

DATED2018

NHS BUSINESS SERVICES AUTHORITY

and

BRUNEL HEALTHCARE MANUFACTURING LIMITED

FRAMEWORK AGREEMENT

FOR THE PROVISION OF

HEALTHY START VITAMINS – WOMEN’S VITAMIN PRODUCT

Agreement Ref: 60479

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This Framework Agreement is made as a Deed on the **day of**
2018.

BETWEEN:

- (1) **NHS BUSINESS SERVICES AUTHORITY** of Bridge House, 152 Pilgrim Street, Newcastle Upon Tyne NE1 6SN (the "**Authority**");
- (2) **Brunel Healthcare Manufacturing Limited** which is a company incorporated and registered in **England and Wales** under company number **4504895** and whose registered office is at **William Nadin Way, Swadlincote, Derbyshire, DE11 0BB** (the "**Supplier**").

RECITALS:

- A The Authority placed a contract notice **2017/S 105-209552** on **2nd June 2017** and subsequent Accelerated Open Procedure notice **2017/S 182-372147** on **20th September 2017** (the "**OJEU Notice**") in the Official Journal of the European Union seeking tenders from potential for the supply of the Products.
- B On **21st September 2017** the Authority issued an invitation to tender (the "**Invitation to Tender**") for the supply of the Products.
- C In response to the Invitation to Tender, the Supplier submitted a tender to the Authority on **6th October 2017** (set out in Schedule 21 (Tender)) (the "**Tender**") through which it represented to the Authority that it is capable of delivering the Products in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Products in an efficient and cost effective manner.
- D On the basis of the Tender, the Authority selected the Supplier to enter into the Framework Agreement to make the Products available via the Authority to the Customers.
- E The Supplier agrees to supply the Products to the Authority in the manner and on the terms described herein.
- F It is the Parties' intention that there will be no obligation for the Authority to place any Orders for Products under this Framework Agreement during the Framework Period.

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 The following definitions in this Clause shall apply in this Framework Agreement.

"Affected Party" means the party seeking to claim relief in respect of a Force Majeure;

"Affiliates" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to

	time;
"Approval"	means the prior written consent of the Authority and "Approve" and "Approved" shall be construed accordingly;
"Audit"	means an audit carried out pursuant to Clause 21 (Records, Audit Access and Open Book Data);
"Auditor"	means the Authority and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;
"Authority Cause"	means any breach of the obligations of the Authority (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Authority in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Authority is liable to the Supplier;
"Authority Personal Data"	means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Authority to the Supplier;
"Authority Representative"	means the representative appointed by the Authority from time to time in relation to this Framework Agreement;
"Authority's Confidential Information"	means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know How, personnel, and suppliers of the Authority, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential;
"BCDR Plan"	the plan prepared pursuant to Clause 36 and Schedule 11 (Business Continuity and Disaster Recovery), as may be amended from time to time;
"BCDR Requirements"	the business continuity and disaster recovery requirements set out in Schedule 11 (Business Continuity and Disaster Recovery);
"CEDR"	means the Centre for Effective Dispute Resolution;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the

	Products and performance of the Orders which comes into force after the Framework Commencement Date;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Commercially Sensitive Information"	means the Supplier's Confidential Information listed in Schedule 17 (Commercially Sensitive Information) comprised of commercially sensitive information: <ul style="list-style-type: none"> a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; and b) that constitutes a trade secret;
"Comparable Supply"	means the supply of products and/or services to another customer of the Supplier that are the same or similar to the Products and/or services delivered under this Framework Agreement;
"Complaint"	means any formal written complaint raised by the Authority and/or a Customer in relation to the performance of this Framework Agreement or any Order in accordance with Clause 50 (Complaints Handling);
"Confidential Information"	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context requires;
"Continuous Improvement Plan"	means a plan for improving the supply of the Products and/or reducing the Product Prices produced by the Supplier pursuant to Schedule 12 (Continuous Improvement);
"Contract Year"	means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof;
"Control"	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and " Controlled " shall be construed accordingly;
"Credits"	the sums payable by the Supplier attributable to a failure to meet a KPI Target as specified in Schedule 2 (Key Performance Indicators);
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;

“Customers”	means any NHS Trust; other NHS entity; local authority, government department; government agency or other statutory; public sector body or any non-public sector organisation where Approved by the Authority, and “Customer” shall be construed accordingly;
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection Legislation"	means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Default"	means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Authority;
“Defective Product”	means any Product supplied under this Framework Agreement which does not conform to or is not produced in accordance with applicable Law, the Specification or which otherwise fails to conform to the requirements of this Framework Agreement relating to the quality and efficacy of the Product;
“Delay”	a delay in the successful achievement of a Milestone;
“Detailed Implementation Plan”	the detailed plan for the implementation of each of the implementation requirements that is developed in accordance with Clause 5.2;
“Delivery”	completion of delivery of an Order in accordance with Clause 10.4;
“Delivery Date”	the date specified for Delivery of an Order in accordance with the Order Form;
“Delivery Location”	the location specified for Delivery of an Order in the Order Form which shall unless otherwise stated be the Storage and Distribution Service Provider’s nominated location;
"Dispute"	means any dispute, difference or question of interpretation

	<p>arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Products, failure to agree in accordance with the procedure for variations in Clause 22.1 (Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;</p>
"Dispute Notice"	<p>means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;</p>
"Dispute Resolution Procedure"	<p>means the dispute resolution procedure set out in Schedule 18 (Dispute Resolution);</p>
"DOTAS"	<p>means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;</p>
"DPA"	<p>means the Data Protection Act 1998 as amended from time to time;</p>
"Due Diligence Information"	<p>means any information supplied to the Supplier by or on behalf of the Authority prior to the Framework Commencement Date;</p>
"Environmental Information Regulations or EIRs"	<p>means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;</p>
"FOIA"	<p>means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;</p>
"Forecasted Requirements"	<p>means the Supplier will maintain a minimum holding of 12 weeks' worth of finished Products within the Supply Chain (based on the Forecasted Requirements), which shall be based on the higher of the latest weekly Sales Forecast for the next 12 weeks usage, and the latest weekly Supplier Forecast for the next 12 weeks supply.</p>
"Force Majeure Event"	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Authority or the Supplier of its obligations arising from:</p> <ol style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from

	performing its obligations under this Framework Agreement;
	b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
	c) acts of the Crown, local government or Regulatory Bodies;
	d) fire, flood or any disaster; and
	e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> i) any industrial dispute relating to the Supplier, the Supplier personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's Supply Chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds.
"Force Majeure Notice"	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Framework Agreement"	means this agreement consisting of the Clauses together with the Schedules and any appendices and annexes to the same;
"Framework Commencement Date"	means 1 st March 2018; [actual start date once standstill completed and prior to issue to Brunel]
"Framework Guarantee"	means a deed of guarantee in favour of the Authority in the form set out in Framework Schedule 13 (Framework Guarantee) granted pursuant to Clause 14 (Guarantee) - NOT USED
"Framework Guarantor"	means any person acceptable to the Authority to give a Framework Guarantee - NOT USED
"Framework Period"	means the period from the Framework Commencement Date until its fifth anniversary, or if terminated before the expiry of the agreement, the earlier date of termination of this Framework Agreement in accordance with its terms;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in"	means a Change in Law where the change is of a general

"Law"	legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"Healthy Start Vitamins Scheme Programme"	means all aspects of the Authority's arrangements to allow for the provision of Healthy Start Vitamins to Recipients and others where appropriate;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"Implementation Period"	means the term of this Framework Agreement from the Framework Commencement Date until the Operational Period Start Date;
"Implementation Plan"	the Outline Implementation Plan unless and until it is superseded by the Detailed Implementation Plan;
"Implementation Requirements"	each of the Authority's requirements including the Testing Requirements which the Supplier shall perform during the Implementation Period to ensure that the Products comply with the Specification, the KPIs and the Framework Agreement;
"Improvement Plan"	means the plan required by the Authority from the Supplier which shall detail how the Supplier will improve the supply of the Products pursuant to Clause 33.1.1 (Authority Remedies);
"Improvement Notice"	means the notice issued by the Authority to the Supplier pursuant to Clause 33.1.3 (Authority Remedies) which will detail how the Supplier shall improve the supply of the Products;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
"Insolvency Event"	means, in respect of the Supplier or Guarantor (as applicable): <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of

considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Supplier or Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

"Intellectual Property Rights" or "IPR"

means:

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

"IPR Claim"

means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as

	otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement;
"Intellectual Property Licence Agreement"	means the licence agreement to be granted to the Supplier by the Secretary of State for Health in respect of the Supplier's use of the Marks and the Works (as defined in the Intellectual Property Licence Agreement) in the form set out in Schedule 14 (Intellectual Property Licence Agreement) to be granted during the Implementation Period pursuant to Clause 27.1;
"Invitation to Tender" or "ITT"	has the meaning given to it in Recital C to this Framework Agreement;
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	means any Sub-Contractor which is listed in Framework Schedule 7 (Key Sub-Contractors), that in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Products;
"Key Performance Indicators" or "KPIs"	means the performance measurements and targets set out in Schedule 2 (Key Performance Indicators);
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Products but excluding know-how already in the other Party's possession before the Framework Commencement Date;
"KPI Target"	means the acceptable performance level for a KPI as set out in Schedule 2 in relation to each KPI;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply, or (where applicable) any regulation or other enforceable right within the meaning of section 2 of the European Communities Act 1972;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation on otherwise and "Loss" shall be interpreted accordingly;
"Milestone"	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
"Milestone Date"	the date set against the relevant Milestone in the Implementation Plan by which the Milestone shall be completed;
"MI Report"	means a report containing Management Information submitted

	to the Authority in accordance with Framework Schedule 9 (Management Information);
"MI Reporting Template"	means the form of report set out in the Annex to Framework Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"Modern Slavery Act"	means the Modern Slavery Act 2015 as amended, updated or replaced from time to time;
"New Products"	means products and/or services which the Authority wishes to procure from a third party which are the same or similar to the Products;
"Occasion of Tax Non-Compliance"	means where: <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion;
"OJEU Notice"	has the meaning given to it in Recital A to this Framework Agreement;
"Open Book Data"	means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the charges already paid or payable and charges forecast to be paid during the Framework Period and term of any Orders;
"Operational Period"	the term of this Framework Agreement from the Operational Period Start Date until its expiry;
"Operational Period Start Date"	means 5 th January 2019 (or such other date as agreed between the Parties);
"Order"	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the supply of the

	Products made between the Authority and the Supplier pursuant to Schedule 6 Ordering Procedure;
"Order Form"	means an order form based on the Template Order Form;
"Ordering Procedure"	means the process for awarding any Orders pursuant to Clause 8 (Ordering Procedure) and Schedule 6 (Ordering Procedure);
"Outline Implementation Plan"	the outline plan set out in Schedule 3 for the implementation of the Product Requirements;
"Party"	means the Authority or the Supplier and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Product(s)"	means the women's Healthy Start Vitamins as described in Schedule 1 (Specification) which the Supplier shall make available to the Authority pursuant to the Framework Agreement;
"Product Prices"	the prices of the Products as set out in Schedule 4 and "Product Price" means the price of an individual Product as determined in that Schedule;
"Product Requirements"	the requirements of the Authority for the Products as set out in Schedule 1 (Specification) as amended from time to time;
"Products within the Supply Chain"	means products that are stored in the Supplier's facility, and those products stored in the Storage and Distribution Service Providers facilities, and/or products in transit between these facilities;
"Prohibited Act"	means any of the following: <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement; or c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation

	repealed or revoked by such Act); or
	ii) under legislation creating offences concerning Fraud; or
	iii) at common law concerning Fraud; or
	iv) committing (or attempting or conspiring to commit) Fraud;
"Rebate Amount"	means the sum of money to be paid by the Supplier to the Authority annually in arrears calculated using the annual value of sales figure above the Rebate Threshold and the Rebate Percentage;
"Rebate Percentage"	the percentage or percentages to be applied to the annual value of sales above the Rebate Threshold as set out in the Supplier's Tender;
"Rebate Threshold"	the annual value of sales above which a Rebate Amount will be applied in respect of each Rebate Year, as set out in the Supplier's Tender;
"Rebate Year"	as described at Schedule 4 paragraph 7.3;
"Recipient"	means a person meeting the criteria set out in paragraph 3.1.2 of Schedule 1 (Specification) who after making a successful application, is in receipt of a food and vitamin voucher;
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Rejected Product"	any Defective Product(s) rejected by the Authority pursuant to Clause 11;
"Relevant Person"	means any employee, agent, servant, or representative of the Authority or other public body;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Supplier"	means a third party bidding to provide New Products;
"Replacement Products"	means any products which are substantially similar to the Products and which are received in substitution for the Products following the expiry or termination of this Framework Agreement;
"Replacement Supplier"	means any third party provider of Replacement Products appointed by or at the direction of the Authority from time to time;
"Reporting Date"	means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other

	date as may be agreed between the Parties;
"Requests for Information"	means a request for information relating to this Framework Agreement or the supply of the Products or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs;
"Restricted Countries"	shall have the meaning given to it in Clause 28.5.3 (Protection of Personal Data);
"Sales Forecast"	means the weekly rolling sales forecast from the Storage and Distribution Service Provider;
"Specification"	the specification for the Products set out in Schedule 1;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
"Standards"	means: <ul style="list-style-type: none"> a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) any standards detailed in the specification in Schedule 2 (Key Performance Indicators); and c) any relevant Government codes of practice and guidance applicable from time to time;
"Storage and Distribution Service Provider"	means the supplier appointed by the Authority to be responsible for storage and distribution of the Products who shall act as an agent of the Authority pursuant to its agreement with the Authority;
"Sub-Contract"	means any contract or agreement between the Supplier and a third party (or proposed contract or agreement), other than this Framework Agreement, pursuant to which a third party: <ul style="list-style-type: none"> (a) supplies the Products (or any part of them); (b) provides facilities or services necessary for the provision of the Products (or any part of them); and/or (c) is responsible for the management, direction or control of the provision of the Products (or any part of them);
"Sub-Contractor"	means any person other than the Supplier who is a party to a Sub-Contract and the servants or agents of that person;
"Supplier Forecast"	means the Supplier's production forecast that must take seasonality into account. This will be derived from: A) before the start of the Operational Period by using the previous 24 months

	product despatch data, and B) thereafter using the weekly rolling sales forecast from the Storage and Distribution Service Provider;
"Supplier Personnel"	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Framework Agreement or any Orders;
"Supplier Representative"	means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
"Supplier's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Supply Chain"	means as defined in Clause 13.1.2;
"Template Order Form"	means the template form in Annex 1 of Schedule 6 (Template Order Form);
"Tender"	means the tender submitted by the Supplier to the Authority on 6 th October 2017 a copy of which is set out in Schedule 21 (Tender);
"Testing Requirements"	the part of the Authority's Implementation Requirements relating to testing of the Products by the Supplier and independent verification of those tests required during the Implementation Period as detailed in the Specification;
"Test Success Criteria"	the criteria set by the Authority in section 2 paragraph 3 women, and section 3 paragraph 3 children of the Specification to test that the Testing Requirements have been performed in such a manner as to ensure that the Products comply with the Implementation Plan, KPIs, Specification and the Framework Agreement.
"Tests"	the tests carried out by the Authority in accordance with the applicable Test Success Criteria;
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Framework Agreement on a specified date and setting out the grounds for termination;
"Transaction Processing Service Provider"	means the supplier appointed by the Authority to be responsible for receiving invoices and making payments in respect of the vitamin Products and who shall act as an agent of the Authority;
"Transparency"	means the principles set out at

Principles"	https://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public (and as may be amended from time to time) detailing the requirement for the proactive release of information under the Government's transparency commitment to publish contract information;
"Transparency Reports"	means the information relating to the Services and performance of this Framework Agreement which the Supplier is required to provide to the Authority in accordance with the reporting requirements in Schedule 22;
"Variation"	has the meaning given to it in Clause 22.1.1 (Variation Procedure);
"Variation Form"	means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Framework Schedule 19 (Variation Form);
"Variation Procedure"	means the procedure for carrying out a Variation as set out in Clause 22.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales;

1.2 Interpretation

1.2.1 In this Framework Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
- (g) references to "**representations**" shall be construed as references to present facts; to "**warranties**" as references to present and future facts; and to "**undertakings**" as references to obligations under this Framework Agreement;
- (h) references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Framework Agreement and references in any Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Schedule or the part of the Schedule in which the references appear;
- (i) any reference to this Framework Agreement includes the Schedules; and
- (j) the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.

1.2.2 Subject to Clause 1.2.3, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:

- (a) the Clauses and Schedule 1 (Specification);
- (b) Schedules 1 to 19 inclusive;
- (c) Schedule 21 (Tender).

1.2.3 Where Schedule 21 (Tender) contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Authority shall in its absolute and

sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Framework Agreement.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that:

- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Framework Agreement;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;
- 2.1.3 it has raised all relevant due diligence questions with the Authority before the Framework Commencement Date, has undertaken all necessary due diligence and has entered into this Framework Agreement in reliance on its own due diligence alone;
- 2.1.4 it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Supplier be entitled to recover any costs or charges, arising as a result of any:
 - (a) misrepresentation of the requirements of the Supplier in the Invitation to Tender or elsewhere;
 - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - (c) failure by the Supplier to undertake its own due diligence.

3. SUPPLIER'S APPOINTMENT

3.1 The Authority hereby appoints the Supplier as a potential provider of the Products and during the Framework Period, subject to Clause 7 (Condition Precedent) the Supplier shall supply and the Authority and/or its agent (which for the avoidance of doubt includes the Storage and Distribution Service Provider), may purchase such quantities of Products as are required in accordance with the Ordering Procedure and the terms and conditions of this Framework Agreement.

4. SCOPE OF FRAMEWORK AGREEMENT

4.1 Without prejudice to Clause 48 (Third Party Rights), this Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Products by the Supplier.

4.2 The Supplier acknowledges and agrees that:

- 4.2.1 there is no obligation whatsoever on the Authority to purchase any Products under this Framework Agreement;
- 4.2.2 in entering into this Framework Agreement no volume or value guarantee has been granted by the Authority in relation to the provision of the Products by the Supplier;
- 4.2.3 it shall only supply the Products to the Authority and/or its agent(s) under the terms of this Framework Agreement; and
- 4.2.4 Orders for Products may be placed by the Storage and Distribution Service Provider acting on behalf of the Authority.

5. IMPLEMENTATION

- 5.1 The Supplier shall comply with the Implementation Plan set out in Schedule 3.
- 5.2 The Supplier and the Authority shall agree the Detailed Implementation Plan as follows:
 - 5.2.1 The Outline Implementation Plan is set out at Schedule 3.
 - 5.2.2 The Supplier shall prepare and deliver to the Authority for the Authority's approval a draft of the Detailed Implementation Plan within three (3) Working Days of the Framework Commencement Date which must:
 - (i) include all the requirements of the Outline Implementation Plan;
 - (ii) contain additional information at the level of detail necessary to manage the Implementation Period effectively and as the Authority may require; and
 - (iii) take account of all dependencies known to, or which should reasonably be known to, the Supplier.
 - 5.2.3 The Supplier shall not be entitled to propose any variations to the Key Milestone Dates set out in the Outline Implementation Plan.
 - 5.2.4 The Authority shall review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable.
 - 5.2.5 Following such review and consultation, the Authority shall formally approve or reject the draft Detailed Implementation Plan no later than three (3) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority. If the Authority rejects the draft Detailed Implementation Plan, the provisions of Clause 5.3 shall apply.
 - 5.2.6 Once the draft Detailed Implementation Plan is approved, it shall replace the Outline Implementation Plan.
- 5.3 The following shall apply if the Authority rejects the draft Detailed Implementation Plan:
 - 5.3.1 The Authority shall inform the Supplier in writing of its reasons for its rejection.
 - 5.3.2 The Supplier shall then revise the draft Detailed Implementation Plan (taking account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within three (3) Working Days of the date of the Authority's notice of rejection.
- 5.4 The provisions of Clauses 5.2 and 5.3 shall apply again to any re-submitted draft Detailed Implementation Plan, provided that either party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 5.5 The Supplier shall at its cost perform each of the tasks identified in the Implementation Plan by the applicable Milestone Date assigned to the particular task in the Implementation Plan.

- 5.6 The Supplier shall ensure that it has completed all of the Testing Requirements which is required to ensure that the Products satisfy the applicable Test Success Criteria and that the Products shall pass the applicable Test Success Criteria by the date set out in Schedule 3 - Implementation Plan (October 2018).
- 5.7 If, at any time, the Supplier becomes aware that it will not (or is unlikely to) successfully achieve any Milestone by the applicable Milestone Date, it shall immediately notify the Authority of the fact of the Delay, the reasons for the Delay, the consequences of the Delay for the rest of the Implementation Plan and how the Supplier proposes to mitigate the Delay.
- 5.8 If the Supplier fails to achieve any Milestone by the applicable Milestone Date, the provisions of Clause 33 shall apply.
- 5.9 For the avoidance of doubt, the Supplier shall be responsible for and bear all costs incurred in the implementation, development and testing of the Products including the costs of any contracts which the Supplier may enter into to enable it to supply the Products.

6. TESTING AND TEST SUCCESS CRITERIA

- 6.1 The Authority shall confirm its intended Test Success Criteria to the Supplier on or before the applicable date set out in the Implementation Plan.
- 6.2 Once the Supplier has satisfied itself that it has completed the Testing Requirements set out in the Implementation Plan, it shall provide the information set out in the Specification to the Authority to enable the Authority to conduct the applicable Tests.
- 6.3 The Authority shall use its reasonable endeavours to complete the applicable Tests within the period set out in the Implementation Plan for the conduct of the applicable Tests. The Supplier shall provide all such assistance as may be reasonably required by the Authority in the conduct of such Testing and where required by the Authority, the Supplier may be present at such Tests.
- 6.4 If in the reasonable opinion of the Authority, all the criteria for the applicable Tests have been met by the Supplier, the Authority shall notify the Supplier in writing that the Supplier has passed the applicable Tests.
- 6.5 Where the Supplier does not meet the Test Success Criteria for the applicable Tests, this Framework Agreement shall automatically expire in accordance with Clause 7.

7. CONDITION PRECEDENT

- 7.1 Save for Clauses 1 (Definitions and Interpretation), 13 (Representations and Warranties), 15 (Framework Period), 28.2 (Confidentiality), 28.4 (Freedom of Information), 31 (Limitation on Liability), 41 (Waiver and Cumulative Remedies); 42 (Relationship of the Parties), 47 (Entire Agreement), 48 (Third Party Rights), 49 (Notices), 51 (Disputes) and 52 (Governing Law and Jurisdiction, this Framework Agreement is conditional upon satisfactory compliance with the Test Success Criteria as set out in Clause 6.5 (the “**Testing and Test Success Criteria**”).
- 7.2 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent by December 2018. In the event that the Condition Precedent is not satisfied by that date then:

7.2.1 this Framework Agreement shall automatically cease and shall not come into effect; and

7.2.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

7.3 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 7.1 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 7.2.

7.4 For the avoidance of doubt, the Authority shall not place any Orders under this Framework Agreement until the Supplier satisfies the Condition Precedent.

8. ORDERING PROCEDURE

8.1 The Supplier shall only accept Orders from the Authority and/or its agent in accordance with the Ordering Procedure.

8.2 The Supplier shall fulfil each Order in accordance with the terms of this Framework Agreement. The Supplier shall not seek to impose or rely on any other contractual terms which in any way vary or contradict the Framework Agreement.

8.3 For the avoidance of doubt, references to the Authority's agent in this Clause and in Schedule 6 shall include the Storage and Distribution Service Provider.

8.4 The Supplier shall comply with the relevant provisions in Schedule 6 (Ordering Procedure).

9. MANUFACTURE, QUALITY AND PACKAGING

9.1 The Products supplied to the Authority by the Supplier under this Framework Agreement shall:

9.1.1 conform to the Specification;

9.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Authority;

9.1.3 have the shelf life set out in the Specification (Schedule 1); and

9.1.4 comply with all applicable statutory and regulatory requirements.

9.2 The Supplier shall:

9.2.1 at all times maintain sufficient manufacturing capacity, stocks of raw materials and packaging and stocks of Products to enable it to manufacture, pack and supply the Products in accordance with the Authority's requirements and the obligations under this Framework Agreement;

9.2.2 manufacture, pack and supply the Products in accordance with all generally accepted industry standards and practices that are applicable;

9.2.3 keep the production facilities used in the manufacture of the Product in a state and condition necessary to enable the Supplier to comply with its obligations to supply the Product to the Authority in accordance with this Framework Agreement;

- 9.2.4 ensure that the transport and of the Products mean that they are delivered in good and useable condition;
 - 9.2.5 permit or procure permission for the Authority or the Authority's nominee during normal business hours having given reasonable advance notice (except in an emergency , where the Supplier shall grant immediate access) access to the production facilities used in the manufacture of the Product to enable the Authority to inspect the production and quality assurance processes in relation to the Product and inspect and take samples of the raw materials, the packaging and the Products;
 - 9.2.6 ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition
 - 9.2.7 obtain and maintain in force for the Term, all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products in accordance with this Framework Agreement
 - 9.2.8 comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage and handling of the Products.
- 9.3 If following an inspection under clause 9.2.5, the Authority reasonably considers that the Products do not comply with clause 9.1, the Authority shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure that the Products are or will comply with clause 9.1. The Authority shall have the right to re-conduct inspections and take further samples after the Supplier has carried out its remedial actions.

10. STORAGE AND DELIVERY

- 10.1 The Supplier shall:
- 10.1.1 store all Products when manufactured in a good and proper manner so as to ensure that they continue to meet the requirements set out in the Specification at all times;
 - 10.1.2 transport and deliver the Products in such manner necessary to ensure that it is delivered in good and usable condition;
 - 10.1.3 store and distribute the Products in accordance with good distribution practice;
 - 10.1.4 maintain the highest standards of cleanliness and hygiene as to ensure that the Products continue to meet the requirements set out in the Specification at all times.
- 10.2 The Supplier shall unless otherwise notified by the Authority, deliver each Order to the Storage and Distribution Service Provider.
- 10.3 The Supplier shall deliver the Products specified in each Order to the Delivery Location by the Delivery Date.

- 10.4 Delivery of an Order shall be complete on the completion of unloading of the Order at the Delivery Location and such delivery has been received by and all relevant paperwork provided to the Authority or its agent.
- 10.5 If an Order is not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Authority may have, the Authority may:
 - 10.5.1 cancel that Order and refuse to take any subsequent attempted delivery of the Order;
 - 10.5.2 request the Supplier, to deliver substitute Products at the Supplier's risk and expense within specified timescales;
 - 10.5.3 obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Authority in obtaining such substitute products.
 - 10.5.4 terminate this Framework Agreement with immediate effect; and
 - 10.5.5 subject to Clause 31, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Authority's failure to comply with its obligations under this agreement.
- 10.6 Each Order shall be accompanied by a delivery note from the Supplier showing the Order number, the date of the Order, the quantity of Products included in the Order and the product/code numbers of the Products.
- 10.7 The Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs and all other costs associated with the delivery of the Products to the Delivery Location and unloading of the Products at that location.

11. INSPECTION AND REJECTION OF PRODUCTS

- 11.1 Throughout the Term, the Authority (including its agents or any party instructed by the Authority) may acting in its absolute discretion, perform checks which may include carrying out a visual inspection of the Products to ensure that all or any of the Products comply with the Specification and/or any other quality standards reasonably imposed on the Supplier from time to time. Such visual inspection may cover checking the relevant batches of Product(s) to ensure that there is no obvious damage, checking batch numbers and expiry dates in accordance with delivery documents and quantity. The Authority will notify the Supplier of any issues arising from such inspection within two (2) Working Days of the date of delivery to the Authority and/or its agents.
- 11.2 The Authority may reject any Products where a visual inspection reveals the Products or their packaging to be damaged and/or to have batch numbers and/or expiry dates which do not correspond to the relevant Delivery documents and/or the provisions of this Framework Agreement.
- 11.3 Without prejudice to any other right or remedy of the Authority, it may by written notice to the Supplier, require the Supplier to replace the Rejected Products at the Supplier's risk and expense with Products that are in compliance with this Framework Agreement.
- 11.4 Where the Authority requires the Supplier to replace the Rejected Products at the Supplier's risk and expense, the Supplier shall use its best endeavours to minimise the

time taken to provide such replacement Product and in any event shall do so within ten (10) Working Days of the date of rejection or such longer period as the Authority may agree in writing.

- 11.5 No failure to make a complaint by the Authority and/or its agent at the time of the Delivery nor any act or omission of the Authority and/or its agent including in particular taking Delivery, keeping a sample, inspection of or payment for any Products by the Authority shall constitute acceptance, waiver or approval of the Product or limit the right subsequently to reject a Product should the Product be a Defective Product.
- 11.6 Rejected Products shall be removed from the Delivery Location by the Supplier at its own expense within fourteen (14) Working Days from the date of notification of rejection. If the Supplier fails to remove Rejected Products within such period the Authority and/or its agent may return such Rejected Products to the Supplier at the Supplier's risk and expense.
- 11.7 Subject to Clause 11.6, risk in and title to Rejected Products shall remain with the Authority/its agent whilst such Rejected Products are in its possession until collection by the Supplier or its agent from the premises of the Authority and/or its agent when risk and title shall pass to the Supplier.
- 11.8 The Authority's rights and remedies under this Clause 11 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.
- 11.9 For the avoidance of doubt, references to the Authority in this Clause 11 shall include the Storage and Distribution Service Provider.

12. TITLE AND RISK

- 12.1 Without prejudice to any other rights or remedies of the Authority, title and risk in the Products shall pass to the Authority on Delivery.
- 12.2 The Supplier warrants that:
 - 12.2.1 It has full, clear and unencumbered title to all the Products;
 - 12.2.2 at the date of Delivery of any of the Products, it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Products to the Authority. On Delivery, the Authority shall acquire a valid and unencumbered title to the Products.

13. REPRESENTATIONS AND WARRANTIES

- 13.1 The Supplier warrants and undertakes that:
 - 13.1.1 each Product will comply with the Specification;
 - 13.1.2 it shall have at least 12 (twelve) weeks worth of Products available for sale stored in its storage facilities, in transition between the Supplier and the Storage and Distribution Service Provider and/or with the Storage and Distribution Service Provider ("the **Supply Chain**") at any time;
 - 13.1.3 it has manufacturing and warehousing capacity sufficient to comply with its obligations under this Framework Agreement;

- 13.1.4 it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the Products and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards; and
 - 13.1.5 its Business Continuity Plan set out in Schedule 11 is sufficient to ensure continuity of supply of the Products in accordance with this Framework Agreement in the event of manufacturing site failure including emergency maintenance work.
- 13.2 Each Party represents and warrants that:
- 13.2.1 it has full capacity and authority to enter into and to perform this Framework Agreement;
 - 13.2.2 this Framework Agreement is executed by its duly authorised representative;
 - 13.2.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Framework Agreement; and
 - 13.2.4 its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
- 13.3 The Supplier represents and warrants that:
- 13.3.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 13.3.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;
 - 13.3.3 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;
 - 13.3.4 its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
 - 13.3.5 as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;

- 13.3.6 if the charges payable under this Framework Agreement exceed or are likely to exceed five (5) million pounds, as at the Framework Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
 - 13.3.7 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement;
 - 13.3.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
 - 13.3.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - 13.3.10 for the Framework Period and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement, the Supplier shall not employ or offer employment to any staff of the Authority who has been associated with the procurement and/or provision of the Products without Approval or the prior written consent of the Authority which shall not be unreasonably withheld.
- 13.4 Each of the representations and warranties set out in Clauses 13.1 and 13.3 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.
- 13.5 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 13.1 and 13.3 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 13.6 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.
- 13.7 Each time that an Order is entered into, the warranties and representations in Clauses 13.1 and 13.3 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

14. GUARANTEE - NOT USED

- 14.1 Where the Authority has notified the Supplier that [the award of this Framework Agreement is conditional upon receipt of] [prior to the execution of the first Order the Supplier shall provide] a valid Framework Guarantee, then on or prior to the execution of the [Framework Agreement] [the first Order], as a condition for the award of this Framework Agreement, the Supplier must have delivered to the Authority:

14.1.1 an executed Framework Guarantee substantially in the form set out in Schedule 13 from a Framework Guarantor; and

14.1.2 a certified copy extract of the board minutes and/or resolution of the Framework Guarantor approving the execution of the Framework Guarantee.

B. DURATION OF FRAMEWORK AGREEMENT

15. FRAMEWORK AGREEMENT PERIOD

15.1 This Framework Agreement shall take effect on the Framework Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law, either

15.1.1 at the end of the Framework Period; or

15.1.2 under operation of Clause 7.

15.2 The Framework Period comprises the Implementation Period and the Operational Period.

C. FRAMEWORK AGREEMENT PERFORMANCE

16. FRAMEWORK AGREEMENT PERFORMANCE

16.1 The Supplier shall perform its obligations under this Framework Agreement in accordance with:

16.1.1 the requirements of this Framework Agreement, including Schedule 8 (Framework Management);

16.1.2 the terms of each Order;

16.1.3 Good Industry Practice;

16.1.4 all applicable Standards; and

16.1.5 in compliance with all applicable Law.

16.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 16.1 and shall comply with the Authority's decision on the resolution of any such conflict.

16.3 The Supplier shall perform all its obligations under all Orders:

16.3.1 in accordance with the requirements of this Framework Agreement; and

16.3.2 in accordance with the terms of the respective Order.

16.4 The Supplier shall draw any conflict in the application of any of the requirements of 16.3.1 and 16.3.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

17. KEY PERFORMANCE INDICATORS

- 17.1 The Supplier shall at all times during the Framework Period comply with the Key Performance Indicators and achieve the KPI Targets set out in Schedule 2 (Key Performance Indicators).
- 17.2 The Supplier shall provide the Authority with a monthly report detailing its performance in respect of each KPI which shall at a minimum, clearly detail whether each KPI Target has been passed or failed and the level of performance achieved by the Supplier.
- 17.3 Where the Supplier fails to meet a KPI Target, the Supplier shall notify the Authority promptly and take all remedial action that is reasonable to rectify or to prevent a KPI failure from taking place or recurring.
- 17.4 Subject to the limit set out in Clause 31 (Liability), Credits shall be applied in accordance with the provisions of the table set out in Schedule 2 (Key Performance Indicators). The Credits shall either be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice then due to be issued under this Framework Agreement, or the Supplier shall issue a credit note against a previous invoice and the amount for the Credits shall be repayable by the Supplier as a debt within thirty (30) Working Days of issue of the credit note.
- 17.5 The Supplier acknowledges that any Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Supplier's failure to meet the KPIs.

18. STANDARDS

- 18.1 The Supplier shall comply with the Standards at all times during the performance by the Supplier of the Framework Agreement and any Order, including any Standards set out in Schedule 2 (Key Performance Indicators).
- 18.2 Throughout the Framework Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, of the Products. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.
- 18.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Authority's receipt under an Order, of the Products is explained to the Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 18.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Framework Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.
- 18.5 Where a standard, policy or document is referred to in Schedule 2 (Key Performance Indicators) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

19. CONTINUOUS IMPROVEMENT

- 19.1 The Supplier shall at all times during the Framework Period comply with its obligations to continually improve its performance under this Framework Agreement and the manner in which it provides the Products as set out in Schedule 12 (Continuous Improvement).

D. CONTRACT GOVERNANCE

20. FRAMEWORK MANAGEMENT

- 20.1 The Parties shall manage this Framework Agreement in accordance with Schedule 8 (Framework Management).
- 20.2 The Supplier shall comply at all times with the collaboration processes and obligations set out in Schedule 9 (Collaboration Principles).

21. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 21.1 The Supplier shall keep and maintain, until the later of:
- 21.1.1 seven (7) years after the date of termination or expiry of this Framework Agreement; or
 - 21.1.2 seven (7) years after the date of termination or expiry of the last Order to expire or terminate; or
 - 21.1.3 such other date as may be agreed between the Parties,
- full and accurate records and accounts of the operation of this Framework Agreement, including the Orders entered into with the Authority, the Products provided pursuant to the Orders, and the amounts paid by the Authority under the Orders.
- 21.2 The Supplier shall comply with Government's policy on Open Book Contract Management https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525283/obcm_guidance_final.pdf and all relevant instructions of the Authority in order to fully implement the said policy in this Framework Agreement.
- 21.3 The Supplier shall keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law.
- 21.4 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Framework Agreement, including in order to:
- 21.4.1 verify the accuracy of the charges and any other amounts payable by the Authority under an Order (including proposed or actual variations to them in accordance with this Framework Agreement);
 - 21.4.2 verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Products;

- 21.4.3 verify the Open Book Data;
 - 21.4.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - 21.4.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - 21.4.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier [the Framework Guarantor] and/or any Sub-Contractors or their ability to supply the Products; - **NOT USED**
 - 21.4.7 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - 21.4.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
 - 21.4.9 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - 21.4.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 21.4.11 verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;
 - 21.4.12 review any MI Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - 21.4.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or
 - 21.4.14 receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Framework Agreement in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.
- 21.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the supply of the Products pursuant to the Order, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.
- 21.6 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
- 21.6.1 all information within the scope of the Audit requested by the Auditor;

21.6.2 reasonable access to any sites controlled by the Supplier and to equipment used in the supply of the Products; and

21.6.3 access to the Supplier Personnel.

21.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause.

22. CHANGE

22.1 Variation Procedure

22.1.1 Subject to the provisions of this Clause 22 and, in respect of any change to the Product Prices, subject to the provisions of Schedule 4 (Prices), the Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a variation to this Framework Agreement provided always that such variation does not amount to a substantial variation of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

22.1.2 The Authority may request a Variation by completing, signing and sending the Variation Form as set out in Schedule 19 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.

22.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 22.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.

22.1.4 In the event that the Supplier is unable to agree to or provide the Variation, the Authority may:

- (i) agree to continue to perform its obligations under this Framework Agreement without the Variation; or
- (ii) terminate this Framework Agreement with immediate effect.

22.2 Legislative Change

22.2.1 The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase to the Product Prices as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Product Prices is reasonably foreseeable at the Framework Commencement Date.

22.2.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 22.2.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the supply of the Products, the Product Prices or this Framework Agreement; and
- (b) provide the Authority with evidence:

- (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
- (ii) as to how the Specific Change in Law has affected the cost of providing the Products; and
- (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Schedule 12 (Continuous Improvement), has been taken into account in amending the Product Prices.

22.2.3 Any change in the Product Prices or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 22.2.1(b) shall unless otherwise agreed between the Parties (such agreement not to be unreasonably conditioned, withheld or delayed) be implemented in accordance with Clause 22.1 (Variation Procedure).

E. PRICE, PAYMENTS, TAXATION AND VALUE FOR MONEY PROVISIONS

23. PRODUCT PRICES

- 23.1 The Product Prices for the Framework Period shall be the prices set out in Schedule 4 Annex 1. These prices will remain fixed during the Framework Period and are inclusive of the costs of packaging, storage and insurance of the Products by the Supplier together with the cost of Delivery to the Authority's Storage and Distribution Service Provider, or similar expenses in connection with the Product.
- 23.2 The Supplier shall use all reasonable endeavours during the Framework Period to reduce its manufacturing, supply and other costs for the Products including seeking more competitive supplies of raw materials and equipment.

24. TERMS OF PAYMENT

- 24.1 If the Authority fails to pay any undisputed charges properly invoiced under this Framework Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgement.
- 24.2 The Product Prices are stated to be exclusive of VAT and any other taxes, levies, duties or similar governmental assessments, including use or withholding taxes which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 24.3 No payment shall be due to the Supplier in respect of any Rejected Products.
- 24.4 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT and any other taxes, levies, duties or similar governmental assessments relating to payments made to the Supplier under this Framework Agreement. Any amounts due under this Clause 24.4 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

24.5 The Authority may set off any amount owed by the Supplier to it against any amount due to the Supplier under this agreement or under any other agreement between the Supplier and the Authority.

25. PROMOTING TAX COMPLIANCE

25.1 This Clause 25 shall apply if the charges payable under this Framework Agreement are or are likely to exceed five (5) million pounds during the Framework Period.

25.2 If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

25.2.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

25.2.2 promptly provide to the Authority:

(a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

25.3 In the event that the Supplier fails to comply with this Clause 25 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Framework Agreement for material Default.

F. SUPPLY CHAIN MATTERS

26. SUPPLY CHAIN RIGHTS AND PROTECTION

26.1 Modern Slavery Act

26.1.1 The Supplier shall implement due diligence procedures for Sub-Contractors and other participants in its Supply Chains, to ensure that there is no slavery or human trafficking in its Supply Chains.

26.1.2 The Supplier shall notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a Supply Chain which has a connection with this Framework Agreement.

26.1.3 If pursuant to section 54 of the Modern Slavery Act, the Supplier is required to publish an annual Slavery and Human Trafficking Statement (as defined in the Modern Slavery Act), it shall deliver to the Authority a copy not later than thirty (30) days after the Framework Commencement Date and each anniversary of the Framework Commencement Date for the duration of the Framework Period.

26.2 Appointment of Key Sub-Contractors

26.2.1 The Authority has consented to the engagement of the Key Sub-Contractors listed in Schedule 7 (Key Sub-Contractors).

26.2.2 Where during the Framework Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 26.2.3.

The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority may reasonably withhold its consent to the appointment of a Key Sub-Contractor if it considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the supply of the Products or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

26.2.3 The Supplier shall provide the Authority with the following information in respect of the proposed Key Sub-Contractor:

- (a) the proposed Key Sub-Contractor's name, registered office and company registration number;
- (b) the scope/description of any goods and/or services to be provided by the proposed Key Sub-Contractor;
- (c) where the proposed Key Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Key Sub-Contract has been agreed on "arm's-length" terms; and
- (d) Key Sub-Contract price expressed as a percentage of the total projected Product Price over the Framework Period.

26.2.4 If requested by the Authority, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 26.2.3, the Supplier shall also provide:

- (a) a copy of the proposed Key Sub-Contract; and
- (b) any further information reasonably requested by the Authority.

26.2.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Framework Agreement in respect of:
 - (i) the data protection requirements set out in Clause 28.5 (Protection of Personal Data);

- (ii) the FOIA requirements set out in Clause 28.4 (Freedom of Information);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 29 (Publicity and Branding);
 - (iv) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
 - (v) the conduct of audits set out in Clause 21 (Records, Audit Access and Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 34 (Authority Termination Rights) and 36 (Consequences of Expiry or Termination) of this Framework Agreement;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Products provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Authority;

26.3 Supply Chain Protection

26.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) above; and
- (d) conferring a right to the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

26.3.2 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.

26.3.3 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

26.3.4 Notwithstanding any provision of Clauses 28.2 (Confidentiality) and 29 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority

shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

26.4 Termination of Sub-Contracts

26.4.1 The Authority may require the Supplier to terminate:

- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 34 (Authority Termination Rights) except Clause 34.7 (Termination Without Cause); and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Products or otherwise; and/or
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

26.4.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 26.4.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Framework Agreement including the supply of the Products.

26.5 Retention of Legal Obligations

26.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to Clause 26, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. INTELLECTUAL PROPERTY AND INFORMATION

27. INTELLECTUAL PROPERTY RIGHTS

27.1 Within [5] five Working Days of receiving the Intellectual Property Licence Agreement from the Authority, the Supplier shall deliver to the Authority, the executed Intellectual Property Licence Agreement.

27.2 The Supplier grants to the Authority, a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all Intellectual Property Rights

the Supplier has in the Products or in any materials accompanying the Products to the extent that it is necessary to fulfil its obligations under this Framework Agreement.

27.3 IPR Indemnity

27.3.1 The Supplier shall ensure and procure that the availability, provision and use of the Products and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

27.3.2 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:

- (a) any claim made against the Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Products; and
- (b) any claim made against the Authority by a third party arising out of, or in connection with, the supply of the Products, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier, its employees, agents or Sub-Contractors.

27.3.3 The Authority shall promptly notify the Supplier of any infringement claim made against it relating to any Products and, subject to any statutory obligation requiring the Authority to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

27.4 Subject to the Intellectual Property Licence Agreement, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.

28. PROVISION AND PROTECTION OF INFORMATION

28.1 Provision of Management Information

28.1.1 The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of Schedule 9 (Collaboration Principles).

28.1.2 The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:

- (a) use and to share with any Customer and Relevant Person; and/or
- (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this

Framework Agreement and/or Orders, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

28.1.3 The Authority shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.

28.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 28.1.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.

28.2 Confidentiality

28.2.1 For the purposes of this Clause 28.2, the term **“Disclosing Party”** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **“Recipient”** in this Clause 28.2 shall mean the Party which receives or obtains directly or indirectly Confidential Information.

28.2.2 Except to the extent set out in this Clause 28.2 or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

28.2.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 28.4 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or

- (iii) the conduct of a Central Government Body review in respect of this Framework Agreement; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 28.2.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 28.2.5 Subject to Clauses 28.2.2 and 28.2.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Products and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Framework Agreement; and
 - (b) its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.
- 28.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 28.2.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.
- 28.2.7 The Authority may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
 - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
 - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 28.2.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
 - (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,
 - (g) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 28.2.7.

- 28.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 28.2.7 shall include information relating to Orders, including service levels and pricing information may be shared with any Central Government Body from time to time.
- 28.2.9 Nothing in this Clause 28.2 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 28.2.10 In the event that the Supplier fails to comply with Clauses 28.2.2 to 28.2.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

28.3 Transparency

- 28.3.1 The Parties acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf and the Transparency Principles referred to therein. The Authority shall determine whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 28.3.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish this Framework Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Framework Agreement agreed from time to time.
- 28.3.3 The Supplier acknowledges and agrees that publication of this Framework Agreement will include the publication of the name and contact details of the Supplier Representative (including its successors). Such details will not be redacted.
- 28.3.4 By executing this Framework Agreement, the Supplier confirms that it has obtained the Supplier Representative's consent and shall, prior to the appointment of any successor Supplier Representative obtain the successor's consent, permitting the publication of their name and contact details under this Clause 28.3 or otherwise, the Supplier shall take all necessary steps to ensure that publication will not cause the Authority or the Supplier to breach the Data Protection Act 1998.
- 28.3.5 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.

28.4 Freedom of Information

- 28.4.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Supplier's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

28.4.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

28.5 Protection of Personal Data

28.5.1 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Framework Agreement, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor (within the meaning of the DPA).

28.5.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Framework Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Products and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Framework Agreement);
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:

- (i) are aware of and comply with the Supplier's duties under this Clause 28.5.2 and Clause 28.2 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Framework Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within five (5) Working Days if it receives:
- (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 28.5.2(e)), including by promptly providing:
- (i) the Authority with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Authority, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 28.5.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

28.5.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**"). If, after the Framework Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to anywhere outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with Clause 22.1 (Variation Procedure) and Clauses 28.5.3(b) to 28.5.3(d);
- (b) the Supplier shall set out in its proposal to the Authority for a Variation, details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Framework Agreement or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
 - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Supplier relating to the relevant Personal Data transfer,

and the Supplier acknowledges that in each case, this may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

28.5.4 The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Framework Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the

extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

29. PUBLICITY AND BRANDING

29.1 The Supplier shall not:

29.1.1 make any press announcements or publicise this Framework Agreement in any way; or

29.1.2 use the Authority's name, logo or brand in any promotion or marketing or announcement of Orders,

without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

29.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Products) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

29.3 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Authority, including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

H. LIABILITY AND INSURANCE

30. PRODUCT LIABILITY

30.1 If any claim is made against the Authority arising out of or in connection with the manufacture of or any defect in the Products, the Supplier shall indemnify the Authority against all damages or other compensation awarded against the Authority in connection with the claim or paid or agreed to be paid by the Authority in settlement of the claim and all legal or other expenses incurred by the Authority in or about the defence or settlement of the claim.

30.2 The Authority will notify the Supplier as soon as practicable after becoming aware of the claim, and take all action reasonably requested by the Supplier to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to the Authority being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in doing so.

31. LIABILITY

31.1 This Clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and sub-contractors) to each other in respect of:

(a) any breach of this Framework Agreement;

(b) any use made of the Products by the Authority; and

- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Framework Agreement.

- 31.2 Neither Party excludes or limits its liability for:
 - 31.2.1 death or personal injury resulting from negligence; or
 - 31.2.2 bribery, Fraud or fraudulent misrepresentation;
 - 31.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - 31.2.4 breach of section 2 of the Consumer Protection Act 1987; or
 - 31.2.5 any liability to the extent it cannot be excluded or limited by Law.
- 31.3 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 30.1 (Product Liability) and Clause 27.3 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 31.4 Subject to Clauses 31.1 and 31.2, the Supplier's total aggregate liability arising under or in connection with this Framework Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise shall be limited to the greater of five million pounds (£5,000,000) or 125% of the total sums paid or payable by the Authority to the Supplier for the Products.
- 31.5 Subject to Clause 31.2, the Authority's total aggregate liability in respect of Losses incurred under or in connection with this Framework Agreement as a result of an Authority Cause shall in no event exceed £5,000,000 (five million).
- 31.6 Subject to Clause 31.1, neither Party shall be liable to the other Party for any:
 - 31.6.1 indirect, special or consequential Loss;
 - 31.6.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 31.7 Subject to Clause 31.4, and notwithstanding Clause 31.5, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
 - 31.7.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 31.7.2 any wasted expenditure or charges;
 - 31.7.3 the additional cost of procuring Replacement Products for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Products above those which would have been payable under this Framework Agreement;
 - 31.7.4 any compensation or interest paid to a third party by the Authority;
 - 31.7.5 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 31.8 The Supplier acknowledges that, subject to this Clause 31, any Losses suffered by a Recipient that are caused by a Default of the Supplier shall be deemed to be Losses that have been suffered by, and which are recoverable by, the Authority.

- 31.9 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Framework Agreement.

32. INSURANCE

- 32.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company the following insurance policies:

32.1.1 public liability insurance for not less than five million pounds (£5,000,000) per claim; and

32.1.2 product liability insurance for not less than five million pounds (£5,000,000) per claims arising from any single event and not less than five million pounds (£5,000,000) in aggregate for all claims arising in a year;

The Supplier shall ensure that the Authority's interest is noted on each insurance policy, or that a generic interest clause has been included.

- 32.2 On taking out and renewing each policy, the Supplier shall promptly send a copy of the receipt for the premium to the Authority. On the Authority's written request, the Supplier shall provide the Authority with copies of the insurance policy certificates and details of the cover provided.

- 32.3 The Supplier shall ensure that any Sub-Contractors also maintain adequate insurance having regard to the obligations under this Framework Agreement which they are contracted to fulfil.

- 32.4 The Supplier shall:

32.4.1 do nothing to invalidate any insurance policy or to prejudice the Authority's entitlement under it; and

32.4.2 notify the Authority if any insurance policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

- 32.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Framework Agreement or any Orders.

- 32.6 If the Supplier fails or is unable to maintain insurance in accordance with Clause 32.1, or fails to provide evidence that it has paid the current year's premiums in accordance with Clause 32.2, the Authority may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

I. REMEDIES

33. AUTHORITY REMEDIES

33.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 34.2 (Termination on Material Default), if the Supplier fails to achieve a Milestone by the applicable Milestone Date and/or if the Supplier fails to achieve a KPI Target as described in the table set out at Schedule 2 (Key Performance Indicators), the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

33.1.1 The Authority shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Authority, an Improvement Plan within five (5) Working Days of a written request by the Authority for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan within ten (10) Working Days of Approval.

33.1.2 The Authority shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Supplier requesting such meetings.

33.1.3 The Authority shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.

33.1.4 In the event that the Authority has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:

- (a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
- (b) fails to implement an Improvement Plan Approved by the Authority;

then (without prejudice to any other rights and remedies of termination provided for in this Framework Agreement), the Authority shall be entitled to terminate this Framework Agreement for material Default.

J. TERMINATION AND SUSPENSION

34. AUTHORITY TERMINATION RIGHTS

34.1 Termination in Relation To Guarantee - NOT USED

34.1.1 Where the Authority has procured a Framework Guarantee from the Supplier under Clause 14.1 (Guarantee), the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Framework Guarantor withdraws the Framework Guarantee for any reason whatsoever;
- (b) the Framework Guarantor is in breach or anticipatory breach of the Framework Guarantee;

- (c) an Insolvency Event occurs in respect of the Framework Guarantor;
- (d) the Framework Guarantee becomes invalid or unenforceable for any reason whatsoever; or
- (e) the Supplier fails to provide the documentation required by Clause 14.1 by the date so specified by the Authority;

and in each case the Framework Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority.

34.2 Termination on Material Default

34.2.1 The Authority may terminate this Framework Agreement for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier refuses or fails to comply with its obligations as set out in Framework Schedule 12 (Continuous Improvement);
- (b) in the event of two or more failures by the Supplier to meet the KPI Targets whether the failures relate to the same or different KPI targets, in any rolling period of three (3) months;
- (c) the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:
 - (i) Clause 22.1.4(ii) (Variation Procedure);
 - (ii) Clause 33.1.4 (Authority Remedies);
 - (iii) Clause 28.2.10 (Confidentiality);
 - (iv) Clause 43.6.2 (Prevention of Fraud and Bribery);
 - (v) Clause 39.1.2 (Compliance with the Law);
 - (vi) Clause 44.3 (Conflicts of Interest); and/or
 - (vii) anywhere that is stated in this Framework Agreement that the Supplier by its act or omission will have committed a material Default;
- (d) the Supplier commits a material Default of any of the following Clauses or Framework Schedules:
 - (i) Clause 13 (Representations and Warranties) except Clause 13.3.6;
 - (ii) Clause 16 (Framework Agreement Performance);
 - (iii) Clause 21 (Records, Audit Access and Open Book Data);
 - (iv) Clause 24 (Promoting Tax Compliance);
 - (v) Clause 26 (Supply Chain Rights and Protection);
 - (vi) Clause 28.1 (Provision of Management Information);
 - (vii) Clause 28.4 (Freedom of Information);
 - (viii) Clause 28.5 (Protection of Personal Data); and/or
 - (ix) Schedule 2 (Key Performance Indicators).

- (e) the representation and warranty given by the Supplier pursuant to Clause 13.3.6 is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
- (f) the Supplier commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
- (g) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Supplier specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

34.2.2 Where the Authority is terminating this Framework Agreement for a material Default, it may rely on a single material Default or on a number of Defaults or repeated Defaults that, taken together, constitute a material Default.

34.3 Termination in Relation to Financial Standing

34.3.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Products under this Framework Agreement; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Products under this Framework Agreement;

34.4 Termination on Insolvency

34.4.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

34.5 Termination on Change of Control

34.5.1 The Supplier shall notify the Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

34.5.2 The Supplier shall ensure that any notification made pursuant to Clause 34.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

34.5.3 The Authority may terminate this Framework Agreement under Clause 34.5 by issuing a Termination Notice to the Supplier within six (6) Months of:

- (a) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

34.6 Termination for breach of Regulations

34.6.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c) of the Public Contracts Regulations 2015 (as amended).

34.7 Termination Without Cause

34.7.1 The Authority shall have the right to terminate this Framework Agreement with effect from at any time following nine (9) Months after the Framework Commencement Date by giving at least twelve (12) Months' written notice to the Supplier.

34.7.2 The Authority may terminate this Framework Agreement at any time by issuing a notice to the Supplier:

- (a) where the agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 on the Functioning of the EU; or
- (b) if the Framework Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure.

34.8 Partial Termination

34.8.1 Where the Authority has the right to terminate this Framework Agreement, the Authority is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 34.8 provided always that, if the Authority elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.

34.8.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 22.1 (Variation Procedure) including the effect that the partial termination may have on the provision of any other Products and the Product Prices provided that:

- (a) the Supplier shall not be entitled to an increase in the Product Prices in respect of the Products that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 34 (Authority Termination Rights) with the exception of Clause 34.7 (Termination Without Cause); and
- (b) the Supplier shall not be entitled to reject the variation.

35. SUSPENSION OF SUPPLIER'S APPOINTMENT

- 35.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 34 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Orders during the period specified in the Authority's notice.
- 35.2 Any suspension under Clause 35.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 35.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Orders concluded prior to the suspension notice.
- 35.4 If the Authority provides notice to the Supplier in accordance with this Clause 35.1, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.
- 35.5 For the avoidance of doubt, no period of suspension under this Clause 35 shall result in an extension of the Framework Period.

36. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 36.1 Within 90 Working Days from the Framework Commencement Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval the BCDR Plan.
- 36.2 The Supplier shall ensure that it is able to implement the provisions of the BCDR Plan at any time in accordance with its terms.
- 36.3 The Supplier shall test the BCDR Plan on a regular basis (and, in any event, not less than once in every 12 month period). The Authority shall be entitled to participate in such tests as it may reasonably require.
- 36.4 Following each test, the Supplier shall send to the Authority a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result of those tests.
- 36.5 The Supplier shall implement the BCDR Plan in the event that the Products are not available for more than 28 Working Days.

37. FORCE MAJEURE

- 37.1 Subject to the remainder of Clause 36, and subject to the Supplier's compliance with any obligations in Clause 36 (Business Continuity and Disaster Recovery), the Affected Party may claim relief under Clause 36 from liability for failure to meet its obligations under this Framework Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Framework Agreement which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- 37.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 37.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 37 to the extent that consequences of the relevant Force Majeure Event:
- 37.3.1 are capable of being mitigated by any of the provision of any Products, but the Supplier has failed to do so; and/or
 - 37.3.2 should have been foreseen and prevented or avoided by a prudent provider of goods similar to the Products, operating to the standards required by this Framework Agreement.
- 37.4 Subject to Clause 37.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Products affected by the Force Majeure Event.
- 37.5 The Parties shall at all time's following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 37.6 Where, as a result of a Force Majeure Event:
- 37.6.1 an Affected Party fails to perform its obligations in accordance with this Framework Agreement, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Framework Agreement in whole or in part as a result of such failure unless the provision of the Products is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
 - (b) the Supplier shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;
 - 37.6.2 the Supplier fails to perform its obligations in accordance with this Framework Agreement:
 - (a) the Supplier shall be entitled to receive payment of the Product Prices only to the extent that the Products continue to be provided in accordance with the terms of this Framework Agreement during the occurrence of the Force Majeure Event.
- 37.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement.
- 37.8 Relief from liability for the Affected Party under this Clause 36 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement and shall not be dependent on the serving of notice under Clause 37.7.

38. CONSEQUENCES OF EXPIRY OR TERMINATION

- 38.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 38.
- 38.2 Termination or expiry of this Framework Agreement shall not cause any Orders to terminate automatically. For the avoidance of doubt, all Orders shall remain in force unless and until they are terminated or expire, notwithstanding the termination or expiry of this Framework Agreement.
- 38.3 If the Authority terminates this Framework Agreement under Clause 34.2 (Termination on Material Default) and then makes other arrangements for the supply of the Products to Customers, the Supplier shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement goods and/or services to the Products and no further payments shall be payable by the Authority until the Authority has established and recovered from the Supplier the full amount of such cost.
- 38.4 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Authority any and all of the Authority's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Framework Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Authority and is reasonably necessary for such compliance).
- 38.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 38.6 Termination or expiry of this Framework Agreement shall be without prejudice to the survival of any provision of this Framework Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Framework Agreement, including the provisions of:
- 38.6.1 Clauses 1 (Definitions and Interpretation), 13 (Representations and Warranties), 16 (Framework Agreement Performance), 21 (Records, Audit Access and Open Book Data), 27 (Intellectual Property Rights), 28.1 (Provision of Management Information), 28.2 (Confidentiality), 28.3 (Transparency), 28.4 (Freedom of Information), 28.5 (Protection of Personal Data), 30 (Liability), 32 (Insurance), 36 (Consequences of Expiry or Termination), 39 (Compliance), 41 (Waiver and Cumulative Remedies), 43 (Prevention of Fraud and Bribery), 45 (Severance), 47 (Entire Agreement), 48 (Third Party Rights), 49 (Notices), 50 (Complaints Handling), 51 (Dispute Resolution) and 52 (Governing Law and Jurisdiction); and
 - 38.6.2 Schedules 2 (Key Performance Indicators), 4 (Product Prices), 7 (Key Sub-Contractors), 8 (Collaborative Principles), 9 (Management Information), 12 (Continuous Improvement), 13 (Guarantee - NOT USED), 17 (Commercially Sensitive Information) and 21 (Tender).

K. MISCELLANEOUS AND GOVERNING LAW

39. COMPLIANCE

39.1 Compliance with Law

39.1.1 The Supplier shall comply with all applicable Law in connection with the performance of this Framework Agreement.

39.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 39.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Framework Agreement by giving notice in writing to the Supplier.

39.2 Equality and Diversity

39.2.1 The Supplier shall:

- (a) perform its obligations under this Framework Agreement (including those in relation to the provision of the Products) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

39.3 Official Secrets Act and Finance Act

39.3.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

40. ASSIGNMENT AND NOVATION

40.1 The Supplier shall not assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Framework Agreement or any part of it without Approval.

40.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Framework Agreement or any part thereof and the Supplier warrants that it shall carry out all such reasonable further acts required to effect such transfer, assignment, novation, sub-contracting or disposal. If the Authority novates this Framework Agreement to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not transfer, assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

41. WAIVER AND CUMULATIVE REMEDIES

- 41.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 49 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.
- 41.2 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

42. RELATIONSHIP OF THE PARTIES

- 42.1 Except as expressly provided otherwise in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Parties pursuant to this Framework Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

43. PREVENTION OF FRAUD AND BRIBERY

- 43.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Framework Commencement Date:
- 43.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 43.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 43.2 The Supplier shall not during the Framework Period:
- 43.2.1 commit a Prohibited Act; and/or
 - 43.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 43.3 The Supplier shall during the Framework Period:
- 43.3.1 establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 43.3.2 require that its Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 43.3.1;
 - 43.3.3 keep appropriate records of its compliance with its obligations under Clause 43.3.1 and make such records available to the Authority on request;

- 43.3.4 if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 43.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Products in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
 - 43.3.5 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 43.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 43.1, 43.2 and 43.3.2, or has reason to believe that it has or any of the Supplier Personnel has:
- 43.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 43.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 43.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement has committed or attempted to commit a Prohibited Act.
- 43.5 If the Supplier makes a notification to the Authority pursuant to Clause 43.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Records, Audit Access and Open Book Data).
- 43.6 If the Supplier breaches Clause 43.1, the Authority may by notice:
- 43.6.1 require the Supplier to remove from the performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 43.6.2 immediately terminate this Framework Agreement for material Default.
- 43.7 Any notice served by the Authority under Clause 43.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

44. CONFLICTS OF INTEREST

- 44.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority under the provisions of this Framework Agreement or any Order.

- 44.2 The Supplier shall promptly notify and provide full particulars to the Authority if such conflict referred to in Clause 44.1 arises or may reasonably be foreseen as arising.
- 44.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement or any Order. The action of the Authority pursuant to this Clause 44.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

45. SEVERANCE

- 45.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.
- 45.2 In the event that any deemed deletion under Clause 45.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 45.3 If the Parties are unable to resolve any Dispute arising under this Clause 45 within twenty (20) Working Days of the date of the notice given pursuant to Clause 45.2, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Framework Agreement is terminated pursuant to this Clause 45.3.

46. FURTHER ASSURANCES

- 46.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Framework Agreement.

47. ENTIRE AGREEMENT

- 47.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of the subject matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 47.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.
- 47.3 Nothing in this Clause 47 shall exclude any liability in respect of misrepresentations made fraudulently.

48. THIRD PARTY RIGHTS

48.1 The provisions of:

48.1.1 Clauses 4 (Scope of Framework Agreement), 8 (Ordering Procedure), 13 (Representations and Warranties), 14 (Guarantee), 16 (Framework Agreement Performance), 21 (Records, Audit Access and Open Book Data), 28.5 (Protection of Personal Data), 32 (Insurance), 39.2 (Equality and Diversity) and 48 (Third Party Rights); and

48.1.2 Schedules 4 (Product Prices), 13 (Guarantee) and 21 (Tender),

(together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

48.2 Subject to Clause 48.1, a person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

48.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without Approval, which may, if given, be given on and subject to such terms as the Authority may determine.

48.4 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 48.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

48.5 The Authority may act as agent and trustee for each Third Party Beneficiary and/or enforce on behalf of that Third Party Beneficiary any Third Party Provision and/or recover any Loss suffered by that Third Party Beneficiary in connection with a breach of any Third Party Provision.

49. NOTICES

49.1 Except as otherwise expressly provided within this Framework Agreement, any notices issued under this Framework Agreement must be in writing. For the purpose of this Clause 49, an e-mail is accepted as being "in writing".

49.2 Subject to Clause 49.3, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clause 49.3)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt

Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt
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- 49.3 Each Party shall immediately notify the other in the event of a change in their registered address and/or the address for service of notices set out in this Clause. If the Supplier has reason to believe that the address for service of notices set out in this Clause may be replaced by an address outside of England and Wales then the Supplier shall irrevocably designate, appoint and empower a service agent to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Authority in respect of this agreement and in doing so shall irrevocably consent to the service of notices and demands, service of process or any other legal summons served in such way.
- 49.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 49.2 within twenty four (24) hours of transmission of the email:
- 49.4.1 any Termination Notice under Clause 34 (Authority Termination Rights), including in respect of partial termination;
- 49.4.2 any notice in respect of:
- (a) Suspension of Supplier’s appointment (Clause 35)
 - (b) Waiver (Clause 41);
 - (c) Default or Authority Cause; and
- 49.4.3 any Dispute Notice.
- 49.5 Failure to send any original notice in accordance with Clause 49.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 49.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.
- 49.6 This Clause 49 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 18 (Dispute Resolution Procedure)).

49.7 For the purposes of this Clause 49, the address of each Party shall be:

49.7.1 For the Authority:

NHS Business Services Authority (NHS BSA)

Supplier Management, 200 Lichfield Lane, Mansfield, NG18 4RG

For the attention of: Redacted under Section 40 - Personal Information

49.7.2 For the Supplier:

Brunel Healthcare Manufacturing Ltd

Address: William Nadin Way, Swadlincote, Derbyshire, DE11 0BB

For the attention of: Redacted under Section 40 - Personal Information

49.8 Either Party may change its address for service by serving a notice in accordance with this Clause 49.

49.9 This Clause 49 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)

50. COMPLAINTS HANDLING

50.1 Either Party shall notify the other Party of any Complaints made by Customers, which are not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and, if the Supplier is the Party providing the notice, such notice shall contain full details of the Supplier's plans to resolve such Complaint.

50.2 Without prejudice to any rights and remedies that a complainant may have at Law (including under this Framework Agreement and/or an Order), and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Framework Agreement and/or an Order, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

50.3 Within two (2) Working Days of a request by the Authority, the Supplier shall provide full details of a Complaint to the Authority, including details of steps taken to achieve its resolution.

51. DISPUTE RESOLUTION

51.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with the Dispute Resolution Procedure.

51.2 The Supplier shall continue to supply the Products in accordance with the terms of this Framework Agreement until a Dispute has been resolved.

52. GOVERNING LAW AND JURISDICTION

52.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or

formation shall be governed by and construed in accordance with the laws of England and Wales.

- 52.2 Subject to Clause 51 (Dispute Resolution) and Schedule 18 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

This Framework Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a **DEED** by

NHS BUSINESS SERVICES AUTHORITY:

Acting by: (Signature)

.....
(Signature of Witness)

Name of Witness:.....

Address of Witness:.....

Occupation of Witness:.....

EXECUTED as a DEED by

BRUNEL HEALTHCARE MANUFACTURING LIMITED acting by

:

A Managing Director, in the presence of:(Signature of Director)

.....
(Signature of Witness)

Name of Witness:.....

Address of Witness:.....

Occupation of Witness:.....

SCHEDULE 1: SPECIFICATION

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INTRODUCTION

1. Purpose of this Document

1.1 This Specification sets out the Authority's requirements for the performance of the Agreement with which the Supplier shall comply. The meanings of the definitions used in this Specification are set out in Clause 1 of the Framework Agreement.

1.2 This Specification comprises three parts:

- Section One – Background and Approach
- Section Two – Technical Specification – Women's Vitamins

1.3 Section One of this document is to provide Suppliers with full details of the background to and the Authority's approach and rationale for the Product manufacture section of the Healthy Start Vitamin Scheme Women's Vitamins (HSVS).

1.4 Section Two along with the Supplier(s) tender responses to the technical questions in the ITT will form Schedule 2 of the Agreement.

1.5 Throughout this document the word 'Supplier' means the body completing the questions i.e. the legal entity responsible for the information provided and ultimately the supply of the Products.

SECTION ONE – BACKGROUND AND APPROACH

1. Introduction and Background

The Authority is issuing this Specification as part of the reprocurement of the Healthy Start Vitamin Scheme with target dates of:

- Contract Award /Start Date: 28th December 2017¹
- Implementation Period Date: 5th January 2018
- Operational Period Start Date: 5th January 2019

The Authority is hoping to appoint a preferred bidder by year end to allow for a satisfactory period of testing, verification and implementation before the Operational Period Start Date. Bidders should note that the Framework Agreement is conditional on satisfactory compliance with the Authority's testing requirements as detailed in this Specification and the Framework Agreement. The Framework Agreement will automatically expire at the end of the Implementation Period where the Supplier fails to comply with those testing requirements.

2. Key Objectives and Outcomes

- 2.1 The Authority's primary objective is to meet its statutory obligations and to procure vitamin Products which the Authority may make available for purchase through its appointed Healthy Start Vitamins Storage and Distribution Service Provider.
- 2.2 Any NHS Trust; other NHS entity; local Authority, government department; government agency or other statutory; public sector body or any non-public sector organisation where Approved by the Authority, (the Customers) may purchase the Product via a Catalogue purchase to the Storage and Distribution Service Provider and may make available to those Healthy Start Recipients as described in paragraph 3.1.2 below (the Recipients).
- 2.3 Replenishment orders may be made under the Framework Agreement by the Authority or its agents including the Storage and Distribution Service Providers to the Supplier and the Customers would make a Catalogue purchase with the Storage and Service Provider to receive the Products.

¹ To be confirmed at contract award.

2.4 The Authority has secondary objectives which include determining whether increased take-up of the Products by Recipients may be driven by providing improved Products, and raising the profile of Healthy Start Vitamins among Recipients and the population in the United Kingdom as a whole.

2.5 The Authority requires the Supplier to meet the following key objectives when performing its obligations under the Agreement so that:

a. the Products are:

i. Delivered on time and in full – through ensuring that enough supply of each Product is manufactured, in place and located so it can be delivered effectively to meet the expected demand profile(s) as described in Appendix A below;

ii. Compliant and quality assured – meeting all requirements of all legislation covering the manufacturing, packaging, marketing and use of food supplements, as well as the quality and other requirements set out below;

iii. Attractive to users, and are easy to use and administer;

and:

also includes robust systems which :-

i. Ensure that finished Products are safely and securely stored in a way which does not compromise quality;

ii. Support the delivery of the overall HSVS solution, and where necessary link into the systems of other contractors and organisations involved in the delivery of the HSVS solution, as described in paragraph 5.2.1 below;

iii. Allow the Authority and their appointed contract managers to access robust and timely management information when they need it.

3. Background to the Healthy Start Scheme and Healthy Start Vitamins

3.1 The Healthy Start Scheme

3.1.1 The Healthy Start Scheme is a statutory scheme operated by the Department of Health on behalf of the Secretary of State for Health (SoS) which aims to improve maternal diets and promote healthier eating for children in the early years, in the families that are most vulnerable to poor diets, in often hard to reach groups (the Scheme).

3.1.2 To be eligible for the Scheme a person (Recipient) must be at least 10 weeks' pregnant, or have a child under four, and be in receipt of:-

- Income Support; or
- Income-based Jobseeker's Allowance; or
- Income-related Employment and Support Allowance; or
- Child Tax Credit (with a family income of £16,190 or less per year)
- Universal Credit (with a family take home pay of £408 or less per month)
- People also qualify if they are under the age of 18 and at least 10 weeks' pregnant, even if they do not receive any of the above benefits.

3.1.3 The Scheme has a dedicated website which provides information for healthcare professionals, food retailers and the public about all aspects of the Scheme, and this website can be accessed here:

www.healthystart.nhs.uk

3.1.4 A person who wishes to apply for the Healthy Start Scheme, makes their application to DH's Healthy Start Issuing Unit. Applications must be made on a paper form. An invitation to apply and pre-populated application form (with name and address) are sent out by the Healthy Start Issuing Unit upon receipt of qualifying income and benefit information from HMRC. On average, 15,600 invitations to apply are sent out each four-weekly cycle. In addition, application forms can also be obtained from the Healthy Start Issuing Unit directly via the website or contact centre number, or from healthcare professionals such as midwives and health visitors. The Healthy Start application must be signed by a healthcare professional, who will have a discussion with the applicant about the importance of healthy eating, including vitamin supplementation.

3.1.5 If their application is successful, Recipients receive vouchers which can be spent on healthy foods – fresh or frozen fruit or vegetables, plain cow's milk or infant formula based on cow's milk which is suitable from birth. Healthy Start food vouchers have a value of £3.10 per week. Most Recipients receive one voucher per week, but an additional weekly voucher is issued to mothers of children under the age of one.

3.1.6 Healthy Start food vouchers are posted to Recipients by the Healthy Start Issuing Unit in four-week "cycles" – that is, every four weeks Recipients will receive a block of food vouchers for a four-week period.

3.1.7 Healthy Start food vouchers can be used in a range of retailers, so long as the retailer has signed up to be part of the Scheme. Retailers send the food vouchers they have accepted to the Healthy Start Reimbursement Unit, and receive reimbursement of the value of the voucher.

3.2 Healthy Start Vitamins – Current Arrangements

3.2.1 The Healthy Start Scheme also provides free vitamins (the Product) for Recipients. Pregnant women and new mothers can receive free vitamin tablets containing vitamins C, D and folic acid. Children aged 6 months – 4 years can receive free vitamins drops containing vitamins A, C and D. Both Products are currently provided in containers which hold an eight weeks' supply. Every eight weeks the Healthy Start Issuing Unit sends Recipients a vitamins voucher for the type of vitamins they are entitled to (women's or children's) at the same time as they receive their food vouchers. Recipients can exchange their voucher for a free supply of children's or women's vitamins as appropriate.

3.2.2 NHS Supply Chain are currently responsible for contracting for the manufacture of both vitamin Products, for processing orders, and for delivering stocks of the vitamins to Customers.

3.2.3 Legislation requires organisations which commission maternity services, or services for children, to make free supplies of these vitamins available to Recipients. Customers buy the vitamins from NHS Supply Chain and distribute them, principally through ante-natal settings and consultations, child health consultations, and children's centres. Some areas also distribute the vitamins via community pharmacies.

3.2.4 Local authorities can be reimbursed for the vitamins vouchers they have accepted. This reimbursement covers the cost of the vitamins themselves, but not the cost of any local distribution. Claims for reimbursement are submitted to NHS Supply Chain on a quarterly basis. While this reimbursement is available to local authorities if they collect and submit the vitamin vouchers, not all local authorities choose to do so.

3.2.5 Organisations which provide free Healthy Start vitamins are also able to sell Healthy Start vitamins to people who are not on the Healthy Start Scheme. The maximum price which can be charged in these circumstances is £1.15 for the women's tablets.

3.2.6 Some local authorities buy the Healthy Start Vitamins Products to give to people who do not qualify for Healthy Start, as part of local schemes to improve the vitamin intake status of all pregnant women and/or children in the area, or as part of schemes to target population groups at particular risk of vitamin deficiency.

3.2.7 Wholesale pharmaceutical suppliers have been able to buy stocks of Healthy Start Vitamins to sell on for retail sale to the public. The Authority is not able to provide any figures on the current levels of such sales.

Scotland

3.2.8 From April 2017 the Scottish Government plans to make Healthy Start Vitamins available to all pregnant women over ten weeks' gestation.

3.2.9 The Scotland Act 2016 contained provisions to allow for the transfer of the legislative powers governing the Scheme, although the date of this transfer has not yet been decided. Following this transfer of powers the Scottish Government may wish to make different arrangements, although the extent to which any changes might have an impact (up or down) on the volumes set out are not yet known.

Northern Ireland

3.2.10 In Northern Ireland, Recipients send their vitamin vouchers to the Health and Social Care Business Services Organisation in Belfast, and their vitamins are posted to them.

Other Information about the Current Healthy Start Vitamins

3.2.11 SoS is guided on vitamin intake and the need for vitamin supplementation by the advice given by the Scientific Advisory Committee on Nutrition (SACN) and by Public Health England. The Authority on behalf of SoS therefore requires the Products to comply with the latest advice from these bodies. The requirements described in this Specification are in line with the latest advice, including updated advice on vitamin D intake and supplementation set out in SACN's report published on 15 July 2016 (as amended, updated and/or replaced from time to time). Public Health England's current advice on this report can be accessed here:

<https://www.gov.uk/government/news/phe-publishes-new-advice-on-vitamin-d>

4. Approach

4.1 Procurement Approach

4.1.1 The procurement will be delivered through an Accelerated Open Procedure OJEU procurement.

4.1.2 The Authority is looking to contract with a Supplier(s) that can deliver a solution that can meet the following key business requirements:

- Provide a manufacturing, testing and packaging service for the defined vitamins Product for women that will guarantee supply of the Product for current and potential future volumes.

4.1.3 The Authority has allowed for full Product testing of the manufactured Products by the Supplier within the procurement timeline.

4.1.4 There will be no separate costs to deliver full Product testing and implementation activities. Costs for this activity should be included in the overall pricing for the Product.

4.1.5 The HSVS solution will include a redesign of the artwork which the Supplier will be required to print and place on the packaging, the Authority will provide the artwork to the Supplier during the Implementation Period but the responsibility for printing the artwork onto the relevant packaging will be the Suppliers.

4.1.6 While the overall HSVS solution includes a storage and distribution service, this is to be procured separately after the procurement for the manufacture of the Products has commenced.

- 4.1.7 The HSVS Solution requires an order management and payment processing solution which will align all the different service elements and control the flow of orders and payments to the different elements of the service. The Authority is looking to utilise a current solution rather than procure a new service specifically for HSVS.
- 4.1.8 Suppliers interested in delivering the entire service (or more than one element) must bid separately for each part of the service.

4.2 Working Approach

- 4.2.1 The Authority is looking to form a collaborative working relationship with the Supplier(s) and other service providers involved in the delivery of the overall HSVS solution.
- 4.2.2 The key service providers of the required solution and their main responsibilities for the delivery of the HSVS Solution are as follows:

Supplier of Women’s Vitamin Product: Responsible for the manufacturing, testing, packing and delivering of Women’s Vitamin Product to the Storage and Distribution Service Provider.

Supplier of the Children’s² Vitamin Product: Responsible for the manufacturing, testing, packing and delivering of Children’s Vitamin Products to the Storage and Distribution Service Provider.

Storage and Distribution Service Provider: Responsible for the receipt and central storage of the Vitamin Products when delivered by the Product Supplier(s). Responsible for distributing Catalogue Purchases received from Customers via the Catalogue. Responsible for raising replenishment orders to the Product Suppliers(s) as required to ensure stock is available at the central storage location to fulfil Customer Catalogue Purchases.

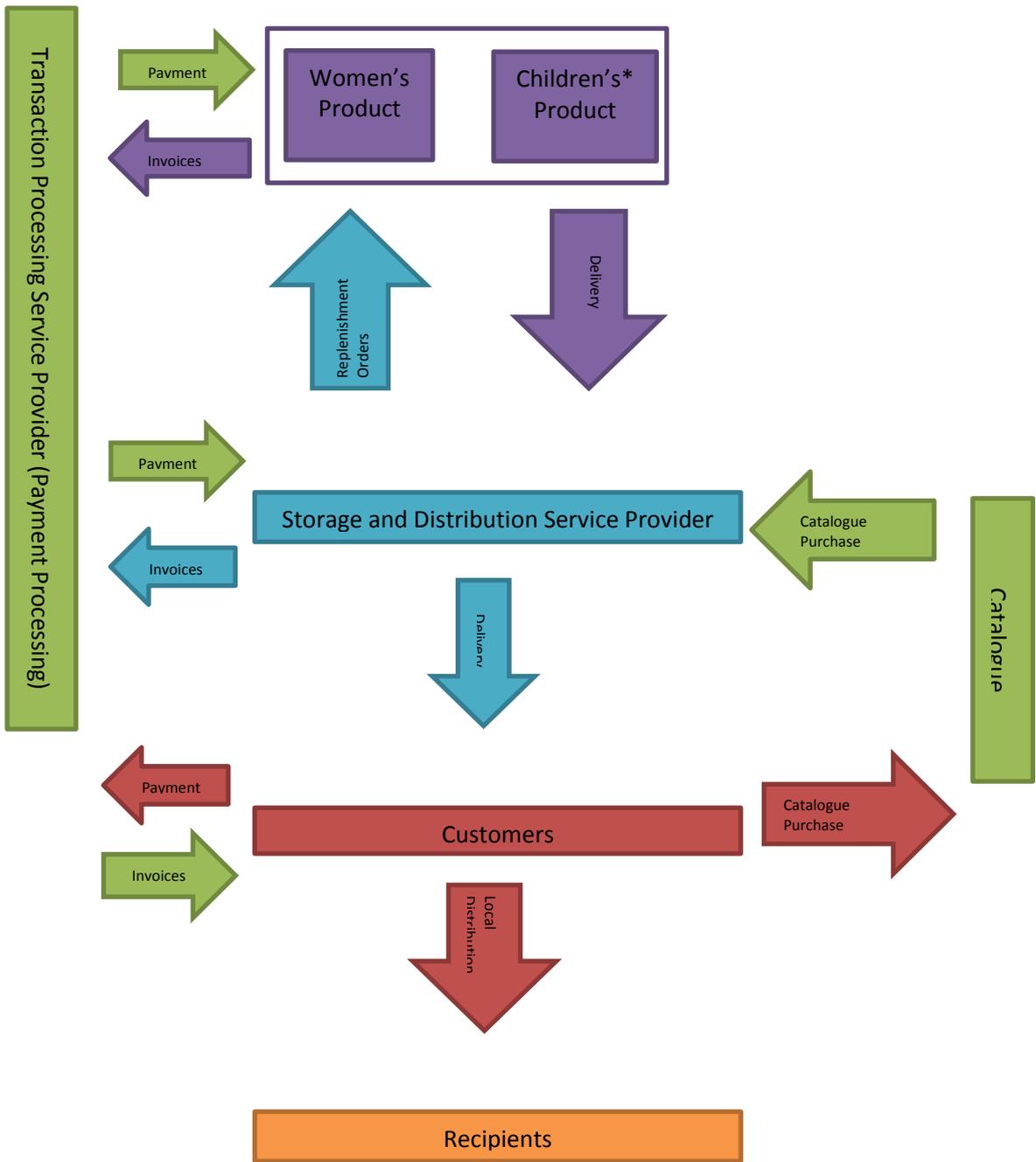
Transaction Processing Service Provider: Responsible for the management of invoices and payments to each service provider in the HSVS solution.

Catalogue: The online Catalogue that allows Customers to place Catalogue Purchases of the Product that will be fulfilled by the Storage and Distribution Service Provider.

Customers & Recipients: As defined in Section One, Paragraph 2 of this document.

- 4.2.3 It is envisaged that the relationships between the different entities will match the proposed structure below:

² Subject to a separate framework agreement



- 4.2.4 The Supplier(s) of the Product will receive replenishment orders from the Authority's agent- the Storage and Distribution Service Provider Once these replenishment orders are fulfilled the Supplier(s) of the Product will invoice the Transaction Processing service provider who will pay correctly defined invoices.
- 4.2.5 The relationships between the different entities in the HSV Solution will be supported by a collaboration schedule in each contract. Each entity will be contracted directly by the Authority and the Transaction Processing Service will be acting as the Authority's Agent in paying correctly defined invoices as per the agreement

5. Overview of the Requirements

5.1 Introduction

The Authority is issuing this Specification as part of the reprocurement of the Healthy Start Vitamin Scheme with target dates of:

- Contract Award /Start Date: 28th December 2017³
- Implementation Period Date: 5th January 2018
- Operational Period Start Date: 5th January 2019

The Authority is hoping to appoint a preferred bidder in the summer of 2017 to allow for a satisfactory period of testing, verification and implementation before the Operational Period Start Date

5.2 Key Solution Elements

- 5.2.1 The Authority requires an overall HSVS solution that will provide core capabilities as follows:

³ To be confirmed at contract award.

Order Management and Payment System

Storage & Distribution

Manufacturing
Lot 1
(Women's Product)

Manufacturing
Lot 2
(Children's Product)

Redesign of Packaging Artwork

Note: Lot 2 is subject to a separate contract arrangement and is only shown here for illustration purposes

5.2.2 This Specification details the requirements for manufacturing of the Products (women's vitamin Product (Lot 1) as set out in the third line of the table above.

5.2.3 The table below highlights the preferred timings for the delivery of the capabilities.

Capability Area	Key Steps	Key Dates
Redesign of Packaging Artwork	Artwork Redesign Complete	TBC
Manufacture of Women's Product Procurement 1	Contracts Awarded	Nov ⁴ 2017
	Service/ Go live	Nov 2018
Manufacture of Children's Product Procurement 1	[Subject to a separate framework agreement]	
Storage and Distribution Procurement 2	Contracts Awarded	TBC
	Service/ Go live	TBC

⁴ To be confirmed at contract award.

6. Key Principles

6.1 Introduction

6.1.1 The requirements listed in this section are key to the success of the Framework Agreement.

6.1.2 The Authority requires the Supplier to make sure that its solution is flexible to meet both short term peaks in demand but also continued increases in requirements. The Supplier's solution should enable the Authority to continuously improve the Service and also increase the take-up of Product by the Recipients and by the wider population.

6.2 Guaranteed Supply and Delivery

6.2.1 The Supplier shall manage their supply chains in order to ensure that vitamins are available and delivered to meet the specified volumes set out in Appendix A and potential future volume increases

6.2.2 The current volumes are based on providing vitamins to a subset of the Recipients via Customers. Not all Recipients utilise the HSVS. The HSVS will aim to increase this take up and therefore the volumes may increase beyond the forecast levels (as provided in Appendix A) within the Recipients during the Term.

6.2.3 If it is possible from a legal perspective for the Authority to do so, it may during the Term consider options to create a commercial opportunity from the sale of the Product to Non-Recipients (**Commercial Opportunity**).

6.2.4 If, at the Authority's sole discretion, it elects to pursue the Commercial Opportunity, the Authority shall be entitled to require the Supplier to produce additional volumes of the Product for the prices set out in Schedule 4 (Product Prices). Any substantial increases in the volume of Products beyond the forecast levels the Supplier is required to produce, shall where appropriate, be dealt with by way of a variation under the framework agreement.

6.2.5 Products delivered damaged, incomplete or not in line with the requirements set out in this document will be replaced by the Supplier(s) at their own expense.

6.3 Compliance

6.3.1 The Supplier must be able to test and prove compliance to relevant regulations at every point in their supply chain from raw materials purchase to manufacture to local storage and then distribution to the appointed Storage and Distribution Service Provider of the Product.

6.4 Collaboration

6.4.1 The Supplier shall in accordance with Schedule 9 (collaboration principals) collaborate at all times with the other service providers including the Transactional Processing Service Provider and the Storage and Distribution Service Provider within the solution capabilities highlighted in 4.2 above in order to deliver the overall solution.

6.5 Value for Money

- 6.5.1 The Supplier shall ensure that the Product demonstrates value for money.
- 6.5.2 The Supplier shall ensure that in providing the Product the Supplier promotes innovation, continuous improvement, cost-control and cost-saving.
- 6.5.3 The supply unit price submitted as part of the procurement process will be the maximum prices that can be charged throughout the term.
- 6.5.4 The Authority will confirm to all service providers within the solution if they wish to pursue the Commercial Opportunity, and how this will be managed. This may be managed directly by the Authority or by an appointed 3rd party organisation.

7. Solution Delivery

7.1 Introduction

- 7.1.1 This section details the overall solution delivery requirements for consideration in the ITT response

7.2 Product Manufacture

- 7.2.1 The current women's Product is in tablet form, proposals for different forms of Product will be considered but must take into account the specifications in parts two and three of this document.
- 7.2.2 Tenderers are encouraged to submit multiple proposals (up to three combinations) for the Product form and Product packaging, to provide the Authority with other solutions that could be more appealing to the Recipients (and other potential users) than the current Products. The Authority will evaluate and select the most appropriate Product proposal for each Lot based on the combined quality (which will include Product appeal of the form and packaging) and cost scores.
- 7.2.3 Tenderers are requested to submit their manufacturing proposals including details of batch Production to meet the minimum requirements set out in Section Two of this Document
- 7.2.4 The Supplier(s) must work collaboratively with the Storage and Distribution Service Provider to agree a replenishment order quantity utilising a weekly rolling Production forecast that is based on Customer Catalogue Purchase volumes and the Storage and Distribution Service Providers weekly sales forecasts (taking into account any seasonality) to ensure that the buffer stock requirements laid out later in this document are met as well as ensuring stock wastage is minimised.

7.3 Product Testing

- 7.3.1 The Products will need to be thoroughly tested before the Operational Period is commenced. The Authority has allowed time in the implementation plan for this testing and expects the Supplier to provide a full testing plan and Testing Gateways as part of the tender response.
- 7.3.2 The Supplier must ensure that progress against the implementation test plan and the achievement of the Testing Gateways is regularly communicated to the Authority.

7.3.3 The testing should at a minimum ensure that the testing Specification detailed in Section Two of this document is met

7.3.4 Once in Live Production ongoing testing and verification of the Product will be required as per the minimum requirements set out in Section Two.

7.4 Packaging

7.4.1 Artwork to be used on the Product packaging will be provided by the Authority pending receipt of package design from Suppliers. Suppliers are therefore required to provide their proposed package specifications for each Product proposal

7.4.2 The Artwork will remain the property of the Authority.

7.4.3 The Supplier will be granted a licence to utilise the Artwork during the term, ensuring always that the final Artwork on the packaging conforms with all the branding guidelines and the original Artwork specification which will be provided with the updated Artwork during the Implementation Phase.

7.4.4 The current contents are provided in packs containing 8 weeks supply, proposals for different levels will be considered subject to:

- Fitting in with a four week Healthy Start voucher issue cycle
- The overall minimum life of the Product as defined later in this document and the likely life of the Product when it is delivered

7.4.5 Packaging should be designed to maximise space utilisation in cases and pallets and should be fit for purpose to minimise risks of potential damage and contamination.

7.4.6 The current scenario is the units of women's vitamin tablets (eight week supply) are in cases of 6. They are not then put into an outer box but laid on a pallet layer. There are 125 cases of 6 on a layer and the pallet is 12 layers high – which totals to 9,000 units per pallet.

The dimensions (including the cases) of the cases for the tablets (6 units) = width 8cm x length/depth 12cm x height 6.5cm

The dimensions (including the cases) of the cases for the drop units (12 units) are as follows: width 7.3cm x length/depth 20cm x height 7.5cm

7.4.7 It is up to the Supplier to propose a suitable size of case and additional packaging (cardboard boxes) but need to ensure that the sizes and weights support the Storage and Distribution Service Provider in delivering an efficient and effective service. To this end it is expected that a case (containing any number of units) should be no bigger in volume than 1,200cm³ and be easy to handle, stack and store. The weight of each case of units should be no larger than 600gms including the case packaging.

7.4.8 The Supplier should utilise UK standard pallets and should not stack the contents more than 1.5m high (including the pallet) on each pallet.

7.4.9 The Supplier should demonstrate that the benefits of their proposals regarding the cases to ensure Products are not damaged, maximising pallet use as well as the convenience for the

Storage and Distribution Service Provider, this may or may not include further packaging such as a cardboard box of a number of cases.

7.4.10 The Authority will provide a licence agreement in the form set out at Schedule 14 of the Framework Agreement to the selected Supplier(s), during the Implementation phase to cover the use of the Artwork and NHS logo during the term of the framework. The Supplier shall ensure that the licence agreement is executed and returned to the Authority within 5 Working Days of receipt. The Supplier may only use the Artwork and NHS logo once the licence agreement has been duly completed.

7.5 Commercial Model

7.5.1 Final pricing of the Product including all the different cost elements should be fully inclusive of all parts of the service (Product manufacture, development testing, Production testing, packaging (including adding artwork) and delivery to the Storage and Distribution Service Provider)

7.6 Implementation

7.6.1 The Authority requires the new service to be live by the Operational Period Start Date of 27th November 2018. Suppliers should provide their plan to achieve this date, what risks they perceive and how they intend to mitigate these risks.

7.6.2 The Authority has highlighted the high level timescales below:

	Calendar Years								
	Q4 2016	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q1 2018	Q2 2018	Q3 2018	Q4 2018
Procurement of manufacture of Children's Vitamins		Subject to a separate framework agreement							
Procurement of manufacture of Women's Vitamins									
Redesign of Artwork					TBC				

Procurement of ordering, storage and distribution service			TBC						
Implementation Phase (Including Product Testing)									
Operational Period Start									

7.6.3 The Supplier’s implementation plan must detail key deliverables, key milestone dates, risks and mitigations including communication and escalation planning during this period

7.6.4 The Supplier’s implementation plan should be produced in accordance with industry best practice and include milestones, dependencies and resources and a consolidation of all project activities (including communications and meetings) into a single plan, including those to be managed by the Authority’s Project Manager.

7.6.5 The Supplier shall indicate in the Implementation plan how they will demonstrate to the Authority that they have undertaken sufficient testing of the Product to cover all compliance requirements which shall include details of independent verification of testing results by an accredited laboratory.

7.6.6 In order to move into Live Production the Supplier(s) must evidence that they have met all the testing requirements (as detailed in Section Two) providing independently verified test results at least one month before the Operational Period Start Date.

7.6.7 The following Testing Gateway example shows the type of testing the Authority expects to see validated:

⁵ To be confirmed at contract award.

PRODUCT TESTING GATEWAYS

Date		Activity Stage	Activity Detail
November ⁶	2017	<i>Framework Award</i>	
December	2017	<i>Implementation Period & Stability Testing with Milestones.</i>	
January	2018		
February	2018		
March	2018		
April	2018		Sample Test 1
May	2018		
June	2018		
July	2018		Sample Test 2
August	2018		
September	2018		
October	2018		Sample Test 3
November	2018		Testing Confirmed
December	2018	Planned manufacturing commences	
January	2019		
February	2019	Operational Period Start Date	Stability Test & Report
March	2019		
April	2019		

Testing continues at 6, 12, 18, 24 and 36 months.

⁶ To be confirmed at contract award.

Example Testing Requirement	Details
<u>Internal Validation by the successful Supplier</u>	The successful Supplier must undertake an internal sample testing process where they will manufacture, internally test and validate batches of the Product.
<u>Independent Testing</u>	The information from the internal test and samples must then be provided to an external expert for their independent stability validation.
<u>Approval by the Authority</u>	<p>The successful Supplier must then provide this data and samples to the Authority, which includes, but is not restricted to:</p> <p>Three sample batches, one at each of the required intervals</p> <p>Specification</p> <p>Analytical methods used by Supplier</p> <p>Full details of formula</p> <p>Samples of each ingredient, and</p> <p>Stability data</p> <p>Independent report.</p> <p>Data supporting the required shelf life of the Product(s) must also be supplied to the Authority for evaluation along with the appropriate validations. The Authority will follow their internal processes to approve the Product including if required a further independent test of the Product samples against the information provided.</p>
<u>Successful implementation testing completed</u>	<p>Successful implementation testing and authorisation of the Product will be achieved following successful testing of and reporting on the samples by the Supplier(s).</p> <p>The Authority will accept earlier stability study results where they relate to the exact Product formulation and method of manufacture.</p> <p>Where the Authority concludes after carrying out its Tests that the Supplier has met all the testing criteria, it will notify the Supplier in writing. Where the Supplier fails to satisfactorily test the Products, the Framework Agreement shall automatically expire.</p>
<u>On-going testing</u>	<p>On-going in contract testing will be required through the life of the contract at the following intervals; 3, 6, 12, 18, 24 and 36 months as detailed for the respective products in section Two this Specification.</p> <p>Batch samples should be maintained at the recommended storage temperature.</p> <p>Any proposed changes to the Product formulation</p>

	<p>changes during the contract period (active or inactive ingredients, method or site of manufacture) must be agreed in advance with the Authority and the Supplier should provide evidence that the stability of the Product is unchanged, or commence further stability studies.</p>
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7.6.8 Supplier(s) shall conduct operational readiness testing with the Authority. This will include demonstrating that there is enough finished stock in the supply chain to satisfy the requirements set out in this Specification on the Operational Period Start Date.

7.7 Implementation Phase Governance and Organisation Management

7.7.1 The Supplier will put in place a project organisation and staffing structure to clearly define the roles and responsibilities of the Supplier and the Authority so that the Supplier can successfully manage the implementation phase, including providing resourcing profiles of key personnel. The Supplier will also specify any requirements and support required from the Authority.

7.7.2 The Supplier should use recognised best practice project management methodology to manage and deliver the implementation.

7.7.3 The Supplier(s) shall at all times have the appropriate, infrastructure, facilities and resources to manage and deliver the implementation requirements and activities. The Supplier shall adhere to industry best practice in respect of the implementation. This shall include any quality management certifications such as ISO and Good Manufacturing Practice (GMP). If the Supplier is a member of any trade association or industry body which works to an agreed set of standards, then details of memberships should be provided

7.7.4 The Supplier shall select, manage and assess subcontractors to ensure retention over the period of any agreement and explain what provisions will exist to minimise the risks of financial or operational failure to the Authority.

7.7.5 The Supplier shall be responsible for the management of risks and issues and setting up and maintaining risk and issues logs to identify and manage risks and issues that arise during the Implementation Period.

7.8 Operational Management

7.8.1 The Supplier will put in place a delivery organisation and staffing structure to clearly define the roles and responsibilities of the Supplier and the Authority so that the Supplier can successfully manage the operational phase, including providing resourcing profiles of key personnel. The Supplier will also specify any requirements and support required from the Authority.

7.8.2 The Supplier(s) shall at all times have the appropriate, infrastructure, facilities and resources to manage and deliver the operational phase. The Supplier shall adhere to industry best practice in respect of the Agreement. This shall include any quality management certifications such as ISO and Good Manufacturing Practice (GMP). If the Supplier is a member of any trade association or industry body which works to an agreed set of standards, then details of memberships should be provided

7.8.3 The Supplier shall select, manage and assess subcontractors to ensure retention over the period of any contract and explain what provisions will exist to minimise the risks of financial or operational failure to the Authority.

7.8.4 The Supplier shall be responsible for the management of risks and issues and setting up and maintaining risk and issues logs to identify and manage risks and issues that during the Operational Period.

7.9 Product Delivery

7.9.1 The Supplier will be required to deliver all correctly defined replenishment orders to the Storage and Distribution Service Provider.

7.10 Volumes

7.10.1 There is no guarantee of any volume of Product sales during the term of the agreement. Appendix A details historical volumes and potential realistic scenarios for each Product's likely volume based on units of 8 week usage.

7.10.2 The Supplier must be able to demonstrate its ability to produce the minimum and higher volumes in line with the specification in Section Two and in line with the initial volume scenarios Appendix A (Volumetric data) of this document. The Supplier must also illustrate its capability to meet any subsequent changes in the volume assumptions.

7.10.3 The Supplier must demonstrate the ability to scale up Production given three months' notice by the Authority if volumes grow beyond the scenarios envisaged in this document.

SECTION TWO – WOMEN’S PRODUCT SPECIFICATION

1. Introduction

The Supplier shall comply in full with this section of the document in regards the minimum requirements and specification of the Product and related activities required in the manufacture, testing, packaging and supply of the Product.

2 Product Specification

2.1 Product Form and Ingredients

2.1.1 The Supplier shall ensure that:

- The Product is always compliant with the advice and guidance provided by Scientific Advisory Committee on Nutrition (SACN) and by Public Health England.
- The Product must be suitable from 10 week’s gestation and for new mothers up to a year after birth.
- The vitamin content of the Product should ensure the following daily intakes:
 1. Vitamin C 70 milligrammes
 2. Vitamin D 10 microgrammes
 3. Folic acid 400 microgrammes
- The shelf-life of the Product must be at least twenty four months
- The Product must be a food supplement, administered once per day in a single dose/unit.
- The amounts of active ingredient used in manufacture should ensure that each dose contains no more than the following overages to ensure the label content is still correct and the end the shelf life (i.e. 2 years from date of manufacture):
 1. Vitamin D approx. 30%
 2. Vitamin C approx. 20%
 3. Folic Acid approx. 50%
- The Product must not resemble confectionery or sweets. This is because the Authority does not wish to undertake any action which cuts across or undermines broader policy initiatives to support healthy eating.
- The Product must not include any additional active ingredients that claim to offer health or other benefits as the Authority wishes to procure Products which only contain the vitamins, and at the levels recommended, as defined by the Scientific Advisory Committee on Nutrition.
- The Product must be unflavoured, or flavoured so as to be palatable for the consumer.

- All ingredients must comply with EU legislation on allergens and no GMO ingredients should be used.
- The finished Product should be free from as many allergens as possible, to ensure the Product is suitable to a wide audience including vegetarians. For example the Product must be free from the following (this is not an exhaustive list):
 1. Nuts and Derivatives
 2. Yeast
 3. Milk and Eggs
 4. Salt
 5. Sugar
- The Supplier must detail all allergens that the Product will be free from, and must also detail any ingredients with allergenic properties, or other properties which may potentially have adverse effects.
- The Products must be Vegetarian Society and Halal certified, like the existing vitamin Products and the Supplier should arrange for these certifications to be obtained.
- There must be no materials of animal origin requiring TSE Certification in the formulation.
- The Product's shelf life is not adversely impacted if it is stored above 25 degrees Celsius for a maximum of 8 hours
- The Product's shelf life is not adversely impacted if it is stored below 4 degrees Celsius for a maximum of 8 hours

2.2 Raw Material Storage

- 2.2.1 The Supplier shall make sure that all the raw materials used to make up the Product shall be stored as per the following specifications:
- The ingredients should be stored at room temperature out of direct sunlight (14 – 25 degrees centigrade) or as appropriate for the respective ingredient
 - The storage facilities must be in line with and comply with relevant food storage regulations to avoid cross contamination
 - The storage facilities should be dry, be free of pests and protected from environmental and other damage.

2.3 Manufacturing

- 2.3.1 The Supplier shall manufacture the Product in accordance with all relevant regulations and good manufacturing practice appropriate to the manufacture of food supplements.
- 2.3.2 Once manufactured, the finished Product must be stored in accordance with the following specifications:
- The Product should be stored at room temperature out of direct sunlight (14 – 25 degrees centigrade)
 - The storage facilities must comply with relevant food storage regulations to avoid cross contamination
 - The storage facilities should be dry, be free of pests and protected from environmental and other damage.
- 2.3.3 In live Production the Supplier shall make sure that the time between manufacture of the Product and delivery into the main Storage and Distribution Service Provider (packaging and testing time) is set to allow maximum shelf life of the Product in the supply chain. Such time shall not be any longer than three months.
- 2.3.4 The Supplier must ensure that batch Production is controlled and the Products are labelled in line with industry standards regarding batch Production of food and food supplements to allow full traceability of the Product through the supply chain.
- 2.3.5 The Supplier must deliver the finished and tested Product to the Storage and Distribution Service Provider's nominated location(s). Ensuring that the Product is not damaged or impacted during transport and that it is transported in line with the requirements for storage:
- The Product is transported at room temperature out of direct sunlight (14 – 25 degrees centigrade)
 - The Supplier's transport facilities must comply with relevant food storage regulations to avoid cross contamination
 - The Supplier's transport facilities should be dry, be free of pests and protected from environmental and other damage.
 - Pallets for delivery should only include one Product type

2.4 Required Product standards

- 2.4.1 The Supplier shall ensure that Products meet the following requirements/ or the relevant portions of the standards within the following:
- Council Directive 2002/46/EC laying down the principles and guidelines for Food Supplements
- 2.4.2 These standards/legislation/directives above are not intended to be exhaustive, and any relevant standard/legislations/directive (even if not stated above) must be complied with.

2.5 Product Information to be provided

2.5.1 In order for the Products to be correctly included in the Catalogue so Customers can make Catalogue Purchases, the Supplier shall provide the Authority the following items for its use and update them as appropriate throughout the Term:

- Full Specifications for all Products.
- The Supplier shall upon reasonable written request from the Authority, provide individual colour photographs (together with such other details as may be reasonably requested from time to time by the Authority) of each of the Products provided to the Authority which shall be formatted in a way which is specified upon request
- In the event that the Supplier is unable to comply with the provisions of this paragraph the Supplier acknowledges that the Authority shall be entitled to take any photographs of the Products.
- The Supplier acknowledges that the Authority shall be entitled to use any photographs and/or information set out in the paragraph above for use (including but not limited to) the Authority Catalogue and:
 1. Shall at times certify and warrant that any such information provided is true and accurate and will be relied upon by the Authority and its customers;
 2. Hereby provides an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any photographs or materials prepared by the Supplier(or The Authority as the case may be) for any purpose relating to the Products;
 3. Warrants that, in respect of any material whose copyright is vested in third parties, it is authorised by these parties to grant the licence set out in the paragraph above and shall notify the Authority in respect of any material which it is not so authorised and shall exercise all reasonable endeavours to obtain such authorisation as soon as reasonably practicable.

2.5.2 The Supplier also shall provide the Authority with the following as appropriate throughout the term of the agreement:

- Evidence of a system of operation that allows for the full and complete traceability of Products in the supply chain. Batch Identification must be available at all times. The Production System should be tested annually as a minimum.
- Sight of the Product Production timetable and Production forecasts as and when requested.
- Immediate notification of any adverse events of customer complaints and subsequent updates throughout the manufacturing process.
- Immediate notification of any Product recall requirements and subsequent updates throughout the manufacturing and recall process
- Information from ongoing stability tests as they are obtained.

- Any proposed changes to the Product formulation, packaging or manufacturing method for approval by the Authority

2.5.3 Disclosure of formulation details, stability active ingredients, and quality data must be made available on request by the Authority.

3. Testing Specification

3.1 Product Testing

3.1.1 The Supplier shall test the Product in accordance with the following specifications, results of which must be made available to the Authority or their representative(s). The Supplier shall test the Product as per the details in Table 1 (testing plan) to meet the details shown in table 2 (testing specification)

Table 1 (testing plan)

Criteria for Testing	Implementation Period Testing	In Live every Batch	Regular Test	Planned
Stability	✓		Every 12 months	
Quality	✓	✓	Every 12 months	
Ingredients	✓	✓		
Form	✓			
Consistency	✓	✓		
Bacterial and fungal contamination	✓		Every 10 batches	
Degradation	✓		Annually	
Internal manufacturing	✓		Annually	
Compliance	✓		Annually	
Contamination	✓		Annually	

Table 2 (testing specification)

Criteria for Testing	Included
Stability	<p>To demonstrate that the Product will continue to perform and be;</p> <p>Stable at the following time points:</p> <p>After Months 1,3,6,12,18,24 and 36</p> <p>Storage temperatures and relative humidity (RH):</p> <ul style="list-style-type: none"> • 25 degrees C and 60% RH (Real time storage) • 45 degrees C and 75% RH (high temperature accelerated test • Data for an intermediate range storage of 30 degrees C and 65%RH would also be ideal as an indicator for the adult presentation. <p>A single test of the product to demonstrate its stability while in typical use for the time-period covered by the number of doses per container.</p> <p>Details of the methods of analysis used for each vitamin (the Authority will take a view on whether these are stability indicating).</p>
Quality	<p>Quality Tested i.e. where applicable based on the proposed Product formulation meets the detailed Product requirements set out in Section Three of this specification.</p> <ul style="list-style-type: none"> • Appearance • Odour & Taste • Identification tests of active ingredients prior to manufacture • Target weight of active ingredients per dose of Product – method of analysis used and how this method has been validated. • Uniformity of dosage units • Mean weight / target weight • Thickness / capsule size • Hardness • Friability Disintegration/ dissolution test • Flavour • Microbial quality •

Ingredients	<ul style="list-style-type: none"> • Appropriate testing for contamination (microbial testing) • Initial tests (in development) of the Product before the first 'live' Production batch must include testing of ingredients prior to the Production • Identification tests of active ingredients prior to manufacture • Target weight of active ingredients per ml – method of analysis used and how this methods has been validated • Study to show the consistency of ingredients in Production
Consistency	<ul style="list-style-type: none"> • Test the consistency of the Product form • Product is fit for purpose (i.e. will dissolve and release the active ingredients into the body)
Bacterial and fungal contamination	<ul style="list-style-type: none"> • For one of the batches used in stability tests we would expect to see test results confirming the absence of bacterial and fungal contamination
Degradation	<ul style="list-style-type: none"> • For the Product presentation a minimum of 1 years real time data on one batch and a minimum of 6 months data on the other batches. The degradation trends on the real time batches need to show that a 24 month label claim is supported. • The accelerated tests will also be indicative and show batch consistency. If the Supplier has stability data on similar Product containing all three vitamins (ideally with the same source of active ingredients) this should also be submitted to support the label shelf life claim.
Internal manufacturing	<ul style="list-style-type: none"> • The Authority will need to see testing and verification data as per the Suppliers proposal in Schedule 21 on a minimum of three batches plus an internal manufacturing process validation report (this should include a summary of the Production process)
Compliance	<ul style="list-style-type: none"> • Demonstrate compliance to the relevant standards
Contamination	<ul style="list-style-type: none"> • Demonstrate that the Products will continue to perform and be stable when in typical use for the time-period covered by the number of doses per container '

The Supplier must demonstrate continuously through the Implementation period by following the Testing Gateway as proposed by the Supplier in their tender response, to assure the Authority that the requirements will be delivered.

Therefore the Testing Gateway should clearly state when and how the testing progress will be validated.

The Authority expects to have regular milestones throughout the Implementation Period no less than every 8 weeks.

4 Packaging

4.1 Packaging Specification

4.1.1 The Supplier shall make sure that:

- The packaging shall comply with the requirements of the Packaging (Essential Requirements) Regulation 2003 (S.I.1941) which implements the EU Directive on Packaging and Packaging Waste (94/62/EC) in the UK, and which requires packaging to be minimised and recoverable.
- The packaging design for the Product is fit for purpose, to ensure the minimum life of the Product is maintained, is appropriate for Recipient use, and cost effective to produce.
- The packaging is designed to allow the appropriate artwork, labelling and bar coding to be applied in a cost effective way, once the redesigned artwork has been procured
- The packet style, shape and type is easy to identify and use
- The package contents must fit in with a 4 week cycle allowing for one dose per day
- The individual units should include a GS1 barcode to enable easy batch identification in the supply chain
- Any cases of a number of units should include a GS1 barcode to enable easy batch identification in the supply chain

4.1.2 The Supplier shall produce packaging as set out in the Supplier's Solution in Schedule 21.

5 Implementation

5.1 Implementation Timetable

5.1.1 The Supplier shall comply with the Implementation Plan and meet the Timetable set out in the Supplier's Solution in Schedule 21 throughout the Implementation Period.

5.2 Implementation Phase Governance and Organisation

5.2.1 The Supplier shall put in place the Supplier's governance structure, infrastructure, facilities and resources as set out in the Supplier's Solution in Schedule 21 throughout the Implementation Period.

5.2.2 The Supplier shall supply the Key Personnel, who are named individuals, including their roles and responsibilities. These individuals are part of the commitment on behalf of the Supplier and will be committed to the implementation of the Agreement.

5.2.3 The Supplier shall be fully responsible for all subcontractors employed by them to fulfil any portion of their obligations to the Authority. The list of key subcontractors together with their activities the Supplier may use is set out in Schedule 7.

- 5.2.4 At the start of the Implementation Period the Supplier shall deliver to the Authority the final draft Implementation project plan for the implementation and transition of the service in Gantt chart format outlining the activities to be undertaken by the Supplier and also any inputs required from the Authority including implementation workshops and approvals for the Authority's final approval. The Authority shall either:
- a. confirm its acceptance of the project plan no later than 3 working days of receipt; or
 - b. if it does not approve the project plan, provide its comments no later than 3 working days of receipt to the Supplier so that the Supplier may amend the project plan and re-issue it to the Authority, no later than 3 working days after the request to amend, for the Authority's approval.
- 5.2.5 The project plan shall include milestones, dependencies and resources and a consolidation of all project activities into a single plan, including those to be managed by the Authority's Project Manager. The Suppliers shall use the Implementation Plan to form the basis for day-to-day control of delivering the Implementation Period successfully. Both parties shall be regularly review the project plan and the Supplier shall make sure it remains reviewed and up to date.
- 5.2.6 If the Supplier fails to satisfactorily comply with the testing requirements as contained in this Specification and the Framework Agreement, the Framework Agreement will automatically expire in accordance with clause 7 of the Framework Agreement.

6 Operational Management

6.1 Operational Phase Governance and Organisation

- 6.1.1 The Supplier shall put in place the Supplier's governance structure, infrastructure, facilities and resources as set out in the Supplier's Solution in Schedule 21 throughout the Operational Period.
- 6.1.2 The Supplier shall supply the Key Personnel, who are named individuals, including their roles and responsibilities. These individuals are part of the commitment on behalf of the Supplier and will be committed to the Operational Period of the Agreement.
- 6.1.3 The Supplier shall be fully responsible for all subcontractors employed by them to fulfil any portion of their obligations to the Authority. The list of key subcontractors together with their activities the Supplier may use it set out in Schedule 7.

7 Exclusivity

- 7.1.1 The Supplier shall only supply the Products specified in this procurement via the Framework and through no other route unless specified by the Authority.

8 Product Delivery

8.1 Manufacturing Volumes

- 8.1.1 There is no guarantee of any volume of Product sales during the term of the agreement. Appendix A details historical volumes and potential realistic scenarios for each Product's likely volume based on units of 8 week usage.
- 8.1.2 The Supplier shall ensure that based on forecast volumes there is at least 12 weeks' finished Product stock released and available for sale at any one time within the supply chain, including at the Operational Period Start Date
- 8.1.3 The Supplier shall ensure that it has capacity available at all times to produce the highest volume scenario in appendix A or in line with any subsequent changes in the volume assumptions that are highlighted throughout the Procurement
- 8.1.4 The Supplier must scale up Production given three months' notice by the Authority if volumes grow beyond the scenarios envisaged in this document
- 8.1.5 The Supplier shall make sure that the Product has at least 21 months shelf life left when it reaches the Storage and Distribution Service Provider

8.2 Replenishment Order Management

- 8.2.1 The Supplier, based on historical usage data, must produce a forecast of expected Production requirements, to ensure that 12 weeks supply of finished vitamin Products is maintained in the supply chain at any one time.
- 8.2.2 The forecast must be reviewed and updated weekly to take into account current finished stock holdings (at both the Supplier and the Storage and Distribution Service Provider), Production and outstanding replenishment orders. The forecast must be made available to other Service Providers, the Authority and their Representatives.
- 8.2.3 The Supplier must coordinate with other service providers, establish communication channels and have an electronic system that is capable of taking and tracking replenishment orders and stock held at the Storage and Distribution Service Provider.
- 8.2.4 The Supplier must supply information to the Authority, their representatives and the other service providers within the overall HSVS Solution as follows:
- Respond to correctly defined replenishment orders within 2 working days to confirm delivery details of the replenishment stock
 - Provide a forecast of Production; illustrating how the 12 week buffer stock requirement will be met.
 - Provide Production information to the other service providers and the Authority as required to demonstrate appropriate volumes are in place to guarantee supply
 - The Supplier shall be entitled to invoice the Authority for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order number.

8.2.5 The Supplier shall make good any incorrect or failed deliveries at no extra cost to the Authority or its agent.

8.2.6 The Supplier shall make good any damaged Products or those not in line with this Specification at no extra cost to the Authority or Storage and Distribution Service Provider

8.3 Business Continuity

8.3.1 The Supplier must have clear Business Continuity Plans and Disaster Recovery plans which set out the key 'event risks' and continuity and recovery plans that allow for all aspects of their service (replenishment order receipt, manufacturing, testing, packaging, local storage and delivery to the Storage and Distribution Service Provider) to commence within a reasonable time given the nature of the event at the same level as the pre 'event' levels.

8.3.2 The Supplier has an obligation to notify the Authority through their appointed representative of any issues that could impact upon the delivery of the Product or the fulfilment of a replenishment Order.

8.4 KPIs

8.4.1 The Products shall be manufactured [and supplied] in accordance with an agreed set of KPIs with associated Credits.

8.4.2 The Authority requires the Supplier to meet KPIs which are subject to a credit regime as detailed within Schedule 2.

8.5 Other Reportable Measures

8.5.1 The Supplier shall also report on and/or provide the following at the intervals stated:

- Within 30 Working Days of the Framework Period and yearly thereof (where certification is yearly), documentation stating Vegetarian Society and Halal certification.
- A report indicating the successful testing of batch monitoring processes/systems – this may be provided in the form of a report broken down by batch number; specifying all stock produced and despatched for that period.
- Where the Supplier's facilities allow, monthly reports stating the average together with the minimum and maximum temperatures of storage areas.

9 Contract Management

9.1 Performance Review Arrangement

9.1.1 The Supplier will work with the Authority's Agents (the Transactional Services Provider and the Storage and Distribution Service Provider) to establish and maintain an effective and beneficial working relationship to ensure the Product is delivered to the standard specified in the Agreement and performance measures are achieved.

9.1.2 The Authority will finalise with the Supplier at the outset the day-to-day relationship management arrangements, contact points, communication flows and escalation procedures, taking into account the Suppliers resource profile and how these resources will support delivery of the contract.

9.2 Contract Review Meetings

9.2.1 Contract review meetings, known as Business Performance and Insight Meetings or BPIMs, will take place between the Authority's Contract Managers, the Authority's Agents and the Supplier on a monthly basis. The Authority's Contract Manager will chair and provide secretariat for BPIMs.

- Typically the agenda for the Business Performance & Insight Meeting will include, but not be exclusive to; policy update, procurement/contractual matters, operational review, quality, finance review, KPI review, innovation and risk management.

9.2.2 The Business Performance & Insight Meetings shall (unless otherwise agreed):

- Take place within 10 working days of the Management Information Reports being issued by the Supplier;
- Take place by telephone conference, video conference or at such a location and time as is reasonable within normal business hours as the Authority shall reasonably require;
- Be attended by the Supplier's Representative, representatives of the Authority's Agents and the Authority's Contract Manager.
- Be fully minuted by the Authority's Contract Manager. The prepared minutes will be circulated to all attendees of the meeting for approval.
- The Authority's Contracts Manager will be entitled to raise any additional questions and/or request any further information regarding any service failure.

9.2.3 Review meetings between the Authority and the Supplier may, also be used for problem solving and dispute resolution subject always Schedule 18 (Dispute Resolution Procedure) and Schedule 9 (Collaboration Principles) which shall take precedence over this paragraph

9.2.4 The Supplier will also be expected to attend and provide support to the Authority for any other ad hoc meetings that may be arranged from time to time during the Term.

9.3 Agreement Exit

9.3.1 The Supplier will be required to supply a detailed Exit Plan within 3 months of the Commencement Date. This will be reviewed annually throughout the Term.

9.3.2 The Exit Plan will detail the support the Supplier will provide to the Authority and the new Supplier for the transition of the Agreement.

9.3.3 The Supplier shall confirm that in the case of exit from the service, any design or integration work completed on behalf of the Authority will either remain the intellectual property of the Authority or the Authority will have the right to use it in perpetuity.

9.4 Management Information

9.4.1 The Supplier shall supply information that is relevant to the delivery of the Agreement to the Authority's Contract Manager, using formats and to timescales specified by the Authority in this Schedule.

9.4.2 The Supplier will be required to provide standard Management Information (MI) reports on a monthly basis, no later than the 10th working day from the end of the reporting month or as requested by the Authority or their Contract Managers.

9.4.3 The indicative information requirements and the frequency of Production for supplying MI is summarised below;

No.	Title	Contract Management Information Required	Frequency
1.	Product Replenishment Orders Received	A report of Product replenishment orders received by the Supplier from the Storage and Distribution Service Provider. This report, as a minimum, must include the replenishment order received date, replenishment order quantity and agreed despatch date.	Monthly
2.	Production/ Stock	A report of finished stock that has been produced by the Supplier. This report, as a minimum, must include Production dates, the amounts produced, corresponding batch numbers, expiry dates and confirmation that the stock has passed all relevant testing and specification requirements.	Monthly
3.	Product Despatched	A report of Products that have been despatched to the Storage and Distribution Service Provider. This report, as a minimum, must include the original replenishment order amount, the amount despatched, the date and their corresponding batch numbers and expiry dates. Details of anticipated delivery dates to the Storage and Distribution Service Provider must also be specified.	Monthly
4.	Production Forecast	A Production forecast detailing anticipated demand and Production amounts.	Weekly
5.	Combination	A report combining any of the above management information reports	Monthly

9.4.4 The format and contents of reports will be agreed and finalised between the contractor and Authority's Contract Managers following contract award.

9.4.5 Following the agreement of standard monthly reports, from time to time the Supplier may be required to produce ad hoc reports, for example to aid an investigation or for policy development purposes. The Supplier will be expected to provide additional reports as reasonably requested at no additional cost to the Authority.

Volumetric Data

A.1 Recipient Numbers

	No. of eligible Recipients (Oct 2016)	Total UK population group
Women	143,360	0.54m

A.2 Indicative volumes

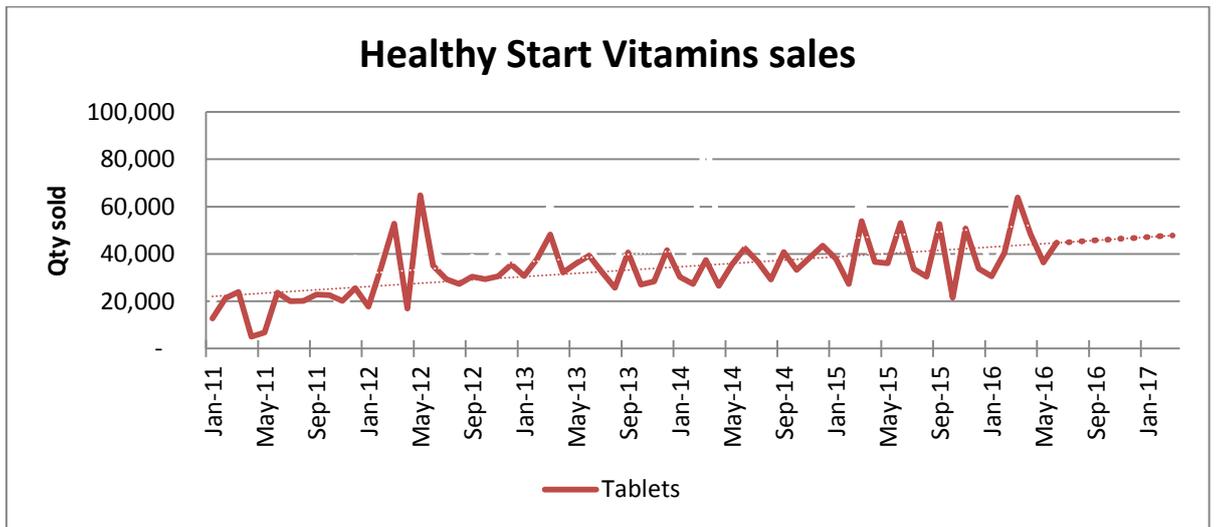
A.2.1 Indicative Baseline and scenario annual volumes are provided below

- a. A Unit is 8 weeks use (so 6.5 units per year)

Women's vitamins

		% increase from baseline	Annual Volumes
	Scenario	Growth	Volume Recipient units (women)
Volumes up to current values (baseline)	Year 1	0%	480,000
	Year 2	0%	480,000
	Year 3	0%	480,000
Current Growth (6%pa)	Year 1	6%	508,800
	Year 2	12%	539,328
	Year 3	19%	571,688
Double growth (12%pa)	Year 1	12%	537,600
	Year 2	25%	602,112
	Year 3	40%	674,365

Seasonality



SCHEDULE 2: KEY PERFORMANCE INDICATORS

1. GENERAL

- 1.1 The purpose of this Schedule is to set out the KPIs by which the Supplier’s overall performance under this Framework Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 22.1 (Variation Procedure).
- 1.2 The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement including Schedule 8 (Framework Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.
- 1.3 The KPIs against which performance by the Supplier of this Framework Agreement will be reported and that apply to the supply of the Products are set out in the table below.
- 1.4 Credits shall accrue to the Authority against the KPI Targets and shall be calculated as described in the table below.

KEY PERFORMANCE INDICATORS TABLE

CATEGORY	KPI	DESCRIPTION	REPORTING CYCLE	KPI TARGET LEVEL	IMPACT
Manufacturing Capacity/Stock Holding	12 Week buffer stock holding (No. of units)	<p>The Supplier will maintain a minimum holding of 12 weeks finished Products within the Supply Chain based on the Forecasted Requirements (the higher of the latest weekly Sales Forecast for the next 12 weeks usage and the latest weekly Supplier Forecast for the next 12 weeks supply as defined in Schedule 6).</p> <p>The Supplier is required to report stock levels to the Authority or their representatives on a monthly basis. The Supplier is required to report immediately to the Authority or their representatives if stock levels fall below the 12 week requirement at any point during a month.</p>	Monthly	6-8 Weeks Stock	Where the amount of finished Product stock held within the Supply Chain, at any point during a month, falls below 8 weeks of the Forecasted Requirements, Clause 33 of the Framework Agreement shall apply.
				4-6 Weeks Stock	Where the amount of finished Product stock held within the Supply Chain, at any point during a month, falls below 6 weeks of Forecasted Requirements, Clause 33 of the Framework Agreement may apply and the Authority may apply a Credit on the Supplier, equivalent to 2% of their revenue in respect of the month in which the failure has occurred.
				<4 Weeks Stock	Where the amount of finished Product stock held within the Supply Chain, at any point during a month, falls below 4 weeks of Forecasted Requirements, Clause 33 of the Framework Agreement shall apply and the Authority may apply a Credit on the Supplier, equivalent to 3% of their revenue in respect of the month in which the failure has occurred.

Delivery	On time Delivery of stock (No. of units)	Orders placed by the Authority or the Storage and Distribution Service Provider with the Supplier must be delivered in full to the location specified, on the date agreed between the Parties at the point at which the Order is placed - unless otherwise agreed with the Authority or their representatives. Products delivered must meet the specification – and the Framework Agreement - Products that do not meet these requirements will be rejected.	Monthly	90%-95% Units Ordered	Where the number of units delivered is between 90% and 95% of the Order, awarded by the Authority or it's agent, Clause 33 of the Framework Agreement shall apply
				85%-90% Units Ordered	Where the number of units delivered is between 85% and 90% of the order awarded by the Authority or its agent, Clause 33 of the Framework agreement shall apply and the Authority may apply a Credit on the Supplier, equivalent to 2% of their revenue in respect of the month in which the failure has occurred.
				<85% Units Ordered	Where the number of units delivered is below 85% of the Order amount awarded by the Authority or its agent, Clause 33 of the Framework Agreement shall apply and the Authority may apply a Credit on the Supplier, equivalent to 3% of their revenue in respect of the month in which the failure has occurred. Non Delivery on the agreed date will be classed as 0% Delivery.
Product Quality	Provision of testing reports (No. of testing reports)	Testing must be carried out and results must be provided to the Authority or their representatives on dates and intervals stated in the Testing Specification.	Monthly	<100% Testing Requirements	Where Testing is not carried out and reports are not provided to the Authority or their representative, as per and on the intervals stated in the Testing Specification, Clause 33 of the Framework Agreement shall apply and the Authority may apply a Credit on the Supplier, equivalent to 3% of their revenue in respect of the month in which the failure has occurred - unless agreed otherwise with the Authority or their representatives. Stock that does not pass Testing requirements must <u>NOT</u> enter the Supply Chain.
Management Information	Provision of Management Information (No. of reports)	Agreed MI reports must be provided or made available to the Authority or their representative within time frames specified.	Monthly	10-15 working days	Where MI reports are provided to the Authority or their representatives later than the 10th working day following the end of the previous reporting month, Clause 33 of the Framework Agreement shall apply.
				>15 working days	Where MI reports are provided to the Authority or their representatives later than the 15th working day following the end of the previous reporting month, Clause 33 of the Framework Agreement shall apply and the Authority may apply a Credit on the Supplier equivalent to

					2% of their revenue in respect of the month in which the failure has occurred - unless agreed otherwise with the Authority or their representatives.
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SCHEDULE 3: IMPLEMENTATION PLAN

REDACTED UNDER SECTION 43 (2) - COMMERCIAL INTEREST

SCHEDULE 4: PRODUCT PRICES

1. GENERAL PROVISIONS

- 1.1 The Product Prices set out in this Schedule 4 are the maximum that the Supplier may charge pursuant to any Orders.
- 1.2 The Supplier acknowledges and agrees that, subject to paragraph 2 of this Schedule 4 (Adjustment of the Framework Prices) the Product Prices cannot be increased during the Framework Period.

2. ADJUSTMENT OF THE PRODUCT PRICES

- 2.1 The Product Prices shall only be varied:
 - 2.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to the Product Prices in accordance with Clause 22.2 of this Framework Agreement (Legislative Change);
 - 2.1.2 where the Product Prices are reviewed and reduced in accordance with Schedule 12 (Continuous Improvement);
 - 2.1.3 where the Product Prices are reviewed and reduced in accordance with paragraph 3 of this Schedule 4 (Supplier Periodic Assessment of Product Prices);

3. SUPPLIER PERIODIC ASSESSMENT OF PRODUCT PRICES

- 3.1 Every twelve (12) Months during the Framework Period, the Supplier shall assess the level of the Product Prices to consider whether it is able to reduce them.
- 3.2 Such assessments by the Supplier under paragraph 3.1 shall be carried out on each anniversary of the Operational Period Start Date. To the extent that the Supplier is able to decrease all the Product Prices it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 4.1.3 below.

4. IMPLEMENTATION OF ADJUSTED PRODUCT PRICES

- 4.1 Variations in accordance with the provisions of this Schedule 4 to the Product Prices shall be made by the Authority to take effect:
 - 4.1.1 in accordance with Clause 22.2 (Legislative Change) where an adjustment to the Product Prices is made in accordance with paragraph 2.1.1 of this Schedule 4;
 - 4.1.2 in accordance with paragraphs 1.1 and 1.2 of Schedule 12 (Continuous Improvement) where an adjustment to the Product Prices is made in accordance with paragraph 2.1.2 of this Schedule 4; or
 - 4.1.3 on the first day of the Month following an adjustment to the Product Prices made in accordance with paragraph 2.1.3 of this Schedule 4.

and the Parties shall amend the Product Prices shown in Annex 1 to this Schedule 4 to reflect such variations.

5. CHARGES UNDER EXISTING ORDERS

- 5.1 For the avoidance of doubt any change to the Framework Prices implemented pursuant to this Schedule 4 are made independently of, and, subject always to paragraph 1.1 of this Schedule 4 and shall not affect the prices payable by the Authority under an Order in force at the time a change to the Product Prices is implemented.

6. INVOICING PROCEDURE

- 6.1 The Supplier shall be entitled to invoice the Authority for each Order on or at any time after Delivery. Each invoice shall quote the relevant Order number.
- 6.2 The Authority shall pay invoices in full within thirty (30) calendar days of receipt. Payment shall be made to the bank account nominated in writing by the Supplier.
- 6.3 The Supplier shall ensure that each invoice:
- (a) shows a breakdown of the amounts charged with supporting evidence; and
 - (b) is supported by any documentation reasonably required by the Authority to substantiate that it is a valid invoice.
- 6.4 The Supplier shall submit invoices directly to [details for the Transactional Provider to be confirmed by the Authority when details are available].

7. REBATES

- 7.1 The Supplier shall pay the Rebate Amount based on the Rebate Percentage and the value of spend under the Framework Agreement exceeding the annual level of spend Rebate Threshold as detailed below:

Annual spend Rebate Threshold	Rebate Percentage
Redacted under Section 43(2) - Commercial Interests	Redacted under Section 43(2) - Commercial Interests

- 7.2 The Rebate Amount is payable on all spend under the Framework Agreement which is over and above the annual Rebate Threshold in the Rebate Year.
- 7.3 The first Rebate Year will start on the Operational Period Start Date, and each subsequent Rebate Year shall start on each anniversary of the Operational Period Start Date.
- 7.4 The Supplier shall pay the Rebate Amount to the Authority within thirty (30) calendar days of each Rebate Year end.

ANNEX 1 – PRODUCT PRICING

REDACTED UNDER SECTION 43 (2) - COMMERCIAL INTERESTS

SCHEDULE 5: NOT USED

SCHEDULE 6: ORDERING PROCEDURE

1. AWARD PROCEDURE

- 1.1 If the Authority decides to source the Products through this Framework Agreement then it will award its Product Requirements in accordance with the procedure in this Schedule 6 (Ordering Procedure)
- 1.2 The Authority may issue an Order to the Supplier subject to compliance by the Supplier of Clause 7 (Condition Precedent).

2. NO AWARD

- 2.1 Nothing in this Framework Agreement shall oblige the Authority to award an Order.

3. ORDER ACCEPTANCE AND CONFIRMATION

- 3.1 The Supplier agrees and acknowledges that in accordance with Clause 4.2.4 of the Framework Agreement, the Storage and Distribution Service Provider acting on behalf of the Authority may award Orders under this Framework Agreement and references to the Authority in this Schedule 6 shall include where appropriate, reference to the Storage and Distribution Service Provider.
- 3.2 Subject to paragraphs 1.1 and 1.2 above, the Authority (or its agent acting on its behalf) may award an Order to the Supplier by sending (including electronically) a signed Order Form substantially in the form (as may be amended or refined by the Authority) of the Template Order Form set out in Annex 1 of Schedule 6 (Template Order Form). The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not as described in this paragraph 3.2 shall not constitute an Order under this Framework Agreement.
- 3.3 The Supplier shall accept all Orders received under this Framework Agreement.
- 3.4 Notwithstanding paragraph 3.3 of this Schedule 6, the Supplier may reject an Order within 1 Working Day of receipt where the Order Form is not fully completed and/or the volumes of Products ordered is in excess of the Supplier's production forecast ("**Supplier Forecast**") volumes and the Storage and Distribution Service Provider's despatch forecast ("**Sales Forecast**") volumes as set out in paragraph 4 below for the period covered by the Order.
- 3.5 On receipt of an Order Form from the Authority as described at paragraph 3.2, the Supplier shall accept the Order by promptly signing and returning (including by electronic means) a copy of the Order Form to the Authority and confirm to the Authority or its agents the date on which the Products ordered will be delivered (Delivery Date) within 2 Working Days of Order Form receipt. The Delivery Date provided should be no more than 5 Working Days after the Order confirmation unless otherwise agreed with the Authority or its representatives.

4. ORDER FREQUENCY AND FULFILMENT

- 4.1 The Supplier shall manage its Product production to guarantee and ensure that there is 12 weeks finished Product stock in the Supply Chain (consisting of Products stored in the Supplier and Storage and Distribution Service Provider's facilities or in transit between these facilities) at any one time after the Operational Period Start Date and throughout the remaining Framework Period and also ensure that it can respond to Orders placed by the Authority and its agents that are in line with the Storage and Distribution Service Provider 's weekly rolling Sales Forecast.
- 4.2 At least ten (10) Working Days before the Operational Period Start Date, the Authority or its agents may in accordance with the terms of the Framework Agreement place an initial Order for 12 weeks stock of Products (the buffer stock) based on the agreed Supplier Forecast.
- 4.3 Thereafter, Orders may be awarded under the terms of the Framework Agreement by the Authority and its agents as Products are required to ensure all Customer catalogue purchases can be fulfilled. The Orders awarded by the Authority will be made in line with the rolling Supplier Forecast and the Storage and Distribution Service Provider's weekly rolling Sales Forecast, subject to any unforeseen changes in demand (up or down).
- 4.4 During the Implementation Period, the Authority will provide the most recent 24 months Product despatch data i.e. fulfilled catalogue purchases to Customers, to the Supplier. The Supplier will create the Supplier Forecast, that must take seasonality into account, at least one month before the Operational Period Start Date, this will be used to support manufacturing planning.
- 4.5 After the Operational Period Start Date and throughout the remaining Framework Period, on a weekly basis, the Authority or its agents will provide a rolling update of Product despatch data to the Supplier to inform the Supplier Forecast to be created by the Supplier pursuant to paragraph 4.4.
- 4.6 The Supplier will at all times after the Operational Period Start Date and throughout the remaining Framework Period maintain and report a weekly rolling Supplier Forecast, covering at least the next 12 weeks. This shall be based on the latest Product despatch data provided by the Authority and include any seasonality from the previous 24 months Product despatch data.
- 4.7 In addition, the Storage and Distribution Service Provider will share their weekly rolling Sales Forecast with the Supplier on a weekly basis.
- 4.8 The Supplier must work collaboratively with the Storage and Distribution Service Provider to update the Supplier Forecast, anticipate future production requirements and ensure capacity.
- 4.9 All Orders must be delivered to the Delivery Location by the Delivery Date

ANNEX 1 – TEMPLATE ORDER FORM

**Healthy Start Vitamins
Order Form**

**Storage and Distribution Company
Address
Post code
Phone number**

Order ref number:	
Order to:	Deliver to:
Name	Name
Company	Company
Address	Address
Town	Town
City	City
Postcode	Postcode
Phone number	Phone number
Order date:	Raised by:

Requested Delivery date:	Confirmed/agreed Delivery date:

Product code	Product description	Quantity	Unit price	Total	ADMIN USE	
					Qty rec'd	Date rec'd
Product Code	Product Description		Price			
Product Code	Product Description		Price			
Comments:			Subtotal			
			Total			

Signed:	Date:

SCHEDULE 7: KEY SUB-CONTRACTORS - NOT APPLICABLE

1. In accordance with Clause 26.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Orders entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

SCHEDULE 8: FRAMEWORK MANAGEMENT

1. INTRODUCTION

- 1.1 The following definitions shall apply in addition to the definitions contained in Clause 1:
- | | |
|-------------------------------------|--|
| "Supplier Framework Manager" | has the meaning given to it in paragraph 2.1.1 of this Schedule 8; and |
| "Supplier Review Meetings" | has the meaning given to it in paragraph 2.2.1 of this Schedule 8. |
- 1.2 The successful delivery of this Framework Agreement will rely on the ability of the Supplier and the Authority in developing a strategic relationship immediately following the Framework Commencement Date and maintaining this relationship throughout the Framework Period.
- 1.3 To achieve this strategic relationship, there will be a requirement to adopt proactive framework management activities which will be informed by quality Management Information, and the sharing of information between the Supplier and the Authority.
- 1.4 This Schedule 8 outlines the general structures and management activities that the Parties shall follow during the Framework Period.

2. FRAMEWORK MANAGEMENT

2.1 Framework Management Structure:

- 2.1.1 The Supplier shall provide a suitably qualified nominated contact (the **"Supplier Framework Manager"**) who will take overall responsibility for delivering the Authority's requirements within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.
- 2.1.2 The Supplier shall put in place a structure to manage the Framework Agreement in accordance with Schedule 2 (Key Performance Indicators).
- 2.1.3 A full governance structure for the Framework Agreement will be agreed between the Parties within fourteen (14) days of the Framework Commencement Date.
- 2.1.4 The Supplier shall comply with the Collaboration principles set out in Schedule 9.

2.2 Supplier Review Meetings

- 2.2.1 Regular performance review meetings will take place on a monthly basis by telephone conference, video conference or at such time and location as the Authority shall reasonably require throughout the Framework Period (**"Supplier Review Meetings"**).
- 2.2.2 The purpose of the Supplier Review Meetings will be to review the Supplier's performance under this Framework Agreement which shall include considering policy update; procurement/contractual matters; operational, quality, finance and KPI review; innovation and risk management. The agenda for each Supplier Review Meeting shall be set by the Authority and communicated to the Supplier in advance of that meeting.
- 2.2.3 The Supplier Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Supplier Framework Manager.

3. KEY PERFORMANCE INDICATORS

- 3.1 The KPIs applicable to this Framework Agreement are set out in Schedule 2 (Key Performance Indicators).
- 3.2 The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.
- 3.3 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this Framework Agreement.
- 3.4 The Supplier's achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 2.2 above, and the review and on-going monitoring of KPIs will form a key part of the framework management process as outlined in this Schedule 8.
- 3.5 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier.
- 3.6 The Authority reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

4. ESCALATION PROCEDURE

- 4.1 In the event that the Authority and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
- 4.2 In cases where the Authority Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Schedule 18 (Dispute Resolution Procedure).

SCHEDULE 9: COLLABORATION PRINCIPLES

1 DEFINITIONS

1.1 In this Schedule, the following definition applies:

“**Collaborating Parties**” means the Authority, the Supplier, and any other suppliers to the Authority who are participating in the Healthy Start Vitamin Scheme Programme from time to time, including the suppliers listed in Appendix 1.

2 INTRODUCTION

2.1 The overriding purpose of the Healthy Start Vitamin Scheme Programme is to enable the Authority meet its statutory obligations by providing vitamin Products which Customers can make available to Recipients and to create a high performing, efficient and economic model for fulfilling this overriding purpose.

2.2 The Collaborating Parties acknowledge and agree that it is in the interest of all Parties for suppliers to work constructively and collaboratively with each other to achieve this overriding purpose.

2.3 This Schedule sets out the principles under which all the Collaborating Parties will work with each other in the delivery of the Healthy Start Vitamin Scheme Programme.

3 COLLABORATION PRINCIPLES

Overarching Collaboration Principles

3.1 The Supplier shall in complying with this Schedule 9 in all material respects (except where stated to the contrary in this Schedule 9), comply with British Standard BS 11000-1: 2010 ‘Collaborative business relationships – Part 1: A framework specification’ and BS 11000-2:2011 Collaborative business relationships – Part 2: Guide to implementing BS 11000-1 (“**British Standard BS 11000**”).

3.2 The Supplier shall so act in accordance with paragraph 3.1 whether it is certified or accredited as being compliant with British Standard BS 11000 or otherwise.

3.3 Where any part of contents of this Schedule 9 conflict with any part of British Standard BS 11000, the contents of this Schedule 9 shall take priority.

Specific Collaboration Principles

3.4 The Supplier shall work constructively, collaboratively, cooperatively and proactively with the other Collaborating Parties in the delivery of the Healthy Start Vitamin Scheme Programme and in carrying out its obligations under this Framework Agreement.

3.5 The Supplier shall:

3.5.1 work together with the Authority and other Collaborating Parties to provide the Products in a co-ordinated manner and working proactively in a spirit of mutual trust and confidence;

- 3.5.2 act in good faith in complying with its obligations under this Schedule and when working with the other Collaborating Parties in relation to the Healthy Start Vitamin Scheme Programme;
 - 3.5.3 notify other Collaborating Parties if it becomes aware of any proposed actions by the Supplier or another Collaborating Party that would be likely to adversely affect any other of the Collaborating Parties;
 - 3.5.4 seek to promptly resolve incidents and problems that arise in relation to the Services on a 'fix first basis' in the best interests of the Healthy Start Vitamin Scheme Programme; and
 - 3.5.5 where appropriate, escalate any issues that arise between the Authority and any Collaborating Parties for resolution in accordance with paragraph 6 below.
- 3.6 The Supplier agrees and acknowledges that compliance with this Schedule may involve a reasonable level of effort over and above the Product Requirements that are specifically identified in this Framework Agreement in the interests of meeting the objectives set out in paragraph 2 above. The Supplier shall not make any charge for complying with the terms of this Schedule unless such charge relates to additional services that the Supplier agrees to provide and are agreed with the Authority in accordance with the Variation Procedure.
- 3.7 The Authority shall enter into contracts with the other Collaborating Parties that contain terms similar to those set out in this Schedule 9.
- 3.8 When another Collaborating Party requests assistance from the Supplier in the resolution of a specific issue or challenge:
- 3.8.1 the Supplier shall provide reasonable assistance to support the Collaborating Party in resolving that issue or challenge; and
 - 3.8.2 save where there would be a material adverse commercial impact on the Supplier, the Supplier shall prioritise such support on the basis of the level of impact that the issue has on the overall delivery of the Healthy Start Vitamin Scheme Programme rather than on the impact it has on the Supplier; and
 - 3.8.3 should the Supplier wish to take any action that may adversely impact other Collaborating Parties, it shall, in advance of taking such action:
 - (i) proactively seek to discuss and engage with other Collaborating Parties to determine whether there is any adverse impact;
 - (ii) work collaborative with other Collaborating Parties to agree how any impact could be minimised;
 - (iii) seek to undertake a balanced assessment of the impacts of the actions, considering the impact on all Collaborating Parties and the Healthy Start Vitamin Scheme Programme, of whether the proposed actions are supportive of the overarching objective set out in paragraph 2; and
 - (iv) seek approval from the Authority before undertaking such action.

4 COLLABORATION GOVERNANCE

- 4.1 The Parties shall attend meetings with the other Collaborating Parties as required from time to time and in accordance with their obligations in this Framework Agreement to:
- 4.1.1 discuss and seek to resolve any issue or challenge in relation to the responsibility for specific incidents or problems that arise in the Healthy Start Vitamin Scheme Programme relating to the supply of the Products;
 - 4.1.2 discuss and seek ways to resolve any issues or challenges with the overall delivery of the Healthy Start Vitamin Scheme Programme; and
 - 4.1.3 make decisions about the management of the Healthy Start Vitamin Scheme Programme that affect more than one Collaborating Party.
- 4.2 The Authority, the Supplier or any other Collaborating Party may from time to time request meetings with one or more of the other Collaborating Parties for the purposes set out in paragraph 4.1 above. If the Supplier or the Authority receives such a request then the Supplier or Authority (as appropriate) shall:
- 4.2.1 use reasonable endeavours to arrange and attend the meeting with the other Collaborating Parties affected by the subject matter of the meeting as soon as reasonably practicable taking into account the urgency of the request;
 - 4.2.2 ensure that the meeting is attended by a representative with appropriate authority, knowledge and expertise to reach agreement with the other Collaborating Parties attending the meeting; and
 - 4.2.3 bring to the meeting any information held by the Supplier or Authority (as appropriate) that is reasonably required to inform discussions during the meeting.
- 4.3 Where the Collaborating Parties meet in accordance with paragraph 4.2 above they shall seek to resolve any disagreements in accordance with the principles set out in paragraph 3 above with the intention of achieving the objectives set out in paragraph 2 above.
- 4.4 If an urgent decision is required in the interests of meeting the objectives set out in paragraph 2 and there is any disagreement among the Collaborating Parties at a meeting held in accordance with paragraph 4.2, the Authority shall be entitled to decide how to proceed (acting reasonably and in the best interests of the Healthy Start Vitamin Scheme Programme).
- 4.5 The Supplier shall comply with any decision reached in accordance with paragraphs 4.2 to 4.4 above. If the Supplier does not agree with any such decision then it may refer the issue for dispute resolution in accordance with paragraph 6 below.
- 4.6 The Supplier may from time to time refer to the Authority questions relating to the supply of the Products and/or the Healthy Start Vitamin Scheme Programme. The Authority will use reasonable endeavours to respond to any such requests in accordance with the principles set out in paragraph 3 above. If such questions require an urgent decision in the interests of meeting the objectives set out in paragraph 2, the Authority shall be entitled to give instructions to the Supplier on how to proceed (acting reasonably and in the best interests of the Healthy Start Vitamin Scheme Programme).

- 4.7 The Supplier acknowledges that the Authority may from time to time request that the Supplier enters into one or more operating level agreements with one or more of the other Collaborating Parties to set out the operational details of how those Collaborating Parties will work together. The Supplier will act reasonably and in good faith in seeking to agree the terms of such operating level agreements.

5 INTERFACE MANAGEMENT

- 5.1 An interface management system shall be established by the Authority and shall incorporate all Collaborating Parties. The interface management system shall be the formal mechanism for any Collaborating Party (the “**Requesting Party**”) to request information from another Collaborating Party (the “**Supplying Party**”).
- 5.2 Such requests may cover documentation, information, intellectual property rights (in accordance with the terms of this Framework Agreement) and assistance to the Requesting Party (the “**Interface Information**”).
- 5.3 In the case where the Supplier is the Supplying Party, the Supplier shall provide Interface Information in response to any such request (the “**Request**”) relating to the supply of the Products for the purposes of complying with its obligations under this Schedule within the timeframe specified within the Request. Where no timeframe has been agreed between the Requesting Party and Supplier with any particular request, the Supplier shall provide the Interface Information within fifteen (15) Working Days.
- 5.4 As the Supplying Party, the Supplier shall ensure that the Interface Information it provides meets the requirements of the Requesting Party and is sufficient to allow the supply of the Products to interface with and integrate smoothly with the services provided by the Authority and/or other Collaborating Parties and facilitate meeting the objectives set out in paragraph 2 across the Healthy Start Vitamin Scheme Programme.
- 5.5 The Supplier shall appoint a nominated person to be responsible for managing the request and supply of Interface Information (the “**Interface Manager**”), who shall act as the single Supplier representative of all matters concerning interface management and collaboration on the Healthy Start Vitamin Scheme Programme.
- 5.6 Interface Managers from all Collaborating Parties shall meet on a regular basis, as required by the Authority , to review status and take action on any issues relating to interface management (the “**Interface Review Meeting**”). The Interface Review Meetings shall be scheduled and chaired by the Authority.
- 5.7 Notwithstanding any other term of this Framework Agreement, the Supplier shall:
- 5.7.1 ensure that any information it creates or provides to the Authority or other Collaborating Parties in relation to the provision of the Products that may be required to enable the efficient delivery of the Healthy Start Vitamin Scheme Programme can be shared with the other Collaborating Parties from time to time; and
 - 5.7.2 not place unreasonable restrictions on the access to or use of such information unless it can demonstrate to the Authority an overriding commercial interest that would be prejudiced by sharing such information.

- 5.8 The Supplier agrees and acknowledges that compliance with this paragraph 5 may require the Supplier to share commercially sensitive information (for example on markets, demand and supplier prices) with the other Collaborating Parties providing that:
- 5.8.1 there is a reasonable need to share in the interests of delivering the objectives of the Healthy Start Vitamin Scheme Programme;
 - 5.8.2 the information shared is proportionate to that need; and
 - 5.8.3 no Personal Data is shared with other Collaborating Parties.
- 5.9 Failure of the Supplier to meet its obligations under this paragraph 5 shall be considered a material Default under the Framework Agreement.

6 DISPUTE RESOLUTION IN RESPECT OF COLLABORATION

- 6.1 Where an issue arises between Collaborating Parties, they shall seek to resolve such dispute or challenge collaboratively between themselves in accordance with this Schedule.
- 6.2 If the Collaborating Parties have already made reasonable efforts to resolve the issues themselves, including escalation at the Interface Review Meeting, but have been unable to do so, they may refer the issue for resolution in accordance with Schedule 18 (Dispute Resolution Procedure).

APPENDIX 1

Key suppliers to the Healthy Start Vitamins Scheme Programme

Key anticipated suppliers:

- Storage and Distribution Service Provider (Redacted under Section 43(2) - Commercial Interests)
- Transactional Processing Service Provider (Redacted under Section 43(2) - Commercial Interests)

SCHEDULE 10: EXIT MANAGEMENT

1. IN THIS SCHEDULE 10, THE FOLLOWING DEFINITIONS SHALL APPLY:

"Exit Information"	has the meaning given to it in paragraph 4.1 of this Schedule 10;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.1 of this Schedule 10 for managing the Parties' respective obligations under this Schedule 10;
"Termination Assistance"	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 6.1 of this Schedule 10;
"Termination Assistance Period"	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Schedule 10;

2. INTRODUCTION

- 2.1 This Schedule 10 describes provisions that shall be included in the Exit Plan, the duties and responsibilities of the Supplier to the Authority leading up to and covering the expiry date and the transfer of responsibilities to the Authority and/or a Replacement Supplier.
- 2.2 The objectives of the exit planning and transfer arrangements are to ensure a smooth transition from the Supplier to the Replacement Supplier at the expiry date.

3. OBLIGATIONS DURING THE FRAMEWORK PERIOD TO FACILITATE EXIT

- 3.1 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule 10 and provide written notification of such appointment to the other Party within three (3) Months of the Framework Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule 10. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule 10. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Framework Agreement and all matters connected with this Schedule 10 and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF PRODUCTS

- 4.1 On reasonable notice at any point during the Framework Period, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of

any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- 4.1.1 details of the supply of the Products;
 - 4.1.2 an inventory of Authority data in the Supplier's possession or control;
 - 4.1.3 a list of on-going and/or threatened disputes in relation to the provision of the Products; and
 - 4.1.4 such other material and information as the Authority shall reasonably require, (together, the “**Exit Information**”).
- 4.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement except that the Authority may not under this paragraph 4.2 of this Schedule 10 disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Sub-Contractors’ prices or costs that are not already disclosed under this Framework Agreement.
- 4.3 The Supplier shall:
- 4.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and
 - 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
- 4.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 4.4.1 prepare an informed offer for the supply of the Products; and
 - 4.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

- 5.1 The Supplier shall, within three (3) Months after the Framework Commencement Date, deliver to the Authority an Exit Plan which:
- 5.1.1 sets out the Supplier's proposed methodology for achieving a successful transition of the supply of the Products from the Supplier to the Replacement Supplier on the expiry or termination of this Framework Agreement;
 - 5.1.2 complies with the requirements set out in paragraph 5.3 of this Schedule 10; and
 - 5.1.3 is otherwise reasonably satisfactory to the Authority.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 5.3 Unless otherwise specified by the Authority or Approved, the Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;
 - 5.3.2 the management structure to be employed during both transfer and cessation of the supply of the Products;
 - 5.3.3 the management structure to be employed during the Termination Assistance Period;
 - 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 5.3.5 how the Products will transfer to the Replacement Supplier, including details of the processes, documentation, data transfer operated by the Supplier or its Sub-Contractors (where applicable);
 - 5.3.6 proposals for providing the Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Products and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use of the Products;
 - 5.3.7 procedures to deal with requests made by the Authority and/or a Replacement Supplier for staffing information;
 - 5.3.8 how each of the issues set out in this Schedule 10 will be addressed to facilitate the transition from the Supplier to the Replacement Supplier with the aim of ensuring that there is no disruption to or degradation of the supply of the Products during the Termination Assistance Period; and
 - 5.3.9 proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Supplier in order to effect a successful handover of the provision of the Products.

6. TERMINATION ASSISTANCE

- 6.1 The Authority shall be entitled to require the provision of Termination Assistance at any time during the Framework Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the expiry date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Assistance is required;
 - 6.1.2 the nature of the Termination Assistance required; and
 - 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Products.
- 6.2 The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to

expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

7. TERMINATION ASSISTANCE PERIOD

- 7.1 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- 7.1.1 continue to provide the Products and, if required by the Authority pursuant to paragraph 6.1 of this Schedule, provide the Termination Assistance;
 - 7.1.2 in addition to providing the Products and the Termination Assistance, provide to the Authority any reasonable assistance requested by the Authority to allow the provision of the Products to continue without interruption following the termination or expiry of this Framework Agreement and to facilitate the successful transfer of responsibility for and conduct of the supply of the Products to the Replacement Supplier; and
 - 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority.
- 7.2 Without prejudice to the Supplier's obligations under paragraph 7.1.3 of this Schedule 10, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule 10 without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.

8. TERMINATION OBLIGATIONS

- 8.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule 10), the Supplier shall:
- 8.2.1 cease to use any Authority data;
 - 8.2.2 provide the Replacement Supplier with a complete and uncorrupted version of any Authority data in electronic form (or such other format as reasonably required by the Authority);
 - 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority data and promptly certify to the Authority that it has completed such deletion;
 - 8.2.4 return to the Authority such of the following as is in the Supplier's possession or control:
 - (c) all copies of any software licensed by the Authority to the Supplier under this Framework Agreement;
 - (d) all materials created by the Supplier under this Framework Agreement in which the IPRs are owned by the Authority;

- 8.2.5 provide access during normal working hours to the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
- (e) such information relating to the supply of the Products as remains in the possession or control of the Supplier; and
 - (f) such members of the Supplier Personnel as have been involved in the design, development and provision of the Products and who are still employed by the Supplier, provided that the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.
- 8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the supply of the Products and the Termination Assistance and its compliance with the other provisions of this Schedule 10), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Products or termination services or for statutory compliance purposes.
- 8.4 Except where this Framework Agreement provides otherwise, all licences and authorisations granted by the Authority to the Supplier in relation to the supply of the Products shall be terminated with effect from the end of the Termination Assistance Period.
- 8.5 Following notice of termination of this Framework Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent terminate, enter into or vary any licence for software in connection with the provision of the Products.

9. CHARGES

- 9.1 Except as otherwise expressly specified in this Framework Agreement, the Supplier shall not make any charges for the supply of the Products by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule 10 including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

SCHEDULE 11: BUSINESS CONTINUITY AND DISASTER RECOVERY

1. CONTENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

1.1 The Supplier shall ensure that the BCDR Plan shall include:

- (a) details of how the Supplier will implement the BCDR Plan;
- (b) details of how the BCDR Plan inter-operates with any other disaster recovery and business continuity plan of the Authority (as notified by the Authority from time to time);
- (c) details as to how the invocation of any element of the BCDR Plan may impact on the supply of the Products and a full analysis of the risks to the supply of the Products; and
- (d) identification of all reasonably possible failures of or disruptions to the supply of the Products.

1.2 The Supplier shall ensure that the BCDR Plan shall also include:

- (a) back-up methodology;
- (b) data verification procedures;
- (c) identification of all potential disaster recovery scenarios;
- (d) responsibilities of the Sub-Contractors in the event of a disaster;
- (e) KPIs that the Supplier will have to comply with in the event of a disaster; and
- (f) Authority obligations and dependencies.

1.3 The Supplier shall also ensure that the BCRD Plan defines the processes, activities and responsibilities relating to the application of emergency fixes in business-critical emergency situations.

2. REVIEW AND AMENDMENT OF THE BCDR PLAN

The Disaster Recovery and Business Continuity Plan shall be reviewed by the Authority and the Supplier annually, or at such other times as may be requested by the Authority or the Supplier.

SCHEDULE 12: CONTINUOUS IMPROVEMENT

1. CONTINUOUS IMPROVEMENT

- 1.1 The Supplier shall adopt a policy of continuous improvement in relation to the Products pursuant to which it will regularly review with the Authority the Products and the manner in which it is providing the Products with a view to reducing the Authority's costs, (including the Product Prices) and/or improving the quality and efficiency of the Products. The Supplier and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.
- 1.2 Without limiting paragraph 1.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Products and/or reducing the charges produced by the Supplier pursuant to this Schedule 12 under all Orders and reducing the Product Prices (without adversely affecting the performance of the Framework Agreement or any Order) during that Contract Year ("**Continuous Improvement Plan**") for the Approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:
 - 1.2.1 identifying the emergence of new and evolving technologies which could improve the Products;
 - 1.2.2 identifying and implementing efficiencies in the Supplier's internal processes and administration that may lead to cost savings and reductions in the Product Prices;
 - 1.2.3 identifying and implementing efficiencies in the way the Authority interacts with the Supplier that may lead to cost savings and reductions in the Product Prices;
 - 1.2.4 identifying and implementing efficiencies in the Supplier's Supply Chain that may lead to cost savings and reductions in the Product Prices;
 - 1.2.5 baselining the quality of the Products and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Framework Period; and
 - 1.2.6 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains pertaining to the Products, and identifying opportunities to assist the Authority in meeting its sustainability objectives.
- 1.3 The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Authority for Approval within ninety (90) Working Days of the first Order or six (6) Months following the Framework Commencement Date, whichever is earlier.
- 1.4 The Authority shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Supplier shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of this Agreement.

- 1.5 Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 1.4:
 - 1.5.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 1.5.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Authority and the Supplier) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.6 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in paragraph 1.2.
- 1.7 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Product Prices.

SCHEDULE 13: GUARANTEE - NOT USED

[INSERT THE NAME OF THE GUARANTOR]

- AND -

[INSERT THE NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

["Products"	has the meaning given to it in the Framework Agreement;]
["Guaranteed Agreement"	means [the Framework Agreement] [the Order] made between the Beneficiary and the Supplier on [insert date];]
"Guaranteed Obligations"	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

- 3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
- 4.1.1 [Address of the Guarantor in England and Wales]
 - 4.1.2 [Facsimile Number]
 - 4.1.3 For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
 - 4.2.1 if delivered by hand, at the time of delivery; or
 - 4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
 - 4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. BENEFICIARY'S PROTECTIONS

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
 - 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6. GUARANTOR INTENT

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7. RIGHTS OF SUBROGATION

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1.1 of subrogation and indemnity;
 - 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
 - 7.1.3 to prove in the liquidation or insolvency of the Supplier,
- only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. DEFERRAL OF RIGHTS

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
 - 8.1.1 exercise any rights it may have to be indemnified by the Supplier;
 - 8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
 - 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
 - 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
 - 8.1.5 claim any set-off or counterclaim against the Supplier;
- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

- 9.1 The Guarantor hereby represents and warrants to the Beneficiary that:
 - 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
 - 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
 - 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a

contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. GUARANTOR'S ACKNOWLEDGEMENT

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. ASSIGNMENT

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. SEVERANCE

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14. THIRD PARTY RIGHTS

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15. GOVERNING LAW

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

SCHEDULE 14: INTELLECTUAL PROPERTY LICENCE AGREEMENT

DATED

[REDACTED]

INTELLECTUAL PROPERTY LICENCE AGREEMENT

between

SECRETARY OF STATE FOR HEALTH

and

BRUNEL HEALTHCARE MANUFACTURING LTD

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SCHEDULE

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This agreement is dated [INSERT DATE]

PARTIES

The Secretary of State for Health acting as part of the Crown of Richmond House, 79 Whitehall, London, SW1A 2NS (**Licensor**).

Brunel Healthcare Manufacturing Ltd incorporated and registered in England and Wales with company number 4504895 whose registered office is at William Nadin Way, Swadlincote, Derbyshire, DE11 0BB (**Licensee**).

BACKGROUND

The Licensor is the owner of the Intellectual Property Rights (as defined below).

The Licensee wishes to use the Intellectual Property Rights in the Territory in relation to the Licensed Products and the Licensor is willing to grant to the Licensee a licence to use the Intellectual Property Rights on the terms and conditions set out in this agreement.

AGREED TERMS

1. INTERPRETATION

The definitions and rules of interpretation in this Clause apply in this agreement.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Framework Agreement[s]: the Framework Agreement for the provision of Healthy Start Vitamins – Women’s Product dated 1st March 2018

Effective Date: the date of this agreement.

Intellectual Property Rights: the Marks and all copyright and rights in the nature of copyright subsisting in the Work.

Licensed Products: means the Women Healthy Start Vitamins as described in Schedule 1 (Specification) of the Framework Agreement[s].

Marks: the trade marks set out in 0 of this 04.

NHS Identity Guidelines: the guidelines available at <https://www.england.nhs.uk/nhsidentity/> as updated from time to time.

Territory: the United Kingdom.

VAT: value added tax.

Work: the work shown in Part 2 of this Schedule 14.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 References to Clauses and Schedules are to the Clauses and Schedules of this agreement.
- 1.7 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.8 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.9 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assignees.
- 1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.12 A reference to **writing** or **written** includes fax but not email.
- 1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. GRANT

- 2.1 In consideration of the sum of £1.00 (receipt of which the Licensor expressly acknowledges), the Licensor hereby grants to the Licensee a non-exclusive licence to use the Intellectual Property Rights on the Licensed Products in the Territory, solely in connection with the manufacture and supply of the Licensed Products and in accordance with the Framework Agreement.

3. APPLICATION OF THE INTELLECTUAL PROPERTY

- 3.1 All Licensed Products made and/or supplied by the Licensee in the Territory shall carry the Work, and on the Licensor's instructions, the Intellectual Property Rights. The Licensee shall comply strictly with the directions of the Licensor regarding the form and manner of the application of the Intellectual Property Rights, including the directions contained in the NHS Identity Guidelines in respect of the Marks.
- 3.2 Subject to Clause 3.3, apart from the Intellectual Property Rights, no other trade mark or logo may be affixed or used in relation to the Licensed Products.
- 3.3 The Licensee may not use its trade name on the packaging materials for the Licensed Products.
- 3.4 The Licensee shall not use in its business any other trade mark confusingly similar to the Marks and shall not use the Marks or any word confusingly similar to the Marks as, or as part of, its corporate or trading name.

4. TITLE, GOODWILL AND REGISTRATIONS

- 4.1 The Licensee acknowledges that the Licensor is the owner of the Intellectual Property.
- 4.2 The Licensee shall procure that all Licensed Products sold by the Licensee and all related quotations, specifications and descriptive literature, and all other materials carrying the Intellectual Property Rights, be marked with:

"Made by [LICENSEE] in [PLACE] under licence from [LICENSOR]. [MARK] is the [registered] trade mark of [LICENSOR]."

or with any other statement as notified in writing from the Licensor to the Licensee.
- 4.3 Any goodwill derived from the use by the Licensee of the Intellectual Property shall accrue to the Licensor. The Licensor may, at any time, call for a document confirming the assignment of that goodwill and the Licensee shall immediately execute it.
- 4.4 The Licensee shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Intellectual Property or the reputation or goodwill associated with the Intellectual Property or the Licensor, or that may invalidate or jeopardise any registration of the Marks.
- 4.5 The Licensee shall not apply for, or obtain, registration of any trade or service mark in any country which consists of, or comprises, or is confusingly similar to, the Intellectual Property.

5. QUALITY CONTROL

- 5.1 The Licensee shall, in exercising its right under this agreement, comply with, and shall ensure that each Licensed Product manufactured and supplied by the Licensee is compliant with, all applicable laws, regulations, industry standards and codes of practice and the terms of the Framework Agreement
- 5.2 The Licensee shall promptly provide the Licensor with copies of all communications, relating to the Mark or the Licensed Products, with any regulatory, industry or other authority.

6. PROTECTION OF THE INTELLECTUAL PROPERTY

- 6.1 The Licensee shall immediately notify the Licensor in writing giving full particulars if any of the following matters come to its attention:
- (a) any actual, suspected or threatened infringement of the Intellectual Property;
 - (b) any actual or threatened claim that the Marks are invalid;
 - (c) any actual or threatened opposition to the Marks;
 - (d) any claim made or threatened that use of the Intellectual Property infringes the rights of any third party;
 - (e) any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Licensee under this agreement; or
 - (f) any other form of attack, charge or claim to which the Intellectual Property may be subject.
- 6.2 In respect of any of the matters listed in Clause 6.1:
- (a) the Licensor shall, in its absolute discretion, decide what action if any to take;
 - (b) the Licensor shall have exclusive control over, and conduct of, all claims and proceedings;
 - (c) the Licensee shall not make any admissions other than to the Licensor and shall provide the Licensor with all assistance that it may reasonably require in the conduct of any claims or proceedings; and
 - (d) the Licensor shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.
- 6.3 The provisions of section 30 of the Trade Marks Act 1994 (or equivalent legislation in any jurisdiction) are expressly excluded.
- 6.4 Nothing in this agreement shall constitute any representation or warranty that:
- (a) any of the Marks are valid; or

- (b) the exercise by the Licensee of rights granted under this agreement will not infringe the rights of any person.

7. LIABILITY, INDEMNITY AND INSURANCE

7.1 To the fullest extent permitted by law, the Licensor shall not be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from the Licensee's exercise of the rights granted to it under this agreement.

7.2 The Licensee shall indemnify the Licensor against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with:

- (a) the Licensee's breach or negligent performance or non-performance of this agreement, including any product liability claim relating to Licensed Products manufactured, supplied or put into use by the Licensee;
- (b) the enforcement of this agreement; or
- (c) any claim made against the Licensor by a third party for death, personal injury or damage to property arising out of or in connection with defective Licensed Products, to the extent that the defect in the Licensed Products is attributable to the acts or omissions of the Licensee, its employees, agents, sub-licensees or subcontractors.

7.3 If a payment due from the Licensee under this Clause is subject to tax (whether by way of direct assessment or withholding at its source), the Licensor shall be entitled to receive from the Licensee such amounts as shall ensure that the net receipt, after tax, to the Licensor in respect of the payment is the same as it would have been were the payment not subject to tax.

7.4 Nothing in this agreement shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence.

8. ADDITIONAL LICENSEE OBLIGATIONS

8.1 The Licensee shall:

- (a) only make use of the Intellectual Property for the purposes authorised in this agreement; and
- (b) comply with all regulations and practices in force or use in the Territory to safeguard the Licensor's rights in the Intellectual Property.

8.2 The Licensee shall not, nor directly or indirectly assist any other person to:

- (a) use the Intellectual Property except as permitted under this agreement; or

- (b) do or omit to do anything to diminish the rights of the Licensor in the Marks.
- 8.3 The Licensee acknowledges and agrees that the exercise of the licence granted to the Licensee under this agreement is subject to all applicable laws, enactments, regulations and other similar instruments in the Territory, and the Licensee understands and agrees that it shall at all times be solely liable and responsible for such due observance and performance.
- 9. SUB-LICENSING**
- 9.1 The Licensee shall not grant sub-licences under this agreement.
- 10. ASSIGNMENT AND OTHER DEALINGS**
- 10.1 The Licensee shall not assign, transfer, mortgage, charge, subcontract, sublicense, declare a trust over, or deal in any other manner with any or all of its rights under this agreement without the prior written consent of the Licensor.
- 11. DURATION AND TERMINATION**
- 11.1 This agreement shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with Clause 11, until the termination or expiry of the Framework Agreement when it shall expire automatically without notice.
- 11.2 Without affecting any other right or remedy available to it, the Licensor may terminate this agreement with immediate effect by giving notice to the Licensee if:
- (a) the Licensee commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period 30 days after being notified to do so;
 - (b) the Licensee repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensee (being a company);
 - (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given, or if an administrator is appointed over the Licensee;
 - (e) the holder of a qualifying floating charge over the assets of the Licensee (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (f) a person becomes entitled to appoint a receiver over all or any of the assets of the Licensee or a receiver is appointed over all or any of the assets of the Licensee;

- (g) a creditor or encumbrancer of the Licensee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (h) the Licensee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

12. CONSEQUENCES OF TERMINATION

- 12.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 12.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

13. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14. ENTIRE AGREEMENT

- 14.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

15. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. SEVERANCE

16.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this agreement.

16.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. THIRD PARTY RIGHTS

No one other than a party to this agreement shall have any right to enforce any of its terms.

18. NO PARTNERSHIP OR AGENCY

18.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

18.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

20. NOTICES

20.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case)

20.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; or
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 20.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that the Licensor may have, the Licensee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Licensee. Accordingly, the Licensor shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

22. DISPUTE RESOLUTION

- 22.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in Schedule 18 of the Framework Agreement (Dispute Resolution Procedure).

23. GOVERNING LAW

This agreement 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 shall be governed by and construed in accordance with the law of England and Wales.

24. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

Part 1 - Intellectual Property

Trade mark(s)

Registered trade marks and applications

Mark	Trade Mark Number	Classes	Registration Date
	2356641	05, 09, 10, 25 , 38, 44 and 45	16 December 2005
NHS	2336307	05, 10, 16, 35, 41, 42 and 44	2 December 2005
NHS	2353908	25, 38 and 45	16 December 2005
	2139445	16, 35, 41 and 42	24 April 1998
	2527994	05, 09, 10, 12, 16, 25, 35, 36, 41, 42 and 44	7 October 2009

Part 2 - Copyright Work

Work to be inserted once it has been designed by third party contractor

Signed by
for and on behalf of
The Secretary of State for Health

.....
Authorised Signatory

Signed by Redacted under Section 40 -
Personal Information
for and on behalf of Brunel Healthcare
Manufacturing Ltd

.....
Managing Director

SCHEDULE 15: NOT USED

SCHEDULE 16: NOT USED

SCHEDULE 17: COMMERCIALY SENSITIVE INFORMATION

1. INTRODUCTION

- 1.1 In this Schedule 17 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule 17 applies.
- 1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 28.4 (Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

Table 1 - Confidential Information

INFORMATION CONSIDERED CONFIDENTIAL	REASON FOR FOIA EXEMPTION (INCLUDE PARAGRAPH REFERENCE)	PERIOD EXEMPTION IS SOUGHT (MONTHS)
All of the information detailed in Part B Schedule One (a), Selection Questionnaire (SQ)	This information contains details of Brunels' proprietary, in house policies and procedures and as such is Confidential in house information which we do not wish any of our competitors to see or to know about.	This should be in force forever, no expiry date.
All of our responses to questions A and AP and all attachments.	As above.	This should be in force forever, no expiry date.

Table 2 - Commercially Sensitive Information

INFORMATION CONSIDERED COMMERCIALY SENSITIVE	REASON FOR FOIA EXEMPTION (INCLUDE PARAGRAPH REFERENCE)	PERIOD EXEMPTION IS SOUGHT A(MONTHS)
All information as above and also in relation to prices submitted and rebates / discounts offered.	This information would be Commercially beneficial to our competitors and Brunel do not wish this information to be made public to anyone .	This should be in force forever, no expiry date.

SCHEDULE 18: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Schedule 18, the following definitions shall apply:

"CEDR"	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Exception"	means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Framework Agreement or in the supply of the Products;
"Expedited Dispute Timetable"	means the accelerated timetable for the resolution of disputes as set out in paragraph 2.6;
"Expert"	means the person appointed by the Parties in accordance with paragraph 5.2 of this Schedule 18;
"Mediation Notice"	has the meaning given to it in paragraph 3.2; and
"Mediator"	means the independent third party appointed in accordance with paragraph 4.2 of this Schedule 18.

2. INTRODUCTION

2.1 If a Dispute arises then:

2.1.1 the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

2.2.1 the material particulars of the Dispute;

2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Framework Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure set out in this Schedule 18.

2.4 Subject to paragraph 3.2, the Parties shall seek to resolve Disputes:

2.4.1 first by commercial negotiation (as prescribed in paragraph 3);

2.4.2 then by mediation (as prescribed in paragraph 4); and

2.4.3 lastly by recourse to arbitration or litigation (in accordance with Clause 52 (Governing Law and Jurisdiction)).

Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5) where specified under the provisions of this Framework Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 (Expert Determination).

- 2.5 In exceptional circumstances where the use of the times in this Schedule 18 would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 2.6 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Framework Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Schedule 18:
- 2.6.1 in paragraph 3.2.3, ten (10) Working Days;
 - 2.6.2 in paragraph 4.2, ten (10) Working Days;
 - 2.6.3 in paragraph 5.2, five (5) Working Days; and
- 2.7 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority Representative and the Supplier Representative, such discussions being commercial negotiations.
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or
 - 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3; or
 - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 within thirty (30) Working Days of service of the Dispute Notice,
- either Party may serve a written notice to proceed to mediation (a “**Mediation Notice**”) in accordance with paragraph 4.

4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Framework Agreement.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 22.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to the Specification, manufacture, quality or condition of the Products or relates to an ICT technical, financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be a technical expert who is able to serve as a Qualified Person for Pharmacovigilance under EU medicines legislation or appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society) as appropriate.
- 5.3 The Expert shall act on the following basis:
 - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 5.3.2 the Expert's determination shall (in the absence of a material failure by either Party to follow the agreed procedures) be final and binding on the Parties;
 - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
 - 5.3.5 the process shall be conducted in private and shall be confidential; and
 - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

- 5.4 Each Party shall act reasonably and co-operate to give effect to the provisions of this paragraph 5 and otherwise do nothing to hinder or prevent the Expert from reaching his determination.

6. URGENT RELIEF

- 6.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- 6.1.1 for interim or interlocutory remedies in relation to this Framework Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
 - 6.1.2 where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

SCHEDULE 19: VARIATION FORM

Variation Form No:

.....

BETWEEN:

[insert name of Authority] ("**the Authority**")

and

[insert name of Supplier] ("**the Supplier**")

1. This Framework Agreement is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the Framework Agreement.
3. The Framework Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature

Date

Name (in Capitals)

Address

.....
Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

.....

SCHEDULE 20: CONDUCT OF CLAIMS

1. INDEMNITIES

- 1.1 This Schedule shall apply to the conduct by a Party from whom an indemnity is sought under this Framework Agreement or any Order (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Framework Agreement or any Order (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 1.5, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Framework Agreement or any Order if:
 - 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2. RECOVERY OF SUMS

- 2.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:
- 2.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - 2.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

3. MITIGATION

- 3.1 The Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

SCHEDULE 21: TENDER

1. GENERAL

- 1.1 This Schedule 21 sets out a copy of the Supplier's Tender including the Supplier's responses to the ITT.
- 1.2 Subject to Clauses 1.2.2 and in addition to any other obligations on the Supplier under this Framework Agreement and any Order, the Supplier shall supply the Products to the Authority in accordance with the Tender.

REDACTED UNDER SECTION 43 (2) - COMMERCIAL INTERESTS

SCHEDULE 22: TRANSPARENCY REPORTS

1. GENERAL

- 1.1 Within three (3) months of the Framework Commencement Date or the date so specified by the Authority the Supplier shall submit to the Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in Annex 1 of this Schedule 22.
- 1.2 If the Authority rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the Parties have agreed versions of each Transparency Report.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule 22.
- 1.4 Any Dispute in connection with the preparation and/or approval of Transparency Reports shall be resolved in accordance with Schedule 18 (Dispute Resolution Procedure).
- 1.5 The requirements in this Schedule 22 are in addition to any other reporting requirements set out in this Framework Agreement.

ANNEX 1: LIST OF TRANSPARENCY REPORTS

Title of Report	Content	Format	Frequency
[Headline Service performance]	[]	[]	[]
[Charges]	[]	[]	[]
[Key Sub-Contractors]	[]	[]	[]
[Technical]	[]	[]	[]
[Performance management arrangements]	[]	[]	[]