred to as the “Service”.

**2. CONFIDENTIAL INFORMATION**

2.1. In consideration of certain confidential information relating to the Service (“Confidential Information”) being made available to you by the Department of Health (“Us”), you unconditionally and irrevocably agree to the undertakings contained in this letter.

2.2. Such Confidential Information shall include, without limitation:

1. All Confidential Information detailed in the Schedule to this letter;
2. Any other information relating to the Confidential Information in relation to the Service in whatever form supplied which is directly or indirectly disclosed or made available to you before or after the date of this letter, and;
3. Any information which contains, or reflects, or generated from any such Confidential Information.

**3. OBLIGATION of CONFIDENTIALITY**

3.1. Subject to paragraphs [4] and [6], you shall at all times keep secret and confidential the Confidential Information and the terms of this letter.

**4. EXCLUDED INFORMATION**

4.1. The obligation to maintain the confidentiality of Confidential Information does not apply to Confidential Information which you can demonstrate:

1. Is generally available (or becomes available) in the public domain other than as a result of a breach by you or your Representatives (as defined in paragraph [6.1] of the undertakings contained in this letter (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information);
2. Was lawfully in your possession before the information was disclosed to you as evidenced by written records; or
3. Both parties agree in writing that it is no longer confidential and may be disclosed.

4.2. You may disclose Confidential Information only if you are required to disclose it by any applicable law, or regulation, or regulatory authority, or by the order or ruling of a court, or administrative body of competent jurisdiction provided that:

1. If disclosure of Confidential Information is required for the purpose set out in paragraph [4.2], prior to such disclosure you shall give us prompt written notice of the information you propose to disclose (being the minimum amount of information consistent with satisfying you obligations) and shall take into account any reasonable comments we may have in relation to the content, timing and manner of despatch of the disclosure and take such steps as we may reasonably require to enable us to mitigate the extent of, or avoid the requirement of any such disclosure.
2. If you are legally prohibited from informing us before any such Confidential Information is disclosed, you shall (to the extent permitted by law) inform us of the full circumstances of the disclosure or announcement and the information that has been disclosed immediately after such disclosure or announcement is made.

**5. PERMITTED USE**

5.1. You may use the Confidential Information solely for taking part in the Service and any preparation necessary to do so.

**6. PERMITTED DISCLOSURE**

6.1. You may disclose Confidential Information only to those of your employees and professional advisors (together the “Representatives”) who are directly and necessarily concerned with your participation in the Service and whose knowledge of the Confidential Information is essential for that purpose, provided that, if we request in writing, any professional advisers to whom you propose to disclose (or have disclosed) Confidential Information enter into a confidentiality agreement with us substantially on the same terms as this letter to the disclosure of any Confidential Information to them.

6.2. You shall procure that each Representative to whom any disclosure of Confidential Information is made, is made aware and adheres to the terms of the undertakings contained in this letter as if they were a party to them. You shall, in any event, be responsible for any breach by your Representatives of the undertakings contained in this letter.

6.3. You shall notify us immediately in writing of the details of each Representative to whom any Confidential Information is proposed to be disclosed by you, or on your behalf.

6.4. You shall also notify us immediately upon becoming aware that any of the Confidential Information has been disclosed to, or obtained by, a third party otherwise than as permitted by this letter, together with details of such unauthorised disclosure.

**7. ANNOUNCEMENTS**

7.1. No announcement, communication or disclosure of your interest in the Service or the fact of our discussions shall be made or indicated by you or on your behalf without our prior written consent, unless such announcement or disclosure is required by law or by the rules of any relevant stock exchange or by any supervisory, governmental or regulatory body or court of competent jurisdiction or other authority with relevant powers to whose rules you are subject.

**8. FURTHER OBLIGATIONS**

8.1. You and your Representatives shall keep the Confidential Information safe in a secure place and properly protected against theft, damage, loss and unauthorised access (including, but not limited to, access by electronic means) and, without prejudice to the foregoing, you shall take all reasonable steps and exercise reasonable skill and care to keep the same confidential and exercise in relation to Confidential Information no lesser security measures and degree of care as you apply to your own confidential information and all documents and other material reproducing or incorporating any of the Confidential Information shall be kept separate from your own confidential information.

8.2. You shall mark as confidential any document, disks or other media containing or reflecting, or which are generated from any Confidential Information.

**9. RETURN of CONFIDENTIAL INFORMATION**

9.1. Subject to paragraph 9.2 below, you and your Representatives shall immediately on the earlier of you receiving written demand from us to do so and the Service or your involvement in it ceasing for any reason:

1. Return to us all Confidential Information other than as mentioned in paragraph 9.1(c) (and all copies, reproductions or extracts thereof any part thereof);
2. Remove all Confidential Information from any computer systems, other similar devices or virtual facility owned or used by you or by your Representative;
3. Destroy all notes, analyses, compilations, studies, memoranda and other documents containing or reflecting or generated from any Confidential Information prepared by you or any of your Representatives; and
4. Request that one of your directors confirms to us in writing that to the best of their knowledge, information and belief, having made all proper enquiries, the matters set out in paragraphs 9.1(a) to (c) have been done.

9.2. You and your Representatives shall not have to destroy or permanently erase copies which you are required by law to retain.

**10. ACCURACY of CONFIDENTIAL INFORMATION**

10.1. You acknowledge and agree that, except as may be otherwise agreed in writing in any contract or deed that we subsequently enter into in connection with the Service, we accept no responsibility for nor make any representation or warranty, express or implied, with respect to the accuracy, reliability or completeness or otherwise of the Confidential Information, and we have no obligation to update or correct any inaccuracies in any Confidential Information provided. Furthermore, you herby irrevocably and unconditionally waive any claims, rights or remedies which you may otherwise have in relation to the accuracy, reliability or completeness of the Confidential Information.

10.2. Nothing in this letter shall exclude any liability for, or remedy in respect of, any representation made or given fraudulently.

**11. AUTHORISED CONTACT**

11.1 All requests to us for Confidential Information or general enquiries relating to the Service should be made to [name] at [email address] (or to such other persons as we may nominate from time to time) and to other person.

**12. DURATION**

12.1 The agreement in this letter shall terminate upon the entry into force of a contractual agreement between you and us in respect of the Services.

12.2 If the parties do not enter into a contractual agreement in respect of the Service, the agreement in this letter shall last for a period of [\*\*] years from the date of this letter, unless it is terminated earlier for breach of either party or by agreement between the parties.

12.3 Termination of the agreement in this letter shall not affect any accrued rights or remedies to which we are entitled.

**13. GENERAL**

13.1. You confirm that you are acting as principal and not as a representative or broker for any other person, and confirm that you shall be responsible for any and all costs incurred by you or on your behalf in connection with this letter.

13.2. No right or licence is granted to you or any of your Representatives in relation to any Confidential Information, except as expressly set out in this letter and the Confidential Information shall at all times remain our property.

13.3. Access to the Confidential Information is granted to you and your Representatives without waiver by us of confidentiality and/or legal professional privilege and / or common interest privilege which attaches to any of the Confidential Information. You acknowledge and agree that neither you not your Representatives shall, at any time, waive, assign or compromise privilege or confidentiality in relation to the Confidential Information in any way.

13.4. You shall indemnify us and keep us fully indemnified at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest penalties and other reasonable costs and expenses suffered or incurred by us arising from any breach of the agreement in this letter by you and from the actions or omissions of any Representatives.

13.5. You agree and acknowledge that because of the valuable nature of the Confidential Information, damages would not be an adequate remedy for a breach of any term of this letter and you, therefore, agree that we are entitled to the remedies of injunction, specific performance and other equitable relief for a threatened or actual breach of any term of this letter by you or any of your Representatives without proof of special damage.

13.6. The failure to exercise or delay in exercising a right or remedy provided by this letter, by law or in equity does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this letter, by law or I equity, prevents further exercise of the right or remedy or the exercise of another right or remedy available to us, whether contractual, equitable, proprietary or otherwise.

13.7. Each of the terms of this letter are several and distinct, and to the extent any such provision shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect any other part of that provision or the other provisions of this letter which shall remain in full force and effect, and the said provisions (to the extent possible) shall be given effect to in its reduced form as may be decided by any court of competent jurisdiction.

13.8. No term of this letter is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

**14. ASSIGNMENT**

14.1. This letter is personal to you and may not be assigned or transferred to any third party without our prior written consent.

**15. ENTIRE AGREEMENT and VARIATION**

15.1. This letter constitutes the entire agreement and understanding of the parties in respect of the subject matter of this letter and supersedes all prior oral and written agreements, understandings and arrangements between us relating to the subject matter of this letter.

15.2. Subject to paragraph 15.3, no variation of the agreement in this letter shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

15.3. The Authority may at its sole discretion update the Confidential Information in the Schedule to this agreement by serving a copy of the updated Schedule to you writing. Such variation shall take effect from the date of service of the updated Schedule to you.

**16. JURISDICTION and GOVERNING LAW**

16.1. The terms of this letter are governed by, and shall be construed in accordance with, English Law.

16.2. The courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings and to determine any claim, dispute or difference which may arise out of or in connection with this letter, and, for those purposes, each party irrevocably submits to the jurisdiction of the courts of England.

**17. COUNTERPARTS**

17.1. This letter may be executed in two or more counterparts, each of which shall be deemed an original, but all counterparts taken together shall constitute one and the same letter. This letter may be executed by facsimile signature or other electronic transmission.

Please confirm your agreement to the terms of this letter by signing and dating the attached copy.

Yours Sincerely

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For and on behalf of the [insert department name]

We, the undersigned, hereby acknowledge receipt of the letter of which this is a copy and agree to its terms.

Signed

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|  |

For and on behalf of [name of company]

Date

|  |
| --- |
|  |

**THE SCHEDULE**

**[Department to list confidential information here]**