

BLOOD SERVICE DEED OF AGREEMENT

Commonwealth of Australia, acting through
and represented by the
National Blood Authority

Australian Red Cross Society

Edited version for publication on NBA website

The contract provided here has been edited, and is not in the form as executed. In addition, certain parts of the contract are not disclosed.

The contract is provided for information only and should not be relied on by any person. The NBA is not liable for any reliance upon the contract herein which results in loss or damage to any person.

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Chapter 1

About this Deed

Chapter outline

This Chapter sets out:

- the Parties, their objectives and mutual goals;
- the background to and purpose of this Deed;
- the relationship between this Deed and various other documents, including the Funding Services Agreement; and
- the Term of this Deed.

1. PARTIES

1.1 The Parties to this Deed are:

1.1.1 the **Commonwealth of Australia**, acting through and represented by the **National Blood Authority**, a non-corporate Commonwealth entity established under the *National Blood Authority Act 2003* (Cth) ("**the NBA**"); and

1.1.2 **Australian Red Cross Society** ("**Red Cross**") a body corporate and politic established by Royal Charter dated 28 June 1941.

1.2 The Parties acknowledge and agree that:

1.2.1 Red Cross is acting through that part of Red Cross known as the Australian Red Cross Blood Service ("**Blood Service**"); and

1.2.2 a reference to the "**Blood Service**" is a reference to the division of Red Cross known as the Australian Red Cross Blood Service, which refers to the operations, assets and liabilities of the Blood Service but does not refer to the other operations, assets and liabilities of Red Cross except to the extent specified in this Deed.

1.3 Without limiting **clause 1.2**, the NBA is entitled to assume that any action taken by either Red Cross or the Blood Service in relation to this Deed or the Funding and Services Agreement binds both Red Cross and the Blood Service.

2. EFFECT OF THIS DEED

2.1 This Deed replaces previous deeds and arrangements on the following basis:

- 2.1.1 subject to **clause 2.1.4**, from the Commencement Date, all arrangements (other than the Separate Property Agreements) between the Parties in relation to the supply of fresh blood products and related services are contained in this Deed and the Funding and Services Agreement;
- 2.1.2 the Parties acknowledge that, as far as they are each aware, neither Party is in, and there are no outstanding, material breaches of the Previous Deed which have not been addressed;
- 2.1.3 the Previous Deed of Agreement between the Parties has no operation from the Commencement Date, other than as referred to below or to the extent the Previous Deed of Agreement is expressed to survive expiry or termination; and
- 2.1.4 the Parties must comply with any transition arrangements specified in the Funding and Services Agreement as required to ensure an orderly transition between the Previous Deed of Agreement and this Deed.

3. BACKGROUND TO THIS DEED

Background to this Deed - Red Cross and the Blood Service

3.1 The Royal Charter provides, among other things, that:

- 3.1.1 Red Cross is a voluntary aid society, auxiliary to the public authorities in the humanitarian field; and
- 3.1.2 the public authorities shall at all times respect the adherence by Red Cross to the Fundamental Principles.

3.2 Red Cross is a charity registered under and in accordance with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

3.3 Red Cross collects and distributes products and services using blood donated by blood donors in Australia, amongst other activities, through the Blood Service.

3.4 As at the Commencement Date, the Fundamental Principles are as follows:

3.4.1 Humanity

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

3.4.2 Impartiality

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

3.4.3 Neutrality

In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

3.4.4 Independence

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

3.4.5 Voluntary Service

It is a voluntary relief movement not prompted in any manner by desire for gain.

3.4.6 Unity

There can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

3.4.7 Universality

The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

3.5 The Blood Service provides the Products and Services on the basis that the Products and Services are provided free of charge to patients. This is consistent with the Red Cross humanitarian and charitable purposes. For the avoidance of doubt, the Blood Service may receive other payments or funding in respect of its activities performed in accordance with this Deed or performed independent of its obligations set out in this Deed.

3.6 The NBA acknowledges that:

3.6.1 the Blood Service relies on non-remunerated blood donors;

3.6.2 the Blood Service does not earn any profit from providing the Products and Services to the NBA and the Australian community; and

3.6.3 in order to provide the Products and Services, manage relevant risks, and meet relevant liabilities, the Blood Service relies on the funding provided to the Blood Service in accordance with this Deed.

- 3.7 Without limiting its obligations under this Deed, the Blood Service provides a blood service for the Australian community and undertakes a stewardship role over blood and blood components having regard to:
- 3.7.1 the donation of blood and blood components by blood donors;
 - 3.7.2 the Blood Service's resourcing constraints; and
 - 3.7.3 the policy and funding frameworks established by Governments.
- 3.8 The primary objectives and expectations of Red Cross and the Blood Service in entering into this Deed are:
- 3.8.1 to enhance the ability of Red Cross to fulfil its objectives as a humanitarian, non-profit organisation engaged, amongst other charitable activities, in the collection of blood and blood products from voluntary blood donations from the Australian community and the supply of blood related products and services to the Australian community in a manner that is consistent with the Fundamental Principles;
 - 3.8.2 to ensure the Blood Service is able to perform its obligations in connection with this Deed and the Funding and Services Agreement;
 - 3.8.3 to ensure that there is sufficient funding for the Blood Service to carry out its activities in accordance with this Deed and the Funding and Services Agreement and to meet the associated costs and liabilities incurred in relation to those activities; and
 - 3.8.4 to have the costs of the Blood Service's activities under and in accordance with this Deed and the Funding and Services Agreement (including certain costs in the event of termination or expiry of this Deed) met by the Governments and paid by the NBA pursuant to this Deed to accord with the needs of the health system and the Australian community.

Background to this Deed - the NBA

- 3.9 The NBA operates in accordance with the functions and powers set out in the *National Blood Authority Act 2003* (Cth) and the National Blood Agreement referred to in that Act.
- 3.10 The NBA is a non-corporate Commonwealth entity for the purposes of the *Public Governance, Performance and Accountability Act 2013* (Cth).

4. OBJECTIVES AND MUTUAL GOALS GUIDING THE RELATIONSHIP OF THE PARTIES

Mutual Goals

- 4.1 The NBA and Red Cross share the common goals in respect of their roles within the blood sector in Australia of:
- 4.1.1 Saving and improving lives
 - Saving and improving lives through a world class blood system.

4.1.2 Blood Safety

Ensuring optimal safety and quality in the supply and management of blood, blood products and related services to meet regulatory requirements.

4.1.3 Security of the supply

Ensuring an adequate and secure supply of blood and blood products.

4.1.4 Integrated, efficient and effective blood supply

Ensuring the provision of blood, blood products and related services (including the Products and Services) through the collection, production and distribution of blood, blood products and related services that meet regulatory requirements, while, to the maximum extent possible, and having regard to the primary and secondary policy objectives aims for the Australian blood sector as set out in the National Blood Agreement (as at the date of this Deed or as amended to reflect Blood Sector Policy implemented, or to be implemented, in accordance with **clause 62.6**), making cost benefit decisions within a finite health budget to achieve:

4.1.4.1 efficient collection, processing and distribution;

4.1.4.2 security of supply to meet the needs of the blood sector;

4.1.4.3 maximum use of donated blood;

4.1.4.4 most appropriate use of blood and blood products for patient outcomes;

4.1.4.5 delivery of blood, blood products and related services in accordance with the requests of jurisdictions, with a priority being responsiveness to clinical demand; and

4.1.4.6 effective mitigation of the risks of not meeting Governments' blood supply plan.

4.1.5 Meeting the fair and reasonable costs of the Blood Service in accordance with the National Blood Agreement

Governments are committed to meet the fair and reasonable costs of the Blood Service to allow the Blood Service to meet its supply and quality obligations.

4.1.6 Equity of Access

4.1.6.1 Improving equity of access to blood, blood products and related services throughout Australia and the covered Territories, irrespective of the State or Territory in which an individual lives, in accordance with their clinical need (while noting that the National Blood Agreement does not preclude States and Territories from altering the range of blood, blood products and related services that are prescribed and received in their jurisdiction).

4.1.6.2 Providing blood and blood products to patients free of charge based on clinical need and appropriate clinical practice.

- 4.1.7 Donors
 - 4.1.7.1 Maintaining reliance on blood donors.
 - 4.1.7.2 Supporting, respecting and recognising Australia's blood donors and their contribution to the Australian blood sector.
 - 4.1.7.3 Promoting national self-sufficiency.
- 4.1.8 Respectful relationship

Ensuring that relationships between Red Cross, the Blood Service, Governments and the NBA are characterised by the principles of respect, accountability, trust, empathy, clarity, quality and responsiveness.
- 4.1.9 Ethical Business Practices

Demonstrating ethical business practices that support the best interests of patients, blood and plasma donors, taxpayers, Governments and global health outcomes.

Parties intention to act on basis of principles

- 4.2 The Parties intend to act towards each other on the basis of the following principles:
 - 4.2.1 recognising the importance of maintaining an open and communicative relationship, and achieving this through regular meetings and correspondence to enable optimisation of information flows;
 - 4.2.2 seeking to identify, manage and mitigate risks within their control;
 - 4.2.3 conducting themselves in a spirit of co-operation and good faith; and
 - 4.2.4 recognising the financial, legal and accountability frameworks and constraints applying to each Party in that:
 - 4.2.4.1 the NBA is a non-corporate Commonwealth entity operating in accordance with the *National Blood Authority Act 2003* (Cth), the National Blood Authority referred to in that Act, the *Public Governance, Performance and Accountability Act 2013* (Cth), and other applicable Laws and policies of the Commonwealth; and
 - 4.2.4.2 Red Cross, including the Blood Service, operates under the Fundamental Principles, the *Australian Charities and Not-for-profit Commission Act 2012* (Cth) and the Royal Charter and Rules.

5. PURPOSE OF THIS DEED

- 5.1 This Deed, together with the Funding and Services Agreement, establishes arrangements for:
 - 5.1.1 the provision of Products and Services by the Blood Service; and
 - 5.1.2 the provision of Government funding and the making of Payments in connection with those Products and Services.

6. PURPOSE AND OPERATION OF THE FUNDING AND SERVICES AGREEMENT

- 6.1 The purpose of the Funding and Services Agreement is to set out the detailed processes and specifications for the supply of Products and Services. The Funding and Services Agreement also sets out the mechanisms and processes for the calculation and payment of Payments, and for the operation of other clauses of the Deed.
- 6.2 The Parties intend that there will be three Funding and Services Agreements agreed between them during the Term of this Deed, each with a term of three years. The first Funding and Services Agreement takes effect from the Commencement Date.
- 6.3 Where the Funding and Services Agreement provides for something to be done or not done by one or both Parties:
- 6.3.1 subject to **clause 6.4**, if the Funding and Services Agreement uses the word ‘must’ – the relevant Party must meet the relevant requirement in accordance with this Deed and the Funding and Services Agreement; or
- 6.3.2 if the Funding and Services Agreement uses the phrase ‘will use Best Endeavours’ or expresses the requirement in any other manner (except with the word ‘must’), the relevant Party must use Best Endeavours to meet the relevant requirement in accordance with this Deed and the Funding and Services Agreement.
- 6.4 The Parties acknowledge that systems have outages from time to time and that manual processes are prone to error. The Parties must use Best Endeavours to reduce system outages and errors to reasonable levels but agree that minor system outages and errors, or those caused by circumstances outside the control of that Party, will not constitute a breach of this Deed or the Funding and Services Agreement. Wherever practicable, the Parties will specify the service levels in the Funding and Services Agreement and use the continuous improvement and performance indicator processes in this Deed to clarify their expectations around reasonable levels of system outages and errors.

7. TERM OF THIS DEED

- 7.1 This Deed commences on the Commencement Date and operates until the Expiry Date, unless it is extended by variation or terminated before the Expiry Date in accordance with this Deed.

8. EXECUTION OF THE FUNDING AND SERVICES AGREEMENT

- 8.1 The Parties intend to, contemporaneously with the execution of this Deed, execute the initial Funding and Services Agreement.
- 8.2 The Parties must undertake the following processes to agree each Funding and Services Agreement subsequent to the initial Funding and Services Agreement during the Term of this Deed:
- 8.2.1 no later than six (6) Months before the expiry of the Funding And Services Agreement, the NBA must provide a proposed plan for reviewing and determining a new Funding and Services Agreement, which must include details of:
- 8.2.1.1 issues to be discussed by the Parties and applicable parts of the Funding and Services Agreement; and
- 8.2.1.2 the NBA's objectives, proposal and process for the review;

- 8.2.2 the Blood Service must respond, within twenty (20) Business Days, with a response to the NBA's proposed plan;
- 8.2.3 the NBA must revise the proposed plan to take into account the Blood Service's feedback provided under **clause 8.2.2**; and
- 8.2.4 the Parties must thereafter consult and negotiate in good faith a new Funding and Services Agreement as soon as practicable.

9. EFFECT OF EXPIRY OF THE FUNDING AND SERVICES AGREEMENT

9.1 The Parties intend that during the Term, there will always be a Funding and Services Agreement in existence. Accordingly, if upon the expiry of a Funding and Services Agreement during the Term, a new Funding and Services Agreement has not been agreed and executed by the Parties, the term of the existing Funding and Services Agreement is automatically extended until the earlier of:

- 9.1.1 the date a new Funding and Services Agreement is agreed and executed by the Parties, or the commencement date specified in that new Funding and Services Agreement; or
- 9.1.2 the expiry or termination of this Deed in accordance with its terms.

10. EFFECT OF TERMINATION OF THIS DEED ON THE FUNDING AND SERVICES AGREEMENT

10.1 The Funding and Services Agreement is terminated automatically on, and from, the date of expiry of the Handover Period.

11. PRIORITY OF DOCUMENTS

11.1 In the event of inconsistency between any of the documents comprising this Deed and the Funding and Services Agreement, the following order of descending priority must apply to the extent of the inconsistency:

- 11.1.1 this Deed;
 - 11.1.2 the Schedules to this Deed;
 - 11.1.3 documents incorporated by reference in this Deed, except the Funding and Services Agreement;
 - 11.1.4 the Funding and Services Agreement;
 - 11.1.5 the Schedules to the Funding and Services Agreement; and
 - 11.1.6 any documents incorporated by reference in the Funding and Services Agreement,
- so that the higher ranked document prevails to the extent of the inconsistency.

12. GOVERNMENT STATEMENT OF EXPECTATIONS AND PLANNING PRIORITIES

12.1 The NBA must provide the Blood Service with:

12.1.1 a Statement of Expectations (that has been developed in consultation with the Blood Service) every three (3) years; and

12.1.2 an annual update of the Statement of Expectations in the Annual Supply Estimates (through the Guidance Letter process specified in the Funding and Services Agreement).

12.2 The Statement of Expectations must outline the priorities and reasonable expectations of Governments for the Blood Service.

12.3 In addition to the Statement of Expectations, Governments must communicate any additional priorities or changes in priorities that the Blood Service must take into account in the performance of its obligations under this Deed and the Funding and Services Agreement.

Chapter 2

Products and Services

Chapter outline

This Chapter sets out the Parties' obligations and rights regarding the Products and Services to be provided in accordance with this Deed.

13. PRODUCTS AND SERVICES

13.1 The Blood Service must:

13.1.1 manufacture, distribute and supply the Products and Services in accordance with this Deed and the Funding and Services Agreement; and

13.1.2 subject to the terms of this Deed (including **clause 24**) and the Funding and Services Agreement, provide, deploy, monitor, and maintain (as relevant) all facilities, arrangements, resources, equipment, procedures and Personnel, and do or refrain from doing all things necessary or appropriate to comply with its obligations in this Deed.

13.2 Without limiting **clause 24**, the Parties acknowledge that the funding provided as Payments made in accordance with this Deed is intended to cover all activities of the Blood Service in complying with this Deed and the Funding and Services Agreement, whether or not the full detail of, or all necessary tasks for, those activities are specified.

13.3 Subject to **clause 15**, the Blood Service must:

13.3.1 ensure the activities it performs under this Deed are within the Scope of Activities; and

13.3.2 only use the Payments for activities included within the Scope of Activities.

13.4 The Blood Service must ensure that:

13.4.1 all Products provided in accordance with this Deed and the Funding and Services Agreement comply with all written representations which are published and issued by the Blood Service in relation to those Products;

13.4.2 it has all rights and title necessary to enable it to supply the Products in accordance with this Deed and the Funding and Services Agreement; and

13.4.3 on delivery by the Blood Service, the Products are free from any charge or encumbrance in favour of any third party that is not known by, or Notified to, and agreed by the NBA before the charge or encumbrance is entered into.

- 13.5 The Blood Service must ensure that all Services performed in accordance with this Deed and the Funding and Services Agreement:
- 13.5.1 subject to **clause 15**, are within the Scope of Activities;
 - 13.5.2 comply with all written representations (including any guidelines) which are published and issued by the Blood Service in relation to those Services; and
 - 13.5.3 are performed with due care and skill.
- 13.6 The Blood Service must ensure that any advice it, or any Subcontractor, provides to a third party (including clinicians and Australian Health Providers) in relation to any Service, or the use of any Product, provided in accordance with this Deed and the Funding and Services Agreement is provided:
- 13.6.1 with due care and skill; and
 - 13.6.2 in a professional manner.
- 13.7 For the purpose of **clause 13.6**, the Blood Service must give advice in accordance with the Deed Clinical Services Framework in the Funding and Services Agreement.
- 13.8 For clarity, the NBA has no liability whatsoever in connection with Products or Services provided or performed by the Blood Service that are outside the Scope of Activities.

14. OBLIGATIONS TO PROVIDE PRODUCTS IN COMPLIANCE WITH TGA REQUIREMENTS

- 14.1 Without limiting the Blood Service's obligations specified in **clause 124**, the Blood Service must at all times during the Term comply with obligations applying under the *Therapeutic Goods Act 1998* (Cth) in relation to the Products and the Services.
- 14.2 The Blood Service must, for all Products to the extent that the Blood Service is the sponsor or otherwise responsible at Law for procuring the TG Registration or TG Listing of any of the Products:
- 14.2.1 do all things necessary to obtain and maintain TG Registration or TG Listing for the Products during the Term;
 - 14.2.2 Notify the NBA immediately upon the Blood Service becoming aware that the TG Registration or TG Listing has ceased, or that the Blood Service has reasonable grounds to consider that the TG Registration or TG Listing may cease, and to take any consequential action reasonably required to ensure that the obligations of the Blood Service specified in this Deed and the Funding and Services Agreement are met following the cessation of the TG Registration or TG Listing; and
 - 14.2.3 the extent that the Blood Service is the licensed manufacturer of any of the Products:
 - 14.2.3.1 use Best Endeavours to obtain and maintain such licensing during the Term; and

14.2.3.2 Notify the NBA immediately upon the Blood Service becoming aware that a licence has been suspended or has ceased, or that the Blood Service has reasonable grounds to consider that a licence may be suspended or cease, in relation to a primary site specified in a licence, and to use Best Endeavours to ensure that the obligations of the Blood Service under this Deed and the Funding and Services Agreement are met following the suspension or cessation of such a licence, subject to **clause 24**.

15. BLOOD SERVICE ACTIVITIES OUTSIDE THIS DEED

15.1 The NBA acknowledges that, in accordance with the Fundamental Principles, the Blood Service may from time to time provide products and services (other than the Products or Services) to persons within or outside Australia, or allow the use of the Blood Service's resources, assets or facilities, outside the requirements of this Deed and not within the Scope of Activities ("**Non-Deed Activities**").

15.2 The Blood Service must, in relation to Non-Deed Activities, use Best Endeavours to ensure that:

15.2.1 the provision of blood, blood products or related services or use of resources, assets or facilities for Non-Deed Activities are not detrimental to the provision of Products or Services (including, if applicable, meeting any quality and supply obligations), required to be provided in accordance with this Deed or the Funding and Services Agreement;

15.2.2 it does not subsidise any Non-Deed Activities using any amounts provided to the Blood Service in accordance with this Deed or the Funding and Services Agreement (including any resources paid for or funded by such amounts);

15.2.3 if relevant, donors have given consent to the use of their donation for the purposes of the Non-Deed Activity contemplated by the Blood Service;

15.2.4 it recovers the costs of:

15.2.4.1 providing blood, blood products or related services; and

15.2.4.2 the use of resources, assets or facilities,

in a manner that ensures that all operational and capital costs incurred by the Blood Service for the provision of those blood, blood products or related services or that use of those resources, assets or facilities are either:

15.2.4.3 subject to **clause 15.2.5**, met by the Blood Service; or

15.2.4.4 recovered and returned to the NBA,

on a cost basis agreed by the NBA in accordance with the Funding and Services Agreement;

15.2.5 no claim for Payment from the NBA is made in accordance with this Deed or the Funding and Services Agreement for the provision of blood, blood products or related services or use of resources, assets or facilities for Non-Deed Activities; and

- 15.2.6 the Blood Service obtains all necessary licences, permits or other permissions required to provide blood, blood products or related services or use of resources, assets or facilities for Non-Deed Activities in accordance with the Law.
- 15.3 Before committing to any Non-Deed Activities, the Blood Service:
- 15.3.1 must conduct a risk analysis and satisfy itself, acting reasonably, that the Non-Deed Activity does not unreasonably place at risk the Blood Service's resources, assets or facilities, including Handover Assets;
- 15.3.2 must adequately protect itself from any potential liabilities arising in relation to the performance of the Non-Deed Activity, including by:
- 15.3.2.1 obtaining any available and appropriate insurance; and
- 15.3.2.2 establishing any other contractual protection,
- in respect of the Non-Deed Activities (and the Blood Service must ensure that the NBA does not subsidise this insurance or other contractual protection from any amounts payable in accordance with this Deed of Funding and Services Agreement unless expressly agreed); and
- 15.3.3 provide the NBA with the details of the processes the Blood Service has in place, or will put in place, to ensure that the requirements of this **clause 15** will be met from time to time.
- 15.4 The Blood Service must not provide any indemnity to any entity or person in respect of the Non-Deed Activities, unless the Blood Service has insurance or other contractual protections (including, for example, where relevant an indemnity from Red Cross) in place that will insure or otherwise protect the Blood Service against any Loss the Blood Service may suffer in the event that indemnity is required to be met by the Blood Service (other than the insurance or contractual protections funded by or given to the Blood Service by the NBA in accordance with this Deed).
- 15.5 The Blood Service must Notify the NBA as soon as is practicable after it becomes aware of any event or Claim which may result in the Blood Service having a liability in relation to any Non-Deed Activity which is unlikely to be able to be met from Non-Handover Assets, insurance, or contractual protections (other than the contractual protections given to the Blood Service by the NBA in accordance with this Deed) held by the Blood Service.
- 15.6 The Blood Service:
- 15.6.1 must Notify the NBA of any Non-Deed Activities planned for the next Financial Year through the planning process referred to in this Deed;
- 15.6.2 must provide the NBA with a list of all Non-Deed Activities (new and continuing) at least once each Financial Year (and ensure that the costs and recovery of those costs are accounted for and identified in the annual financial reports);
- 15.6.3 identify whether the performance of any Non-Deed Activities will impact upon the supply of Products and Services in accordance with this Deed or the Funding and Services Agreement; and

- 15.6.4 acknowledges that the risk for all Non-Deed Activities rests with Red Cross even if the Non-Deed Activities are performed on behalf of, or in the name of, the Blood Service.
- 15.7 The information required to be provided in accordance with **clause 15.6** is only required to be provided with respect to Non-Deed Activities that:
- 15.7.1 generate revenue or incur costs of \$100,000 or more per annum (or such other amount agreed in writing by the Parties from time to time); or
- 15.7.2 meet any other threshold requirements agreed in writing by the Parties from time to time.
- 15.8 If at any time the NBA is concerned that the performance of any Non-Deed Activities engaged by the Blood Service may not be consistent with this **clause 15**, then (without limitation to any other rights of the NBA under this Deed, the Funding and Services Agreement or at Law):
- 15.8.1 the NBA may Notify the Blood Service of the concern and the reasons for the concern; and
- 15.8.2 the Blood Service must, as soon as practicable after such Notification, investigate and consider the concern, and Notify the NBA of its findings and conclusions and any appropriate remedial action in relation to the concern.
- 15.9 For clarity, the performance by the Blood Service of Non-Deed Activities:
- 15.9.1 does not limit or affect the Blood Service's obligations in accordance with this Deed and the Funding and Services Agreement;
- 15.9.2 is outside the scope of, and not covered by, any indemnities specified in this Deed; and
- 15.9.3 does not create or give rise to any liability whatsoever on the part of the NBA.

16. PROCUREMENT

- 16.1 The Blood Service must develop, maintain and implement national procurement policies and procedures ("**Procurement Standards**") that are consistent with the provisions of this Deed.
- 16.2 The Procurement Standards must be designed to ensure that the material procurements by the Blood Service for the purposes of this Deed or the Funding and Services Agreement represent value for money to the extent practical without compromising quality or safety to human health, including by:
- 16.2.1 encouraging competition by ensuring non-discrimination in procurement and using competitive procurement processes;
- 16.2.2 promoting the proper use and management of resources; and
- 16.2.3 ensuring procurement decisions are made in an accountable and transparent manner.

- 16.3 The Procurement Standards must include:
- 16.3.1 policies and procedures that the Blood Service must follow in relation to procurement;
 - 16.3.2 standard form procurement documentation, if appropriate; and
 - 16.3.3 monitoring and compliance policies and procedures to ensure that the Procurement Standards are maintained and implemented by the Blood Service, in accordance with this Deed.
- 16.4 The Blood Service must provide a copy of the Procurement Standards to the NBA as requested by the NBA from time to time. The Blood Service must reasonably consider any comments given to the Blood Service by the NBA in relation to the Procurement Standards and reasonably consider proposed adjustments to the Procurement Standards.

17. SUBCONTRACTING

- 17.1 This **clause 17** applies only with respect to new Subcontracts entered into or varied by the Blood Service after the Commencement Date.
- 17.2 Subject to this **clause 17** and **clause 18**, the Blood Service may enter into a Subcontract for the purpose of fulfilling its obligations specified in this Deed or the Funding and Services Agreement.
- 17.3 This **clause 17** does not limit the Blood Service's obligations to comply with **clauses 49.2, 55.2, 119.3, and 123**.
- 17.4 Despite any Subcontract to which it may be a party to from time to time, the Blood Service remains fully responsible for the performance of its obligations specified in this Deed and the Funding and Services Agreement.
- 17.5 The Blood Service must not enter into a Subcontract:
- 17.5.1 on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the Blood Service, constitute a breach of this Deed or the Funding and Services Agreement;
 - 17.5.2 with an entity that has had a judicial decision against it (not including decisions under appeal) relating to Employee entitlements in respect of which it has not paid any judgment amount; and
 - 17.5.3 with an entity that is on, or which has any Personnel that are on, or which is a member of an entity that is on, the Commonwealth's consolidated list (for the purposes of the Charter of the United Nations (Dealing with Assets) Regulations 2008) of individuals and entities to which terrorist asset freezing applies.
- 17.6 The Blood Service must use Best Endeavours to ensure that any Subcontract entered into for the purpose of fulfilling its obligations specified in this Deed or the Funding and Services Agreement requires the Subcontractor to comply with equivalent provisions to the following:
- 17.6.1 **clause 47** (Privacy);
 - 17.6.2 **clause 48** (Confidentiality);

- 17.6.3 **clause 49** (Security);
- 17.6.4 **clause 58** (Audits); and
- 17.6.5 **clause 64** (Conflict of Interest).

18. CONTRACTS REQUIRING THE NBA'S PRIOR APPROVAL

- 18.1 This **clause 18** applies only with respect to new contracts entered into or varied by the Blood Service after the Commencement Date.
- 18.2 The Blood Service must not, without the prior written approval of the NBA (which must not be unreasonably withheld or delayed), enter into, or vary in a material way (including by extending the term of) a contract (including a Subcontract) under which:
 - 18.2.1 an uncapped indemnity is provided to any entity or person by the Blood Service;
 - 18.2.2 a capped indemnity of \$5 million or more is provided to any entity or person by the Blood Service; or
 - 18.2.3 the term of the contract exceeds five (5) years.
- 18.3 If, when seeking approval from the NBA to enter into a contract referred to in **clause 18.2**, the Blood Service indicates that its request is of an urgent nature, the NBA must use Best Endeavours to respond to the request urgently, and, at a maximum, within twenty (20) Business Days.
- 18.4 Without limiting **clause 18.2**:
 - 18.4.1 at the time of seeking approval, the Blood Service must provide to the NBA a complete and legible copy of the proposed contract, provided that the Blood Service is not required to provide the NBA with any pricing or other commercially sensitive information under the proposed contracts; and
 - 18.4.2 the Parties acknowledge that if the Blood Service is unable to provide a copy of any information which is relevant to the NBA's decision pursuant to **clause 18.2**, the NBA may not be able to approve the relevant contract or variation.
- 18.5 The Blood Service must ensure that all parties to contracts referred to in **clause 18.2** are aware that the information provided by the Blood Service under **clause 18.2** may be publicly disclosed by the NBA.
- 18.6 The Parties may agree in writing that the Blood Service is not required to comply with **clause 18.2** in respect of a class of contracts.
- 18.7 For the avoidance of doubt, the NBA may review any contracts referred to in **clause 18.2** and any Subcontract at any time, in accordance with **Chapter 8**.

19. NATIONAL BLOOD SUPPLIERS AND PLASMA FOR FRACTIONATION ARRANGEMENTS

- 19.1 The Blood Service must not, without the prior written approval of the NBA, enter into, vary in a material way (including by extending the term of) or terminate a contract, arrangement or understanding which relates to performance of the Blood Service's obligations under this Deed, between the Blood Service and any:
- 19.1.1 National Blood Supplier; or
 - 19.1.2 Plasma Fractionator for or in relation to Starting Plasma (Group 2 Products).
- 19.2 If the Blood Service proposes to enter into a contract, arrangement or undertaking with a National Blood Supplier or Plasma Fractionator for or in relation to Starting Plasma (Group 2 Products) in relation to Deed activities, the Blood Service must:
- 19.2.1 Notify the NBA as soon as possible and prior to finalisation of the proposed contract, arrangement, understanding or variation, within the constraints of any confidentiality restrictions imposed on the Blood Service by the relevant third party (which the Blood Service must use Best Endeavours to avoid, to the extent to which those confidentiality restrictions relate to disclosure under this **clause 19.2**);
 - 19.2.2 advise the NBA of any confidentiality requirements that, in addition to those in **clause 19.2.1**, must be complied with by the NBA in order for the NBA to gain access to information about the proposed contract, arrangement, understanding or variation;
 - 19.2.3 if the NBA agrees to the requirements referred to in **clause 19.2.2** or to the extent to which the NBA's agreement to those requirements would enable any of the following disclosures, inform the NBA of:
 - 19.2.3.1 who the other party is;
 - 19.2.3.2 the scope and nature of the arrangement (excluding the pricing details); and
 - 19.2.3.3 the potential impact on the Australian blood sector, including the supply of Products;
 - 19.2.4 provide any further information reasonably requested by the NBA and within the constraints of the requirements referred to in **clauses 19.2.1** and **19.2.2**;
 - 19.2.5 consider and take into account any comments provided by the NBA, which comments must be provided in a timely manner and must be relevant to the NBA's statutory functions; and
 - 19.2.6 when the contract, arrangement, understanding or variation is finalised, promptly provide to the NBA a summary of that finalised contract, arrangement, understanding or variation including whether and the extent to which the NBA's comments have been taken into account.

- 19.3 The NBA must as soon as is practicable and by no later than ten (10) Business Days after Notice by the Blood Service to the NBA of a proposal to enter into or vary a contract, arrangement or understanding referred to in this **clause 19** or of receipt of further information from the Blood Service under **clause 19.2.4**, inform the Blood Service either:
- 19.3.1 that the contract, arrangement or understanding, or any variation is approved or not approved (and, if not approved provide written reasons); or
- 19.3.2 of any further information reasonably required by the NBA in order to make a decision under this **clause 19**, which request the Blood Service must comply with within ten (10) Business Days.
- 19.4 The NBA must use Best Endeavours to comply with any reasonable request for urgent consideration of a proposal under **clause 19.2** and not unreasonably withhold or delay approval of contract arrangement, understanding or variation of a contract, arrangements or understanding with National Blood Suppliers.
- 19.5 The Blood Service must, during the term of those contracts, arrangements or understandings, provide information on them as reasonably requested by the NBA for the purposes of administration of this Deed.

20. NO SALE OF HUMAN TISSUE

- 20.1 Neither this Deed nor the Funding and Services Agreement:
- 20.1.1 in any way contemplates, intends or effects the sale by the Blood Service, or the purchase by the NBA, Australian Health Providers or (subject to **clause 114**) any other person, of human tissue; and
- 20.1.2 provides for the transfer or passage of human tissue, except as specified in **clause 118**.

21. PASSING OF OWNERSHIP AND RISK

Ownership of Products to pass to the Approved Health Provider

- 21.1 The Blood Service acknowledges that:
- 21.1.1 as between the Parties it retains ownership of the Products; and
- 21.1.2 it bears all risks of loss or damage to the Products in its care, custody or control,
- until possession of the Products passes from the Blood Service to an Australian Health Provider on delivery of the Product to, or at the direction of, the Australian Health Provider in accordance with the order and delivery arrangements set out in the Funding and Service Agreement.

CHAPTER 3

FUNDING

Chapter outline

This Chapter sets out the Parties' obligations and rights in respect of Payment for the Products and Services.

22. BACKGROUND TO PAYMENTS

22.1 The Parties acknowledge that all of the Governments through the NBA have agreed to continue to meet the fair and reasonable costs of the Blood Service to allow the Blood Service to meet its supply and quality obligations, in accordance with the arrangements under this Deed and the Funding and Services Agreement.

23. PAYMENTS

23.1 The Parties acknowledge the importance of the NBA's obligation to achieve value for public money, and the resulting importance of the Blood Service accounting to the NBA for its use of public money. Therefore, the Parties must perform this Deed in a manner which:

23.1.1 permits the NBA to account for public money readily, transparently and properly, and in accordance with this Deed and the Funding and Services Agreement; and

23.1.2 achieves value for money, noting the NBA has obligations under the *Public Governance, Performance and Accountability Act 2013* (Cth).

23.2 Subject to this Deed, the NBA must make Payments in accordance with the Funding and Services Agreement.

23.3 Subject to **clause 24**, the Blood Service must not seek any payment or other reimbursement (including under an indemnity) under this Deed or the Funding and Services Agreement for any amount which is also payable or has been paid in accordance with any other contractual arrangement the Blood Service with the Commonwealth.

23.4 If the Blood Service is paid an amount which is payable or has been paid under another contractual arrangement that the Blood Service has with the Commonwealth that is attributable to the Blood Service's performance of its obligations under this Deed, the NBA may set-off or recover that amount in accordance with **clause 28**.

24. OUTPUT BASED FUNDING MODEL

24.1 The Parties agree that the OBFM process is designed to ensure that the reasonable costs of the Blood Service in performing its obligations in accordance with this Deed and the Funding and Services Agreement, including performing all required and incidental tasks, are met and that this is reflected in the Payments.

- 24.2 Notwithstanding **clause 24.1**, the Blood Service may request Additional Payments or funding in accordance with the OBFM process set out the Funding and Services Agreement.
- 24.3 The NBA must not unreasonably refuse a request under **clause 24.2** provided that the Blood Service has provided the information required by, and complied with the requirements of, the Funding and Services Agreement in relation to Additional Payments.
- 24.4 Unless and until the NBA provides any Additional Payments or funding requested under **clause 24.2** in accordance with the OBFM, the Blood Service is not obliged to perform any Additional Activity to the extent that such performance is not funded by Payments under this Deed.

25. AUSTRALIAN RED CROSS OVERSIGHT COST REIMBURSEMENT PAYMENTS

- 25.1 The NBA must provide the Australian Red Cross Oversight Cost Reimbursement Payments to the Blood Service in accordance with the Funding and Services Agreement.

26. INVOICING REQUIREMENTS

- 26.1 Where this Deed or the Funding and Services Agreement requires the Blood Service to provide a Correctly Rendered Invoice, the Blood Service must provide an invoice which:
- 26.1.1 complies with the requirements of a Tax Invoice under the GST Law;
 - 26.1.2 is provided in pdf or other software format as agreed between the Parties;
 - 26.1.3 is supported by the data sets specified in the Funding and Services Agreement;
 - 26.1.4 contains the following:
 - 26.1.4.1 date of invoice;
 - 26.1.4.2 period of invoice;
 - 26.1.4.3 invoice number;
 - 26.1.4.4 the Blood Service's name, address and Australian Business Number;
 - 26.1.4.5 total value, total GST and invoice total;
 - 26.1.4.6 any other requirement for a valid Tax Invoice under the GST Law; and
 - 26.1.4.7 is submitted in accordance with the Funding and Services Agreement; and
 - 26.1.5 sets out all Payments payable by the NBA in the relevant Month (other than any Australian Red Cross Oversight Cost Reimbursement Payments which may be invoiced separately), taking into account any set-offs or other adjustments in accordance with this Deed or the Funding and Services Agreement.
- 26.2 Unless specified otherwise in the Funding and Services Agreement, the Blood Service must submit Monthly invoices in arrears.

- 26.3 The Blood Service must use Best Endeavours to provide additional supporting documentation for invoices as reasonably requested by the NBA from time to time, and use Best Endeavours to comply with any reasonable requests issued in writing by the NBA from time to time, following consultation with Blood Service, in relation to the timing, format, specific content, or means of provision of, invoices and supporting documents under this Deed.
- 26.4 Unless there is a dispute in relation to an amount or specific item or number of items within an invoice, the NBA must pay the invoiced amount as specified in the Funding and Services Agreement.
- 26.5 In the event that the NBA in good faith disputes an amount or specific item or number of items within an invoice, the NBA must within three (3) Business Days of receipt of a Correctly Rendered Invoice, request that the Blood Service issue separate invoices for the disputed and non-disputed amounts. The NBA must pay the Blood Service within five (5) Business Days of receipt of a Correctly Rendered Invoice for the non-disputed amount.
- 26.6 In relation to disputed items under an invoice, the NBA and the Blood Service must each nominate a person within their organisation with responsibility for investigating the dispute and using Best Endeavours to resolve it as soon as possible and if those persons:
- 26.6.1 agree that the disputed item should be paid, the NBA must do so within five (5) Business Days of that agreement;
- 26.6.2 agree that the disputed item should be cancelled and a new Correctly Rendered Invoice for a revised amount issued to the NBA, the Blood Service must promptly do so and the NBA must pay the new Correctly Rendered Invoice in accordance with **clause 26.4**; and
- 26.6.3 if those persons are not able to resolve the dispute within twenty (20) Business Days, the dispute will be resolved in accordance with **clause 72**.

27. FINANCIAL MANAGEMENT OBLIGATIONS

- 27.1 The Blood Service agrees that amounts equal to the Payments (other than Australian Red Cross Oversight Cost Reimbursement Payments) must be used only for the Blood Service's purposes under or in accordance with this Deed and within the Scope of Activities, and that:
- 27.1.1 amounts equal to the Blood Service's research and development component of the Product Unit Payments must be used only for research and development purposes; and
- 27.1.2 Capital Payments must be used only for capital purposes in accordance with the approved Capital Plan.
- 27.2 The Blood Service must:
- 27.2.1 separately identify the operational, research and development and capital requirements components of the Payments, and associated expenditures, in relevant accounts and financial reports;
- 27.2.2 if the Blood Service holds financial provisions or reserves derived from the Payments, record and report on the operational, research and development and capital requirements components of the Payments; and

27.2.3 credit interest or other income earned by the Blood Service in respect of the Payments in respect of the operational, research and development and capital requirements components of the Payments.

27.3 The Blood Service must:

27.3.1 maintain accounts and records which allow for income, expenditure and activities conducted under or in accordance with this Deed to be distinguishable from other income, expenditure and activities of the Blood Service;

27.3.2 develop and implement internal financial management processes and controls, including a program of internal financial management review and audit, in accordance with better practice financial management models;

27.3.3 at the reasonable request of the NBA, provide information to the NBA concerning, and substantiate to the NBA, the Blood Service's performance of the obligation in **clause 27.3.2**;

27.3.4 provide financial statements to the NBA in accordance with the Funding and Services Agreement; and

27.3.5 participate in meetings with the NBA in accordance with the Funding and Services Agreement.

28. SET-OFF OR RECOVERY OF MONIES

28.1 Each Party must consult with the other Party, to the extent that it is reasonably practicable in the circumstances, prior to exercising any rights of recovery or set-off under this **clause 28**.

28.2 If, at any time during the Term or on the expiry or termination of this Deed:

28.2.1 the Blood Service is required to pay the NBA any amount in accordance with this Deed or the Funding and Services Agreement;

28.2.2 the Blood Service is paid an amount which is payable or has been paid under another contractual arrangement that the Blood Service has with the Commonwealth that is attributable to the Blood Service's performance of its obligations under this Deed; or

28.2.3 an error is discovered in a Correctly Rendered Invoice and Payments were made on the basis of that error,

the NBA may set-off the amount of those Payments against any Payments due or which become due to the Blood Service.

28.3 If the amount of set-off is not sufficient to cover the amount recoverable by the NBA under this **clause 28**, the NBA may give the Blood Service a Repayment Notice, and the Blood Service must pay the amount specified in the Repayment Notice within forty (40) Business Days (or such longer period as may be set out in the Repayment Notice) of receipt of the Repayment Notice.

Recovery by the Blood Service

- 28.4 If, at any time during the Term or after the expiry or termination of this Deed, the Blood Service reasonably considers that it has made a miscalculation in invoicing which has resulted in Payments made to the Blood Service being less than the Payments due in accordance with the Funding and Services Agreement and this Deed, the Blood Service may issue a Correctly Rendered Invoice for shortfall. If the invoice is correctly rendered in accordance with this Deed, the NBA must pay to the Blood Service, an amount equal to the amount of the shortfall, which is payable by the NBA within twenty (20) Business Days of the date of the Correctly Rendered Invoice.
- 28.5 Despite any other provision of this Deed or the Funding and Services Agreement, if the Blood Service is required to pay an amount to the NBA in accordance with this Deed or the Funding and Services Agreement, whether by way of indemnity or repayment or otherwise, it is agreed that such amount must be set-off against future Payments by the NBA, at a reasonable rate agreed between the Parties, taking into account the operating requirements of the Blood Service and its ability to continue complying with this Deed and the Funding and Services Agreement. The NBA may only demand actual payment of such an amount if there are no future Payments within a reasonable time of the date on which the amount became owing, from which the amount could be deducted.

General

- 28.6 Nothing in this **clause 28** affects any other rights or remedies available to the NBA or the Blood Service at Law.
- 28.7 This **clause 28** survives the expiration or termination of this Deed.

29. TAXES

29.1 Interpretation

- 29.1.1 In this **clause 29**, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

29.2 GST gross up

- 29.2.1 If a party ("**Supplier**") makes a supply under or in connection with this Deed in respect of which GST is payable, the recipient of the supply ("**Recipient**") must pay to the Supplier, an additional amount equal to the GST payable on the supply ("**GST Amount**").
- 29.2.2 **Clause 29.2.1** does not apply if the amount payable for the supply is expressed as 'GST inclusive'.

29.3 Reimbursements

- 29.3.1 If a Party must reimburse or indemnify another Party for a Loss, cost, or expense, the amount to be reimbursed or indemnified must first be reduced by any input tax credit the other Party is entitled to for the Loss, cost or expense, and then increased in accordance with **clause 29.2.1**.

29.4 Exclusion of GST from calculations

29.4.1 If a Payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment must be calculated by reference to, or as a specified percentage of, the amount or revenue stream exclusive of GST.

29.5 Adjustments

29.5.1 If the GST payable by a Supplier on any supply made under or in connection with this Deed varies from the GST Amount paid or payable by the Recipient under **clause 29.2.1**, such that a further amount of GST is payable in relation to the supply or a refund or credit of GST in relation to the supply, then the Supplier must provide a corresponding refund or credit to, or is entitled to receive the amount of that variation from, the Recipient. Any Payment, credit or refund under this **clause 29.5.1** is deemed to be a Payment, credit or refund of the GST Amount payable under **clause 29.2.1**.

29.5.2 If an adjustment event referred to under **clause 29.2.1** occurs in relation to a supply, the Supplier must give an adjustment note to the Recipient in relation to that supply within ten (10) Business Days after becoming aware of the adjustment.

29.6 Tax invoice

29.6.1 A Party need not make a payment for a taxable supply made under or in connection with this Deed or the Funding and Services Agreement until it receives a tax invoice for the supply to which the payment relates.

Chapter 4

Planning

Chapter outline

This Chapter sets out the Parties' obligations regarding planning, horizon scanning, benchmarking and continuous improvement.

30. DEMAND AND SUPPLY PLANNING

30.1 Subject to this Deed and the Funding and Services Agreement, the Blood Service is responsible for supply and demand planning of Products and Services to meet the demand of Australian Health Providers.

30.2 The Blood Service must perform demand and supply planning for Products and Services in accordance with the Funding and Services Agreement.

30.3 For the purpose of this **clause 30**, the Blood Service must use Best Endeavours to ensure it implements and maintains effective donor and collection management arrangements in accordance with the Funding and Services Agreement.

30.4 If the Blood Service fails to provide Products but otherwise performs its obligations in accordance with this Deed and the Funding and Services Agreement, then to the extent the failure is due to:

30.4.1 an insufficiency of suitable blood collections or eligible donors;

30.4.2 loss of donations or Products in the ordinary course of business of the Blood Service within the yield tolerances specified in the Funding and Services Agreement; or

30.4.3 Product recalls arising due to events beyond the reasonable control of the Blood Service,

the Parties agree that:

30.4.4 the failure does not constitute a breach of this Deed; and

30.4.5 the NBA must take into account the factors described in **clauses 30.4.1 to 30.4.3** in any consideration of the performance of the Blood Service for the purposes of this Deed,

provided that the Blood Service has used its Best Endeavours to:

30.4.6 subject to **clause 30.3**, obtain sufficient and suitable blood collections and attract eligible and suitable donors;

30.4.7 minimise the occurrence of Product recalls if reasonably avoidable, and mitigate the effects of Product recalls; and

30.4.8 comply with any relevant processes specified in the Risk Management Plan and the Funding and Services Agreement.

31. CONTINGENCY PLANNING

31.1 Each Party must:

31.1.1 develop and regularly maintain, review and keep up to date their respective Contingency Plans; and

31.1.2 subject to **clause 48** and **49**, at the other Party's request, provide a copy of its Contingency Plans to the other Party within five (5) Business Days of receiving the request.

31.2 Prior to making any amendments to the NBSCP, the NBA must consult with the Blood Service regarding the proposed amendments and give the Blood Service a reasonable time to consider the proposed amendments to the extent they are relevant to the Blood Service. The NBA must take any feedback from the Blood Service into account when finalising any amendments to the NBSCP.

31.3 The Blood Service must use Best Endeavours to ensure that its Contingency Plans are consistent with:

31.3.1 the NBSCP, as amended from time to time, and as provided to the Blood Service; and

31.3.2 the requirements of this Deed and the Funding and Services Agreement.

31.4 The Blood Service must:

31.4.1 work together with the NBA to implement, simulate and test the NBSCP as may be reasonably required by the NBA from time to time (including during any activation of the NBSCP);

31.4.2 comply with the Funding and Services Agreement in relation to any contingency requirements, including in relation to the NBSCP; and

31.4.3 subject to this Deed, comply with its Contingency Plans.

31.5 If either Party becomes aware of any inconsistency between the Contingency Plans of the two Parties, that Party must Notify the other Party within five (5) Business Days of first becoming aware of the inconsistency.

31.6 If any inconsistency is Notified by one Party to the other in accordance with **clause 31.5**, the Parties must negotiate with a view to agreeing how to reconcile or otherwise deal with the inconsistency.

32. HORIZON SCANNING

32.1 The Blood Service must undertake horizon scanning.

32.2 The Blood Service must use Best Endeavours to ensure that the horizon scanning:

- 32.2.1 identifies any new and emerging issues, trends and developments (in Australia and internationally) relevant to this Deed and the Funding and Services Agreement; and
- 32.2.2 identifies issues to be considered in relation to the National Managed Fund.
- 32.3 The Blood Service must use Best Endeavours, if consistent with the Fundamental Principles, to participate in activities related to identifying new and emerging issues, trends and developments as reasonably requested by the NBA, including by:
 - 32.3.1 providing high level written analysis of emerging diseases, new technologies and new tests or services relevant to this Deed in the Horizon Scanning Report;
 - 32.3.2 providing information in respect of new and updated Emerging, Re-emerging and Emerged Infectious Diseases ("**EREED**") and non-infectious diseases to the NBA;
 - 32.3.3 providing written analysis of new planning, policy development and public health investigation activities;
 - 32.3.4 participating in relevant international conferences and developing industry relationships at the global level; and
 - 32.3.5 attending and participating in meetings with the NBA relevant to matters identified in this **clause 32** as reasonably requested by the NBA.
- 32.4 The Blood Service must provide an annual written Horizon Scanning Report to the NBA which includes:
 - 32.4.1 a high level critical analysis of domestic and international emerging issues, trends and developments that are relevant to the supply of blood and blood products in Australia, new technologies and new tests or services relevant to this Deed or the Funding and Services Agreement;
 - 32.4.2 an analysis of any other relevant information resulting from the horizon scanning undertaken by the Blood Service in accordance with this **clause 32**; and
 - 32.4.3 any other information specified in the Funding and Services Agreement in Reporting Template 8 - Horizon Scanning Report or otherwise agreed in writing by the Parties from time to time.
- 32.5 The Blood Service must monitor and use Best Endeavours to manage the risk from EREED, including monitoring of new technologies, new tests or services and other areas of interest that may influence the management of blood and blood products in Australia. This includes:
 - 32.5.1 performing and maintaining routine surveillance through:
 - 32.5.1.1 regular monitoring of sources that provide information on infectious disease outbreaks and threats that may require an immediate response;
 - 32.5.1.2 regular monitoring of sources that provide information in relation to new developments relating to screening tests, pathogen reduction technologies and other sources as relevant to minimisation of the risk; and

- 32.5.1.3 close liaison with government communicable disease control units in States, Territories and the Commonwealth, the Plasma Fractionator, various international groups and organisations involved in global horizon scanning for EREEID (such as working parties of the International Society of Blood Transfusion, Alliance of Blood Operators and Asia Pacific Blood Network);
 - 32.5.2 regular reviewing and updating of the Emergency Infectious Disease list, including risk assessment of EREEID threats that pose a real or potential risk to blood safety in Australia in accordance with the Blood Service's Strategic Framework for Managing the Risks from EREEID;
 - 32.5.3 developing and implementing appropriate risk management plans that include strategies and measures to manage the risk;
 - 32.5.4 reviewing and updating the relevant parts of the Technical Master File ("TMF") (e.g. Guidelines for Selection of Blood Donors) in terms of the changes in risk profile of the identified EREEID; and
 - 32.5.5 maintaining appropriate communication and consultation with the TGA, NBA, JBC, Department of Health, the Plasma Fractionator and other stakeholders as relevant.
- 32.6 If the Blood Service's assessment identifies a risk or material change in risk profile with respect to an EREEID, the Blood Service must consult or inform relevant key stakeholders in a timely manner.
- 32.7 Unless consultation with, or approval of, the NBA is otherwise required under this Deed or the Funding and Services Agreement, the Blood Service must make all decisions regarding management of urgent EREEID threats if the impact on the blood supply or funding is not material and the potential to generate significant public concern is considered by the Blood Service to be reasonably unlikely.
- 32.8 The Blood Service must consult and seek the NBA's approval regarding management of EREEID threats which the Blood Service considers, or which the NBA notifies the Blood Service it considers, are reasonably likely to have:
- 32.8.1 a significant impact on the blood supply;
 - 32.8.2 funding implications; or
 - 32.8.3 the potential to generate significant public concern.
- 32.9 The Blood Service must take into account any matter identified as a material risk in the Blood Service's horizon scanning activities, including as referred to in this **clause 32**, when developing the Blood Service's risk management procedures (including the Risk Management Plan) and the Strategic Plan.
- 32.10 The NBA must:
- 32.10.1 not provide any deliverables provided by the Blood Service to the NBA in accordance with **clauses 32.3** and **32.4** to any third party; and

32.10.2 only use the deliverables provided by the Blood Service to the NBA in accordance with **clause 32.3** and **clause 32.4** for the NBA's own internal purposes (including for the purposes of assessing any trends, developments and associated risks),

unless the Blood Service has provided its prior written consent (which may be subject to any conditions), provided that such consent must not be unreasonably withheld.

32.11 **Clause 32.10** does not prevent disclosure permitted under **clause 48.5**.

33. INTERNATIONAL BENCHMARKING

33.1 The Blood Service must undertake international benchmarking on an annual basis.

33.2 The Blood Service must use Best Endeavours to:

33.2.1 ensure that the international benchmarking identifies areas for improvement in the operations of the Blood Service, including by comparing the Blood Service's practices and procedures with the practices and processes of other international blood services;

33.2.2 document the results of the international benchmarking in a report; and

33.2.3 take the results of the international benchmarking into account when developing the Strategic Plan and the Business Plan on an annual basis.

33.3 Each of the Parties acknowledges that:

33.3.1 the practices and processes of other comparable international blood services may be adapted to reflect local structures, strategies and policies as well as other local factors, including population demographics; and

33.3.2 accordingly, differences between the practices and processes of different blood services are to be expected and may not necessarily reflect a better or poorer performance when compared to the performance of the Blood Service.

33.4 The Blood Service must provide to the NBA the annual report it prepares for the purposes of this **clause 33**. The NBA must:

33.4.1 not provide the annual report provided by the Blood Service to the NBA to any third party; and

33.4.2 only use the annual report provided by the Blood Service to the NBA for internal purposes,

unless the Blood Service has provided its prior written consent (which may be subject to any conditions), provided that such consent must not be unreasonably withheld.

33.5 **Clause 33.4** does not prevent disclosure under **clause 48.5**.

34. STRATEGIC AND BUSINESS PLANNING

34.1 The Blood Service must, in accordance with the Funding and Services Agreement, prepare and implement:

34.1.1 a Strategic Plan (which may include an IT strategic plan);

34.1.2 a Business Plan; and

34.1.3 a Capital Plan,

which together provide a plan for relevant activities to be undertaken by the Blood Service under this Deed for the next Financial Year and meet any requirements for those plans in accordance with the Funding and Services Agreement.

34.2 In preparing the Strategic Plan, the Business Plan and the Capital Plan, the Blood Service must:

34.2.1 consider the results of any horizon scanning undertaken in accordance with **clause 32** and any international benchmarking in accordance with **clause 33**;

34.2.2 consider and take account of, plans for compliance with its continuous improvement obligations in **clause 36**;

34.2.3 identify, assess and consider any risks relevant to the activities included in the Strategic Plan and the Business Plan and how those risks could be mitigated; and

34.2.4 consider the alignment of the Strategic Plan and the Business Plans with the priorities and expectations of Governments identified in the:

34.2.4.1 Statement of Expectation and the Annual Supply Estimates; and

34.2.4.2 annual planning priorities of Governments for the Blood Service if provided to the Blood Service in writing prior to its regular planning reviews.

34.3 The Blood Service must provide the draft Strategic Plan, the draft Business Plan and the draft Capital Plan to the NBA in accordance with the Funding and Services Agreement.

34.4 The Blood Service must provide its final Strategic Plan, Business Plan and Capital Plan for the next Financial Year to the NBA.

34.5 The Blood Service must use Best Endeavours to meet the objectives contained in the final Strategic Plan and Business Plan.

34.6 Any proposed material changes during a Financial Year to the Strategic Plan, Business Plan or Capital Plan must be submitted to the NBA in accordance with the process above.

34.7 The NBA must promptly provide (or provide information about access) to the Blood Service copies of all the NBA and JBC strategic plans, business plans or corporate plans that the NBA is permitted to make available.

- 34.8 The NBA may notify the Blood Service that an activity or expenditure proposed or included in the Strategic Plan, Business Plan or Capital Plan is, in the NBA's reasonable opinion, outside the Scope of Activities, in which case:
- 34.8.1 the activity or expenditure will, if carried out by the Blood Service, comprise a Non-Deed Activity under **clause 15**; and
- 34.8.2 the Blood Service is not entitled to, and may not apply, the Payments in respect of that activity or expenditure.

35. R&D PLANNING

- 35.1 The Blood Service must conduct research and development planning in accordance with the Blood Service Research and Development Framework and individual research projects ("**R&D Framework**") as agreed from time to time by the Parties in accordance with the Funding and Services Agreement.
- 35.2 The Parties must agree to any changes to the R&D Framework.
- 35.3 The Blood Service must use Best Endeavours to conduct all R&D activities in accordance with the R&D Framework and individual research projects.
- 35.4 In accordance with the Funding and Services Agreement, the Blood Service must provide due consideration to the feedback provided by the Research and Advisory Committee ("**RAC**"), including that of the NBA representative on the RAC in developing the R&D Framework and planning R&D projects and priorities.

36. CONTINUOUS IMPROVEMENT

- 36.1 Recognising that one of the NBA's primary objectives and expectations in entering this Deed is to ensure value for money and accountability for public expenditure and one of the primary objectives of the Blood Service in conducting its activities is value for money and continuous improvement, the Blood Service must use Best Endeavours to, subject to **clause 24**:
- 36.1.1 continually seek to improve the performance of its obligations in accordance with this Deed and the Funding and Services Agreement;
- 36.1.2 continually plan for the evolution of the Products and Services and modify the manner in which the Products and Services are provided if appropriate (subject to any variations to this Deed or Funding and Services Agreement required to implement any change) to:
- 36.1.2.1 improve the quality, effectiveness and efficiency of the Products and Services and their delivery; and

36.1.2.2 reduce the costs for the Blood Service to perform obligations if practicable in accordance with this Deed and the Funding and Services Agreement with a view to reducing the Payments due to the Blood Service over time for such activities,

including by:

36.1.3 identifying and applying proven techniques and tools utilised by the Blood Service or in applicable industries that would improve the performance of its obligations in accordance with this Deed or the Funding and Services Agreement either operationally or financially; and

36.1.4 implementing programs, practices and measures designed, to improve the Blood Service's levels of performance.

36.2 Nothing in this **clause 36** requires the NBA to request, approve or fund modifications to the manner in which the Products and Services are provided.

CHAPTER 5

COMMUNICATION AND

PERFORMANCE

IMPROVEMENT

Chapter outline

This Chapter sets out the Parties' agreed communication arrangements, reporting requirements and performance indicators.

37. COMMUNICATION PRINCIPLES

- 37.1 In recognition of the importance of their relationship and their mutual goals as outlined in **clause 4.1**, the Parties must communicate openly, cooperatively, proactively and in good faith whenever practicable on matters relevant to this Deed and the Funding and Services Agreement, in accordance with this Deed and the Funding and Services Agreement.
- 37.2 Both Parties must ensure, as far as is practicable, that the other Party is aware of all issues relevant to this Deed and the Funding and Services Agreement and ensure effective communication channels are maintained at all times.
- 37.3 The Parties must comply with the communication and reporting requirements specified in the Funding and Services Agreement.

38. NATIONAL HAEMOVIGILANCE SYSTEM

- 38.1 The Parties acknowledge that haemovigilance is an important tool to improve the effective and appropriate management of blood and blood products, and to ensure the safety of people receiving and donating blood. The NBA seeks to do that by acting to:
- 38.1.1 promote optimal safety and quality in the supply, management and use of blood and blood products, including through uniform national standards;
- 38.1.2 make best use of available resources, and to ensure financial and performance accountability for the use of resources by all entities involved in the Australian blood sector;
- 38.1.3 undertake national information gathering, monitoring of new developments, reporting and research in relation to the Australian blood sector;
- 38.1.4 undertake or facilitate national information management, benchmarking and cost and performance evaluation for the national blood supply; and

- 38.1.5 facilitate the development of national information systems for safety and quality issues in relation to the Australian blood sector.
- 38.2 Without limiting any other provision in this Deed, the Parties must regularly consult each other and keep each other informed of:
- 38.2.1 any systemic issues that arise in the provision of blood, blood products and related services to the Australian community;
- 38.2.2 any diseases or instances of severe infection of which it becomes aware which relate to the Blood Service; and
- 38.2.3 the proposed course of action or solutions to any such issues, diseases or infections, with a view to:
- 38.2.4 educating one another on the state and evolution of the provision of blood, blood products and related services in the Australian community;
- 38.2.5 continually improving the manner in which the Parties' respective obligations are performed under this Deed and the Funding and Services Agreement;
- 38.2.6 providing a safe and secure supply of blood, blood products and related services; and
- 38.2.7 promoting safe, high quality management and use of blood, blood products, and blood related services in Australia.
- 38.3 The NBA must perform its obligations in this **clause 38** in a manner that is consistent with the NBA Strategic Framework for the National Haemovigilance Program, as that framework is updated from time to time.

39. KEY PERFORMANCE INDICATORS AND TARGETS

Types of Indicators and Targets

- 39.1 There are two types of performance indicators and targets relating to the provision of the Products and Services:
- 39.1.1 Core Key Performance Indicators ("**Core KPIs**") and Targets ("**Core KPI Targets**") which are of particular importance as they demonstrate the Blood Service's ability to deliver the Products and Services; and
- 39.1.2 Reporting Indicators which provide further information about the performance of the Blood Service in relation to performance of the Blood Service under this Deed, but do not create contractual obligations other than relevant reporting obligations.

Requirement to meet or exceed the Core KPI Targets

- 39.2 The Blood Service must use Best Endeavours to provide the Products and Services so as to meet (or exceed) the Core KPI Targets.
- 39.3 If the Blood Service does not meet (or exceed) a Core KPI Target, the consequences specified in **clauses** Error! Reference source not found. and Error! Reference source not found. will apply.

Setting the Core KPIs and Core KPI Targets

- 39.4 The Core KPIs and Core KPI Targets will be agreed between the Parties and set out in the Funding and Services Agreement.
- 39.5 The Parties must review the Core KPIs and Core KPI Targets on an annual basis, and may agree to change the Core KPIs or Core KPI Targets for the following year, in which case the Funding and Services Agreement will be amended accordingly. The agreed Core KPIs and Core KPI Targets will also be reflected in the next Statement of Expectations.

Setting the Reporting Indicators

- 39.6 The Blood Service must annually Notify the NBA of the Reporting Indicators, in addition to the Core KPIs and Core KPI Targets that it will use to measure the following aspects of the Blood Service's performance of the delivery of the Products and Services:
- 39.6.1 donor management;
 - 39.6.2 supply chain management;
 - 39.6.3 supply of Products and Services to Australian Health Providers;
 - 39.6.4 the Blood Service's governance and accountability; and
 - 39.6.5 any other matters as agreed by the Parties in writing.
- 39.7 In setting the Reporting Indicators, the Blood Service must take into account and, where practicable, implement any reasonable request by the NBA to provide additional Reporting Indicators.

Reporting against the Core KPIs and Reporting Indicators

- 39.8 The Blood Service must report against the Core KPIs, Core KPI Targets and Reporting Indicators on a quarterly basis, at least one (1) week before each scheduled quarterly meeting of the Chief Executives. The report must include detailed information about any failure by the Blood Service to meet (or exceed) a Core KPI Target, including reasons as to why the Core KPI Target was not achieved and whether the Blood Service considers those reasons to be within its control or due to external influences.
- 39.9 Any feedback on, and required actions as a result of, the Blood Service's performance against the Core KPIs and the Reporting Indicators will be discussed at the quarterly meetings of the Chief Executives. The NBA will advise the Blood Service on whether it considers any failure of the Blood Service to meet or exceed a Core KPI Target was within the control of the Blood Service or due to external influences.

Consequences of a failure to meet a Core KPI Target

39.10 [Not disclosed. It contains detail about consequences.]

39.11 [Not disclosed. It contains detail about consequences.]

40. COMPLIANCE STATEMENT

40.1 In providing the Products and Services, the Blood Service must meet the requirements of all standards and policies specified in this Deed and the Funding and Services Agreement, as updated from time to time, in addition to complying with all applicable Laws.

40.2 The Blood Service must submit a Compliance Statement to the NBA in accordance with the Funding and Services Agreement.

41. MEETINGS, REPORTING, COMMUNICATION, AND DATA SETS

41.1 The Parties:

41.1.1 must use Best Endeavours to comply with the meeting, reporting and notices requirements specified in the Funding and Services Agreement; and

41.1.2 must comply with the data set requirements specified in the Funding and Services Agreement.

41.2 The Blood Service must use Best Endeavours to participate in additional meetings and to provide additional information or ad-hoc reports or data sets to the NBA on any matter associated with the Blood Service's performance of this Deed or the Funding and Services Agreement as reasonably requested by the NBA.

41.3 The Blood Service must use Best Endeavours to ensure that all information, reports and data sets it provides to the NBA or other parties are accurate, complete and not misleading in any material respect.

42. HEALTH CRISIS SITUATIONS

42.1 Subject to this **clause 42**, in a Health Crisis Situation, the Parties must:

42.1.1 comply with the applicable Contingency Plans established under **clause 31** to deal with that Health Crisis Situation; or

42.1.2 if no applicable Contingency Plan is in place, use Best Endeavours to provide to each other all appropriate and necessary information to allow the Parties to develop an Action Plan to respond to the Health Crisis Situation.

42.2 Subject to any applicable confidentiality and security requirements (including those specified in this Deed or the Funding and Services Agreement), the NBA must use Best Endeavours to provide information to the Blood Service to assist the Blood Service to respond to any Health Crisis Situation.

42.3 The Blood Service must use Best Endeavours to ensure that it has an appropriate number of Blood Service Personnel (being no fewer than three (3) people) who hold appropriate security clearances (being cleared at least to the Negative Vetting 1 level) prior to any Health Crisis

Situation to enable those Blood Service Personnel to be provided with classified information during the Health Crisis Situation.

42.4 If requested, the NBA must facilitate any reasonable requests from the Blood Service for Commonwealth security clearances for Blood Service Personnel that may be required for the purposes of **clause 42.3**.

42.5 The Blood Service must regularly review (and at least every three (3) years) its security clearance arrangements to ensure that appropriate Blood Service Personnel hold appropriate security clearances at all times during the Term.

43. NOTIFIABLE EVENT REPORTING

43.1 The Blood Service must comply with the Notifiable Event requirements specified in the Funding and Services Agreement.

43.2 This **clause 43** does not limit the Blood Service's obligations under this Deed or any WHS Legislation.

44. PUBLIC ANNOUNCEMENT MANAGEMENT

44.1 The Parties must comply with the Public Announcement requirements in the Funding and Services Agreement.

45. ACKNOWLEDGEMENT OF GOVERNMENT FUNDING

45.1 Subject to **clauses 12** and **24**, the Blood Service must comply with the acknowledgement of Government funding requirements in the Funding and Services Agreement.

Chapter 6

Records, Information Management and Security

Chapter outline

This Chapter sets out the Parties' rights and obligations to keep records and information which are related to this Deed or the Funding and Services Agreement.

46. RECORDS

- 46.1 The Blood Service must keep comprehensive written records and accounts of all matters related to its performance of this Deed and the Funding and Services Agreement (such that they are sufficient for the purposes of reviews and audits conducted in accordance with this Deed or the Funding and Services Agreement and unless otherwise required by the NBA) for whichever of the following periods is greater:
- 46.1.1 a period of seven (7) years from the date the record or account was created or obtained; or
 - 46.1.2 the period required by Law or any applicable regulations or standards.
- 46.2 The Blood Service must use Best Endeavours to ensure that all records and accounts required to be kept in accordance with this Deed:
- 46.2.1 enable the extraction of all material information relevant to the performance of this Deed and the Funding and Services Agreement as relevant to the record or account;
 - 46.2.2 without limiting this Deed, are kept in suitable storage facilities, having regard to issues of security, privacy and confidentiality;
 - 46.2.3 any records and accounts that include security classified information are stored in facilities that meet the minimum standards for the storage and handling of Official Information up to and including the highest relevant security classification level;
 - 46.2.4 insofar as the Blood Service is aware, are true and accurate in all substantive respects and are not misleading;
 - 46.2.5 insofar as the Blood Service is aware, are complete and maintained so as to be up-to-date;
 - 46.2.6 are kept in a manner that permits them to be conveniently and properly audited, recognising that the Blood Service, as a national organisation, maintains records at different locations in Australia; and

46.2.7 are drawn in accordance with the Australian Accounting Standards if the records are financial accounts.

47. PRIVACY

47.1 In this **clause 47**, the terms "agency", "Australian Privacy Principles" (**APP**), "CR" and "Personal Information" have the same meaning as they have in the *Privacy Act 1988* (Cth).

47.2 The Blood Service acknowledges that it is a "contracted service provider" within the meaning of the *Privacy Act 1988* (Cth), and must in respect of the performance of its obligations under this Deed and the Funding and Services Agreement:

47.2.1 comply with its obligations under the *Privacy Act 1988* (Cth), including all applicable regulations and registered APP codes or CR codes;

47.2.2 not engage in an act or practice in connection with the performance of its obligations under this Deed and the Funding Services Agreement that would:

47.2.2.1 breach an Australian Privacy Principle; or

47.2.2.2 be an interference with the privacy of an individual under the *Privacy Act 1988* (Cth),

unless that act or practice is permitted under the *Privacy Act 1988* (Cth);

47.2.3 not do any act, or engage in any practice, in connection with the performance of its obligations under this Deed and the Funding Services Agreement that would breach an Australian Privacy Principle if it were done or engaged in by the NBA;

47.2.4 collect, use, disclose, store, retain and dispose of any Personal Information obtained in the course of performing its obligations under this Deed and the Funding Services Agreement in accordance with the *Privacy Act 1988* (Cth);

47.2.5 without limiting **clause 47.2.7**, not use any Personal Information obtained in the course of performing its obligations under this Deed and the Funding Services Agreement for the purposes of direct marketing (as that term is used in the *Privacy Act 1988* (Cth)) other than as permitted by the *Privacy Act 1988* (Cth);

47.2.6 not transfer outside of Australia any Personal Information obtained as a result of, or in connection with, performing its obligations under this Deed and the Funding Services Agreement other than as permitted by the *Privacy Act 1988* (Cth);

47.2.7 comply with any Notice given to the Blood Service by the NBA which is necessary in order for the NBA to comply with any:

47.2.7.1 notice, direction, determination, recommendation or other requirement of the Australian Information Commissioner; or

47.2.7.2 undertaking given to the Privacy Commissioner by the NBA, provided that the NBA must use Best Endeavours to consult with the Blood Service before giving any undertaking and reasonably address the Blood Service's concerns before giving the undertaking,

to the extent such notice, direction, determination, recommendation or undertaking relates to this Deed or the Funding and Services Agreement;

47.2.8 comply with any Notice given to the Blood Service by the NBA which is necessary to enable the NBA to comply with any data breach notification requirement under the *Privacy Act 1988* (Cth);

47.2.9 notify individuals whose Personal Information the Blood Service holds, that complaints about acts or practices of the Blood Service may be investigated by the Privacy Commissioner who has power to award compensation against the Blood Service in appropriate circumstances, whether by way of an appropriate privacy policy, collection statement or other appropriate method;

47.2.10 immediately Notify the NBA if the Blood Service becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this **clause 47**, whether by the Blood Service or any Subcontractor;

47.2.11 ensure that any Employee of the Blood Service who is required to deal with Personal Information in accordance with this Deed or the Funding and Services Agreement is made aware of the obligations of the Blood Service set out in this **clause 47**; and

47.2.12 subject to **clause 17**, ensure that any Subcontract for the performance of the obligations of the Blood Service in accordance with this Deed and the Funding Services Agreement contains an equivalent provision to this **clause 47**.

47.3 The Blood Service's obligations in this **clause 47** are in addition to, and do not limit, any obligations it may have under:

47.3.1 the *Privacy Act 1988* (Cth); and

47.3.2 any privacy codes or privacy principles contained in, authorised by or registered under any Law including any such privacy codes or principles that would apply to the Blood Service but for the application of the other provisions of this **clause 47**.

47.4 This **clause 47** survives the expiration or termination of this Deed.

47.5 The Blood Service and the NBA acknowledge that the NBA is subject to the *Privacy Act 1988* (Cth) as an "agency" under that Act.

48. CONFIDENTIALITY

48.1 Subject to this **clause 48**, a Party must not to disclose to any third party, any Confidential Information of the other Party without the prior written consent of the other Party.

48.2 In giving any consent under this **clause 48**, the Party giving consent may impose such conditions or restrictions as it considers appropriate, and the other Party must comply with those conditions or restrictions.

- 48.3 The NBA may, at any time, require the Blood Service to give, and to arrange for:
- 48.3.1 its Personnel engaged in the provision of Products or Services; or
 - 48.3.2 any other third party, other than a Commonwealth Employee, to whom the information is disclosed pursuant to this **clause 48**,
- to give a deed of undertaking, in the form reasonably required by the NBA, relating to the non-disclosure of Confidential Information.
- 48.4 If the Blood Service receives a request under **clause 48.3**, the Blood Service must promptly use Best Endeavours to arrange for the requested undertaking to be given.
- 48.5 Either Party may disclose Confidential Information of the other Party to the extent that the Confidential Information is:
- 48.5.1 disclosed to its advisers or Personnel solely in order to comply with obligations, or to exercise rights, under this Deed or the Funding and Services Agreement;
 - 48.5.2 disclosed to its Personnel, solely to enable effective management or auditing of contract-related activities, including those relating to this Deed and the Funding and Services Agreement;
 - 48.5.3 disclosed by the Blood Service to the broader Red Cross;
 - 48.5.4 disclosed by the NBA to the responsible Minister;
 - 48.5.5 disclosed by the NBA in response to a request by a House or a Committee of the Parliament;
 - 48.5.6 disclosed by the NBA within the NBA or to another entity that is part of the Commonwealth, if this serves the Commonwealth's legitimate interests;
 - 48.5.7 disclosed by the NBA to the States and Territories but only:
 - 48.5.7.1 if the NBA discloses the Confidential Information in a manner which reflects its particular sensitivity and confidentiality;
 - 48.5.7.2 if the receiving State or Territory first agrees to keep the Confidential Information confidential on terms similar to the confidentiality provisions of this Deed;
 - 48.5.7.3 to the extent that disclosure under this **clause 48** is reasonably required having regard to the nature and sensitivity of the Confidential Information and the particular reason for the proposed disclosure; and
 - 48.5.7.4 after consulting with the Blood Service with a view to agreeing the manner and extent of the proposed disclosure;
 - 48.5.8 authorised or required to be disclosed by Law;
 - 48.5.9 authorised under this Deed of Funding and Services Agreement under a licence or otherwise, to be disclosed; or

48.5.10 in the public domain otherwise than due to a breach of this **clause 48**.

48.6 Nothing in this **clause 48** derogates from any obligation which either Party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Deed, in relation to the protection of Personal Information.

48.7 This **clause 48** survives the expiration or termination of this Deed.

49. SECURITY

49.1 Without limiting its obligations in accordance with this Deed, or the Funding and Services Agreement, the Blood Service must, and must ensure that its Personnel:

49.1.1 comply with the requirements of all relevant security procedures (including the Commonwealth Protective Security Policy Framework ("**PSPF**") as applicable to the Blood Service, and subject to any requirements specified in this Deed or the Funding and Services Agreement); and

49.1.2 use its Best Endeavours to comply with any other reasonable security requirements Notified to the Blood Service by the NBA from time to time, subject to **clause 24**.

49.2 The Blood Service must advise all relevant Blood Service Personnel of the Blood Service's security obligations specified in this Deed and the Funding and Services Agreement.

49.3 The Blood Service must use Best Endeavours to comply with security procedures or security requirements Notified in accordance with **clause 49.1** within a reasonable time, having regard to the nature of the requirement.

49.4 The Blood Service must participate in security reviews of procedures implemented in the performance of this Deed if reasonably requested by the NBA.

49.5 The NBA or its nominee may, at any time by giving reasonable Notice to the Blood Service, inspect the Blood Service's or any Subcontractor's premises during the Term for the purposes of monitoring compliance with the PSPF including:

49.5.1 prior to any renegotiation or extension of this Deed or the Funding and Services Agreement;

49.5.2 following any security incident at the Blood Service's or any Subcontractor's premises;

49.5.3 as part of any Extraordinary Review carried out by the NBA; and

49.5.4 as part of an audit carried out by the NBA, or as otherwise permitted under this Deed.

49.6 The rights and obligations in connection with this **clause 49** survive the expiry or termination of this Deed.

Data Security

49.7 The Blood Service acknowledges and agrees that:

49.7.1 the NBA holds and deals with highly sensitive information;

- 49.7.2 the NBA is concerned that such information is not improperly used or disclosed contrary to this Deed, the Funding and Services Agreement or any Laws; and
- 49.7.3 use or disclosure of such information contrary to this Deed or the Funding and Services Agreement may constitute a breach of this Deed or the Funding and Services Agreement.
- 49.8 Without limiting its obligations specified in this Deed or the Funding and Services Agreement, the Blood Service must comply with the security requirements for the protection of any Official Information provided by the NBA to the Blood Service in accordance with the PSPF and, if applicable, the Commonwealth's Information Security Manual ("**ISM**").
- 49.9 The Parties acknowledge that the performance by the Blood Service of its obligations specified in this Deed or the Funding and Services Agreement may involve access to or creation of databases incorporating Personal Information (such as donor records) and that it is of paramount importance in the performance of this Deed and the Funding and Services Agreement that applicable Laws, and the provisions of this Deed and Funding and Services Agreement (including in respect of privacy and security) are complied with.
- 49.10 The Blood Service must Notify the NBA of any actual or suspected security incidents or breaches that may have an impact on:
- 49.10.1 the Blood Service's ability to perform its obligations in accordance with this Deed or the Funding and Services Agreement (including the Blood Service's ability to deliver the Products and Services); or
- 49.10.2 any Official Information held by, or in transit to or from, the Blood Service.
- 49.11 The Blood Service must promptly report any breaches of information and communications technology security of which it is aware, whether or not those breaches involve the NBA information, to both the NBA and CERT Australia.

Protection of data

- 49.12 The Blood Service must not, and must ensure that its Personnel do not:
- 49.12.1 remove Official Information or allow Official Information to be removed from the Blood Service's premises otherwise than as required by, and in accordance with, this Deed and the Funding and Services Agreement; or
- 49.12.2 take or transmit Official Information or allow Official Information to be taken or transmitted outside of or stored outside of Australia,
- without the NBA's prior written consent. The NBA acknowledges that it does not expect that Official Information will be provided to the Blood Service, but that if it should be necessary, or appropriate, for Official Information to be provided to the Blood Service it will not do so by email, unless otherwise agreed by the Parties.
- 49.13 The Blood Service must Notify the NBA promptly and comply with all directions of the NBA in relation to Official Information if the Blood Service becomes aware of any contravention of this **clause 49**.

Commonwealth Data Governance Protocols

- 49.14 The Blood Service must comply with the data security and governance requirements in this Deed and the Funding and Services Agreement.
- 49.15 The Blood Service must develop a Data Governance Procedure ("**DGP**") that sets out how the Blood Service will comply with **clause 49.14**.

Chapter 7

Intellectual Property, Assets and Registers

Chapter outline

This Chapter sets the Parties' rights and obligations regarding Intellectual Property, assets and requirements in relation to maintaining registers of the Blood Service and Red Cross.

50. INTELLECTUAL PROPERTY

Existing ownership of Intellectual Property not affected

- 50.1 Nothing in this Deed or the Funding and Services Agreement affects the ownership of any Background IP or Third Party IP.

Foreground IP

- 50.2 Subject to this **clause 50**, as between the Blood Service and the NBA, ownership of all Foreground IP in Contract Material vests in the Blood Service on the date of creation of that Foreground IP, unless otherwise agreed in writing by the Parties.

- 50.3 If any Foreground IP subsists in any Contract Material, the Blood Service grants the NBA a perpetual, world-wide, irrevocable, royalty and licence-fee free, non-exclusive licence to use, reproduce, modify, adapt, communicate and publish (including a right to sub-licence) that Foreground IP for any purpose within the NBA's statutory functions.

Background IP

- 50.4 If any Background IP owned by the Blood Service subsists in any Contract Material, the Blood Service grants the NBA a perpetual, world-wide, irrevocable, royalty and licence-fee free, non-exclusive licence to use, reproduce, modify, adapt, communicate and publish (including a right to sub-licence) that Background IP for any purpose within the NBA's statutory functions.

Third Party IP

- 50.5 If any Third Party IP subsists in any Contract Material, the Blood Service must use Best Endeavours to procure for, and grant to, the NBA a perpetual, world-wide, irrevocable, royalty and licence-fee free, non-exclusive licence to use, reproduce, modify, adapt, communicate and publish (including a right to sub-licence) that Third Party IP:

- 50.5.1 as required in order for the NBA to receive the benefit of the Products and Services under this Deed and Funding and Services Agreement; and

- 50.5.2 for any purpose within the NBA's statutory functions.
- 50.6 If the Blood Service becomes aware that it is unable to procure a licence from a third party in accordance with **clause 50.5**, the Blood Service must:
- 50.6.1 inform the NBA in writing, detailing the reasons why it is unable to secure the relevant licence;
 - 50.6.2 identify any actions that the NBA should undertake and specify any timeframe in which the NBA should take those actions; and
 - 50.6.3 using Best Endeavours, assist the NBA to negotiate a licence (including the right to sublicense) from the third party to allow the NBA to obtain a licence on terms reasonably satisfactory to the NBA.

IP Register

- 50.7 The Blood Service must ensure that the details of all Intellectual Property rights in relation to this Deed are recorded in the IP Register in accordance with **clause 55.4**.

Restrictions on sublicensing

- 50.8 The NBA must not, and must not allow any sublicensee to, use any Background IP owned by the Blood Service for any commercial purpose without the prior written consent of the Blood Service (which must not be unreasonably withheld).
- 50.9 The NBA may sublicense Third Party IP for commercial purposes if permitted by the licence obtained by the Blood Service in accordance with **clause 50.5**.

Operation of Part VII of the Copyright Act

- 50.10 Despite Part VII of the *Copyright Act 1968* (Cth), publication of any Contract Material in accordance with any licence granted under this **clause 50** does not affect ownership of any Intellectual Property in such Contract Material.

Restrictions on the use of symbols, names and trade marks

- 50.11 Despite any other provision of this Deed, but subject to **clauses 109 and 110**, neither Party is permitted to use, or permit the use of, the symbol, names or trade mark of the other Party unless:
- 50.11.1 that Party has obtained the prior consent of the other Party in writing and subject to any reasonable conditions imposed on that consent (including, in the case of Red Cross, any necessary authorisation from the relevant Minister); and
 - 50.11.2 in the case of the red cross emblem, the designations or names "Red Cross" or "Australian Red Cross Blood Service" or any trade mark of Red Cross or the Blood Service such use is in accordance with the *Geneva Conventions Act 1957* (Cth).

- 50.12 For the avoidance of doubt, and subject to the *Geneva Conventions Act 1957* (Cth), **clause 50.11**:
- 50.12.1 does not require the NBA to remove the symbol, designation, names or trade mark of Red Cross or the Blood Service when using or dealing with Contract Material or Products and Services as permitted by this Deed or the Funding and Services Agreement; and
- 50.12.2 does not permit the NBA to use, or permit the use of, the red cross emblem, the names "Red Cross" or "Australian Red Cross Blood Service" or trade mark of Red Cross or the Blood Service following:
- 50.12.2.1 the end of the Handover Period; or
- 50.12.2.2 the expiration or termination of this Deed,
- unless the NBA is lawfully authorised to do so for any period as is agreed by the Parties in writing.
- 50.13 The NBA must, in relation to any use of any trademark of the Blood Service, by the NBA or its nominee, accurately represent the role of the NBA or its nominee in relation to the activities with which the trade mark is associated, and ensure that neither the NBA or a nominee uses the trade mark in a misleading or deceptive way.
- 50.14 For the avoidance of doubt, the red cross emblem and names "Red Cross" or "Australian Red Cross Blood Service" are not Intellectual Property for the purpose of this Deed.

51. MORAL RIGHTS

- 51.1 To the extent permitted by applicable Laws and for the benefit of the NBA, the Blood Service must ensure that each of the Blood Service's Personnel used by the Blood Service in the production or creation of any Contract Material gives a genuine consent in writing, in a form acceptable to the NBA, to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral rights.
- 51.2 In this **clause 51**, 'Specified Acts' means:
- 51.2.1 not attributing the authorship, or falsely attributing the authorship, of any Contract Material, or any content in the Contract Material (including without limitation, literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- 51.2.2 materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- 51.2.3 reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- 51.2.4 adding any additional content or information to the Contract Material.

52. IP WARRANTY

52.1 The Blood Service warrants that, having used its Best Endeavours to ensure, to the best of its knowledge, it is entitled, or will be entitled at the relevant time, to deal with Intellectual Property in the Contract Material in the manner provided for in **clause 50**.

53. COMMONWEALTH MATERIAL

53.1 The Blood Service acknowledges the NBA's ownership or control by licence of the Commonwealth Material and all Intellectual Property rights in the Commonwealth Material.

53.2 Subject to this **clause 53**, the NBA grants a non-exclusive, irrevocable, non-transferable, royalty-free licence to Red Cross, including the Blood Service, for the Term and for the Handover Period to use, and to allow its subcontractors to use, any Intellectual Property which is owned by or licensed to the Commonwealth which subsists in any Commonwealth Material for the purpose of performing the Blood Service's obligations in accordance with this Deed and the Funding and Services Agreement.

53.3 The NBA must inform the Blood Service of any Commonwealth Material provided to the Blood Service in accordance with this Deed or the Funding and Services Agreement which contains Third Party IP and of any conditions attaching to the use of that Commonwealth Material because of that Third Party IP.

53.4 The Blood Service must:

53.4.1 ensure that Commonwealth Material is used, copied, supplied or reproduced only for the purposes of performing its obligations in accordance with this Deed or Funding and Services Agreement;

53.4.2 ensure the safe keeping and maintenance of Commonwealth Material at all times; and

53.4.3 only use Commonwealth Material strictly in accordance with any conditions or restrictions specified in this Deed or the Funding and Services Agreement, or as Notified by the NBA to the Blood Service from time to time.

53.5 On expiration or termination of the Handover Period, Red Cross must not retain any Commonwealth Material provided to the Blood Service, or any copies of the Commonwealth Material, provided that Red Cross may retain any copies of Commonwealth Material it has stored for archival or back-up purposes that it is unable to retrieve despite using Best Endeavours to do so.

54. DEED ASSETS

Asset Management Policies

54.1 The Blood Service must develop, implement and maintain for the Term, documented asset management policies and procedures for any Deed Assets (including property, plant, equipment and inventories) in accordance with relevant Australian Accounting Standards and this Deed.

54.2 The Blood Service must provide the NBA with copies of its asset management policies and procedures as requested by the NBA from time to time.

Protection of Handover Assets

- 54.3 The Blood Service:
- 54.3.1 must not encumber, dispose of, or use any Handover Asset, other than in accordance with this **clause 54** without the prior written approval of the NBA;
 - 54.3.2 must hold all Handover Assets securely and use Best Endeavours to safeguard them against theft, Loss, damage or unauthorised use at all times;
 - 54.3.3 must maintain all Handover Assets in reasonable working order, subject to fair wear and tear and having regard to advances in technology and consequential obsolescence; and
 - 54.3.4 subject to this Deed, is fully responsible for, and bears all risks arising in relation to, the use or disposal of any Handover Asset until it is handed over in accordance with this Deed.

Disposal of Assets

- 54.4 Subject to **clause 24**, the Blood Service must only dispose of Deed Assets during the Term in a manner that is consistent with the Capital Plan, and to meet the requirements of the *Public Governance, Performance and Accountability Act 2013* (Cth) that are Notified by the NBA to the Blood Service from time to time.
- 54.5 The Blood Service must apply all funds realised through the disposal of Deed Assets towards the performance of its obligations in accordance with this Deed and the Funding and Services Agreement.
- 54.6 The Blood Service must record in its annual financial statements and in accordance with the Funding and Services Agreement, all funds received from the disposal of any Deed Asset and how those funds have been applied by the Blood Service.

55. REGISTERS

- 55.1 The Blood Service must create and maintain the following registers;
- 55.1.1 an IP Register;
 - 55.1.2 one or more Procedures Registers;
 - 55.1.3 an Asset Register;
 - 55.1.4 an Inventory Register; and
 - 55.1.5 a Contracts Register,
- the requirements of which are further described in this **clause 55**.
- 55.2 The Blood Service must annually provide to the NBA an accurate, up-to-date version of each register that the Blood Service is required to maintain in accordance with this Deed.
- 55.3 The Blood Service must provide a copy of any register maintained in accordance with this Deed to the NBA within five (5) Business Days of a request from the NBA.

IP Register

- 55.4 The IP Register must contain details of:
- 55.4.1 any patents, designs, trademarks or registered domain names owned by, or licensed to or by, the Blood Service that are material to its operations or to the security of the supply of Products and Services, but excluding any such intellectual property licensed to the Blood Service for sponsorship/promotional purposes only; and
 - 55.4.2 any software that the Blood Service licenses from a third party for the purposes of performing its obligations under this Deed, including details of:
 - 55.4.2.1 the licensor/vendor of the software;
 - 55.4.2.2 the applicable product description;
 - 55.4.2.3 the software version number;
 - 55.4.2.4 whether maintenance or support is provided for the software;
 - 55.4.2.5 any jurisdictional limitations (including geographic limitations);
 - 55.4.2.6 whether the licence is exclusive or non-exclusive;
 - 55.4.2.7 any sub-licensing rights or limitations;
 - 55.4.2.8 whether the licence is revocable or irrevocable;
 - 55.4.2.9 the term of the licence (including whether the licence is perpetual or contains any sunrise/sunset provisions);
 - 55.4.2.10 any fees, royalties or other such requirements; and
 - 55.4.2.11 any other relevant details.

Procedures Register(s)

- 55.5 The Procedures Register(s) must contain details of all material policies, guidelines, rules and operating procedures formally adopted by the Blood Service for the purpose of carrying out the Blood Service's operations or otherwise complying with its obligations in accordance with this Deed and the Funding and Services Agreement.
- 55.6 The Blood Service must consider any reasonable suggestion made by the NBA in relation to the development or revision of any Blood Service policies, guidelines, rules or operating procedures created and maintained in accordance with this **clause 55** and update them accordingly.

Asset Register

- 55.7 The Blood Service must maintain an accurate and complete register of all Deed Assets in accordance with the policies and procedures of the Blood Service developed, implemented and maintained in accordance with **clause 54.1**. The Asset Register must identify all Deed Assets with an original cost of \$20,000 (GST inclusive) or more (or such other amount as agreed from time to time by the Parties in writing) including:
- 55.7.1 details of all equipment used and maintained by the Blood Service including all asset numbers, serial numbers, maintenance histories, end of life details, acquisition/lease details and warranty details;
 - 55.7.2 details of any Deed Asset that is under lease, whether that lease is in the name of Red Cross or the Blood Service; and
 - 55.7.3 details of the location of all Deed Assets.

Inventory Register

- 55.8 The Inventory Register must include details of all inventories of Products held by the Blood Service, including inventories of all starting materials, consumables or unfinished Products.

Contracts Register

- 55.9 The Contracts Register must include, at a minimum, the following information for any material contracts entered into by the Blood Service for the purpose of this Deed or Funding Services Agreement:
- 55.9.1 the name of the contractor;
 - 55.9.2 the purpose of the contract;
 - 55.9.3 the maximum estimated expenditure under the contract;
 - 55.9.4 the actual annual spend under the contract in the previous Financial Year;
 - 55.9.5 the nature of the contracted services;
 - 55.9.6 the term of the contract; and
 - 55.9.7 whether the contract is a software licence (in which case additional details must be included in the IP Register).
- 55.10 For the purposes of this **clause 55.9**, "material contract" means a contract under which the Blood Service is expected to incur costs, or receive revenue, of more than \$100,000 per annum.

Chapter 8

Review, Audits and Access

Chapter outline

This Chapter sets out the provisions for review, audits and access under this Deed.

56. NBA EXTRAORDINARY REVIEWS

- 56.1 The NBA (or its nominee) may, by giving reasonable prior Notice to the Blood Service, conduct an extraordinary review in accordance with this **Chapter 8** ("**Extraordinary Review**") if:
- 56.1.1 the Blood Service has failed to meet a Core KPI Target and the Parties are unable to agree to a modification of the relevant Core KPI or Core KPI Target or an appropriate process to remedy that failure;
 - 56.1.2 the Blood Service has made a request under the OBFM for funding to address a deficit;
 - 56.1.3 the NBA considers that the Blood Service has committed a Serious Default of this Deed or the Funding and Services Agreement which having followed the escalation process in the Funding and Services Agreement, is not capable of remedy or which the Blood Service has failed to remedy;
 - 56.1.4 there has been, or is reasonably suspected of being, an event or circumstance which reasonably justifies the NBA undertaking an Extraordinary Review, including with respect to any material or systemic fraud or a serious complaint or allegation being made against the Blood Service;
 - 56.1.5 a request for the conduct of a review is made, on specified grounds, by the NBA at the request of all Governments under the national blood arrangements; or
 - 56.1.6 a 'High' or 'Extreme' finding is made in any internal audit report relating to risk management or governance which is not capable of remedy or which the Blood Service has failed to remedy.
- 56.2 The NBA agrees to use Best Endeavours to ensure that Extraordinary Reviews are initiated for substantial and genuine reasons only which are in accordance with **clause 56.1**, and that no more than one Extraordinary Review is initiated each year.
- 56.3 The NBA may conduct an Extraordinary Review itself or using a contracted service provider, provided that any contracted service provider is required to comply with relevant obligations under this Deed as if it were the NBA. An Extraordinary Review may only be conducted once in any twelve (12) Month period in relation to each respective event set out in **clauses 56.1.1 to 56.1.6**.

- 56.4 If the NBA requires an Extraordinary Review to be conducted:
- 56.4.1 the Parties must agree on the terms of reference and timing for the Extraordinary Review in writing; or
 - 56.4.2 if the Parties cannot agree on the terms of reference and timing within a reasonable time, the terms of reference and timing must be referred for resolution in accordance with **clause 72**.
- 56.5 The Blood Service must participate in any Extraordinary Review conducted in accordance with this **clause 56** including by:
- 56.5.1 participating in good faith in the Extraordinary Review and in accordance with the applicable terms of reference;
 - 56.5.2 providing all reasonable assistance to assist the NBA or its nominee in conducting the Extraordinary Review; and
 - 56.5.3 subject to **clause 61**, using Best Endeavours to provide access to any information, records, documents, premises or Personnel reasonably requested by the NBA or its contracted service provider which are directly relevant to the Extraordinary Review, provided that:
 - 56.5.4 the NBA must consult with the Blood Service throughout the Extraordinary Review, including by providing the Blood Service with any draft reports arising from the Extraordinary Review and taking proper account of, and incorporating, the Blood Service's reasonable feedback into these reports; and
 - 56.5.5 the NBA must share the findings of the Extraordinary Review with the Blood Service, including by providing any final report arising from the Extraordinary Review.
- 56.6 Following any Extraordinary Review, the Parties may agree that a variation to this Deed or the Funding and Services Agreement is required in accordance with **clause 121**.

57. OTHER REVIEWS

- 57.1 The Parties may agree to conduct other reviews of this Deed and the Funding and Services Agreement at any time.

58. AUDITS

Right to conduct audits

- 58.1 This **clause 58** applies for the Term and for a period of seven (7) years from the end of the Handover Period.
- 58.2 The NBA may once a year, and the Auditor-General, Privacy Commissioner, Australian Information Commissioner, or their nominees (each an "**Authorised Investigator**") may from time to time, conduct audits:
- 58.2.1 in the case of the NBA, of the Blood Service's compliance with this Deed or the Funding and Services Agreement; and

- 58.2.2 otherwise, for the purposes of performing their statutory functions or powers.
- 58.3 The Blood Service must:
- 58.3.1 promptly and co-operatively assist any Authorised Investigator (or its nominee) with any audit conducted under this **clause 58**, including by providing any records and other information related to this Deed or the Funding and Services Agreement; and
- 58.3.2 do all things necessary to comply with an Authorised Investigator's requirements, provided such requirements are legally enforceable and within the power of that Authorised Investigator.
- 58.4 The NBA must not unreasonably exercise its rights under this **clause 58**.
- 58.5 Except in the event of a significant non-compliance with this Deed or the Funding and Services Agreement, as determined by the NBA, the NBA must consult in good faith with the Blood Service to determine the scope of, information required for, and program of, any audit conducted by the NBA under this **clause 58**.
- 58.6 In the exercise of the general rights granted by this **clause 58**, the NBA must use Best Endeavours to ensure that any Authorised Investigator uses reasonable endeavours to ensure that the exercise of the Authorised Investigator's rights do not unreasonably interfere with, delay or disrupt the Blood Service's performance of its obligations in accordance with this Deed, the Funding and Services Agreement or the *Therapeutic Goods Act 1998* (Cth), in any material respect.
- 58.7 If in exercising the rights granted under this **clause 58**, the Authorised Investigator interferes with, delays or disrupts the Blood Service's performance of its obligations in accordance with this Deed, the Funding and Services Agreement or the *Therapeutic Goods Act 1998* (Cth), in any respect and that interference, delays or disrupts the Blood Service performing its obligations, the Blood Service may request an extension of time to perform its obligations.
- 58.8 The NBA must not refuse a request pursuant to **clause 58.7** if the Blood Service substantiates the request, within a reasonable time, to the satisfaction of the NBA, acting reasonably, provided that:
- 58.8.1 the Blood Service advised the NBA of the delay within ten (10) Business Days of the event which caused the delay; and
- 58.8.2 the Blood Service has taken or takes all reasonable steps to minimise any delay.
- 58.9 In the process of accessing information under this **clause 58**, the NBA must use Best Endeavours to ensure that the Authorised Investigator gives the Blood Service a reasonable opportunity to specifically mark or otherwise identify information which may be Confidential Information.
- 58.10 The Blood Service must promptly prepare and provide to the NBA (or an Authorised Investigator) if requested, at no additional cost to the NBA, a proposal containing recommendations for corrective action to rectify any error, non-compliance or inaccuracy properly identified in any audit in the way the Blood Service has:
- 58.10.1 supplied any Products or Services;
- 58.10.2 maintained any accounts or records;

58.10.3 calculated Payments, or any other amounts billed to or claimed from the NBA; or

58.10.4 otherwise complied with its obligations,

in accordance with this Deed and the Funding and Services Agreement.

58.11 If the NBA agrees with the recommendations made by the Blood Service in a proposal under **clause 58.10**, it must promptly Notify the Blood Service of its agreement (which may be subject to such conditions as the NBA considers appropriate) and the Blood Service must then implement the recommendations as agreed with the NBA within any agreed timeframes.

58.12 Nothing in this Deed reduces, limits or restricts in any way any function, power, right or entitlement of an Authorised Investigator. The rights of any Authorised Investigator under this Deed are in addition to any other power, right or entitlement of the Authorised Investigator or their nominees. The operation of this **clause 58** does not limit the operation of **clause 47**.

Risk Management Audits

58.13 The Blood Service must engage a third party auditor to conduct an audit of the Blood Service's risk management policies and procedures (a "**Risk Management Audit**") at least once every three (3) years.

58.14 The Risk Management Audit must include, at a minimum, an assessment of the suitability and application of the Blood Service's:

58.14.1 risk management framework;

58.14.2 risk management practices (including in relation to preventing the transmission of blood borne diseases); and

58.14.3 Risk Register as set out in the Risk Management Plan,

against relevant Australian and international standards.

58.15 The NBA may nominate specific risks that must be audited under any Risk Management Audit and the Blood Service must use Best Endeavours to ensure that those risks are assessed during the Risk Management Audit.

58.16 The Blood Service must ensure that the terms of the Risk Management Audit:

58.16.1 are agreed by the NBA, acting reasonably without unreasonable delay, prior to the audit commencing;

58.16.2 identify to the auditor that the purpose of the audit is to inform Governments of the appropriateness of the Blood Service's risk management policies and procedures (including as set out in **clause 66**), and that the audit report are intended to be used by Governments in this regard; and

58.16.3 required the auditor to take the purposes specified in **clause 58.16.2** into account when performing the Risk Management Audit.

58.17 Any auditor engaged by the Blood Service in accordance with this **clause 58** must be approved by the NBA, such approval not to be unreasonably withheld or delayed.

58.18 The Blood Service must provide a copy of the finalised Risk Management Audit report to the NBA as soon as practicable after the completion of the Risk Management Audit unless otherwise agreed in writing by the Parties with a view to providing the report to the NBA by December of the year in which the Risk Management Audit is conducted, and in any event, the report must be provided to the NBA no later than six (6) Months after the Risk Management Audit has been conducted (unless otherwise agreed by the Parties in writing).

Internal Audit

58.19 The Blood Service must develop and maintain an Internal Audit Plan that requires the Blood Service to audit how it has addressed the risks identified in the Risk Management Plan.

58.20 The Blood Service must provide details of its planned internal audit scope and the outcomes of its audits within ten (10) Business Days of a request by the NBA.

58.21 The Blood Service must comply with its Internal Audit Plan.

58.22 The Internal Audit Plan must be a two (2) year rolling plan and include an audit scope document (i.e. the Internal Audit Plan is not required to include full terms of reference) for the coming two (2) years. The Internal Audit Plan must be regularly updated to ensure it always includes details of the next two (2) years of audits.

58.23 The Blood Service must provide a copy of its Internal Audit Plan to the NBA annually, within the timeframe specified in the Funding and Services Agreement.

58.24 On receipt of the Internal Audit Plan, the NBA must review the Internal Audit Plan and provide any comments the NBA has in relation to the Internal Audit Plan to the Blood Service.

58.25 The Blood Service must consider any reasonable comments the NBA has in relation to the Internal Audit Plan and may revise the Internal Audit Plan to take into account those comments.

58.26 The Blood Service must provide the NBA with a copy of all internal audit reports relating to risk management and governance within thirty (30) Business Days of receipt of the relevant report.

59. COSTS

59.1 Subject to this Deed, each Party must bear its own costs of any audits or reviews (including Extraordinary Reviews).

60. ACTION PLANS

60.1 If, in the NBA's reasonable opinion:

60.1.1 the results of any Blood Service internal audit;

60.1.2 the results of any Extraordinary Review; or

60.1.3 the finalised Risk Management Audit report submitted in accordance with **clause 58.18**,

identify any issues that, in the NBA's reasonable opinion need to be addressed, the Blood Service must, if requested by the NBA, develop and provide to the NBA a proposed Action Plan in response to those issues identified by the NBA within sixty (60) Business Days or such longer time period as agreed in writing by the Parties.

60.2 The proposed Action Plan developed in accordance with **clause 60.1**:

60.2.1 must include a proposed timeframe for implementation of the Action Plan; and

60.2.2 may include any proposed variations to this Deed or the Funding and Services Agreement to be made in accordance with **clause 121**.

60.3 The NBA must, within fifteen (15) Business Days of receiving a proposed Action Plan in accordance with **clause 60.1**, either provide Notice to the Blood Service that it:

60.3.1 approves the Action Plan; or

60.3.2 does not approve the Action Plan setting out its reasons in writing.

60.4 If the NBA does not approve the Action Plan, the Parties must negotiate a revised Action Plan in good faith and, failing agreement on a revised Action Plan, refer the matter to the process in **clause 72**.

60.5 Without limiting the Parties' obligations in accordance with this Deed or the Funding and Services Agreement, the Blood Service must implement any agreed Action Plan.

60.6 If an Action Plan resulting from any Extraordinary Review under **clause 56** has been implemented, the Blood Service must include in the Quarterly Performance Report a report on its progress towards implementation of the approved Action Plan. The Blood Service must continue to provide this report until the NBA is satisfied that all actions have been implemented as agreed.

61. ACCESS

61.1 This **clause 61** applies for the Term and for a period of seven (7) years from the date of its expiration or termination.

61.2 The NBA or any other Authorised Investigator may, for the purposes of an Extraordinary Review or an audit, in accordance with this Deed or the Funding and Services Agreement, to the extent relevant for that Extraordinary Review or audit, and on reasonable notice to the Blood Service, during business hours:

61.2.1 access the premises of the Blood Service;

61.2.2 require the Blood Service or Blood Service Personnel to provide records and information and, if reasonably practicable, in a data format and storage medium accessible by the NBA or Authorised Investigator using the NBA's or Authorised Investigator's existing computer hardware and software;

- 61.2.3 inspect and copy documentation, books and records, however stored, in the custody or under the control of the Blood Service or Blood Service Personnel relevant to the performance of this Deed or the Funding Services Agreement, provided that the Blood Service is not required to provide access to anything that may constitute a breach of its confidentiality obligations to third parties or a waiver of legal privilege; and
- 61.2.4 require assistance in respect of any inquiry into or concerning this Deed or the Funding and Services Agreement. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the NBA), any request for information directed to the NBA, and any inquiry conducted by Parliament or any Parliamentary committee.
- 61.3 In the exercise of the general rights granted by this **clause 61**, the NBA must use Best Endeavours:
- 61.3.1 not to; and
- 61.3.2 to ensure that any other Authorised Investigator does not, interfere with, delay or disrupt the Blood Service's performance of its obligations specified in this Deed, the Funding and Services Agreement or the *Therapeutic Goods Act 1998* (Cth), in any material respect.
- 61.4 Except for those circumstances in which giving Notice is not practicable or appropriate, and without limiting any other right, recourse or remedy available to the Authorised Investigator, the NBA must use Best Endeavours to ensure that the Authorised Investigator gives the Blood Service:
- 61.4.1 reasonable Notice of its intention to access the Blood Service's premises, and any data, records, accounts and other financial material or other Material related to this Deed or the Funding and Services Agreement; and
- 61.4.2 if reasonably practicable, an indication of which documents and/or class of documents to which it may require access.
- 61.5 The requirement for, and participation in, audits or Extraordinary Review does not in any way reduce the Blood Service's responsibility to perform its obligations in accordance with this Deed and the Funding and Services Agreement.
- 61.6 The Blood Service must ensure that any Subcontract entered into for the purpose of this Deed or the Funding and Services Agreement contains an equivalent clause granting the rights specified in this **clause 61**.

Chapter 9

Policy

Chapter outline

This Chapter sets out the provisions for the Blood Service's compliance with Law, Blood Sector Policies and Whole-of-Government Policies.

62. LAW, BLOOD SECTOR POLICIES, WHOLE-OF-GOVERNMENT POLICIES AND FUNDAMENTAL PRINCIPLES

62.1 Despite any other provision of this Deed or the Funding and Services Agreement, the Blood Service must provide the Products and Services in accordance with:

62.1.1 all Laws;

62.1.2 Government Instructions;

62.1.3 subject to **clause 62.4**, any Commonwealth Government policies endorsed or agreed by the NBA or the JBC, relating specifically to the blood sector or otherwise specifically applicable to the Products and Services under this Deed or the Funding and Services Agreement, as Notified to the Blood Service by the NBA from time to time ("**Blood Sector Policies**"); and

62.1.4 any Whole-of-Government Policies which the Blood Service has expressly agreed to comply with, whether in this Deed or the Funding and Services Agreement (provided that the Blood Service must not unreasonably withhold its agreement to include additional Whole-of-Government Policies in the Funding and Services Agreement, as amended from time to time).

62.2 The NBA must advise the Blood Service, as soon as reasonably practicable, and if authorised to do so, of any:

62.2.1 policy decisions by the Commonwealth Government (including decisions made by the JBC or responsible Commonwealth Minister) specified in or related to this Deed or the Funding and Services Agreement of which it is aware of and are relevant to the Blood Service, including any Blood Sector Policies or relevant Whole-of-Government Policies; and

62.2.2 matters under consideration by Governments if the Blood Service may be able to provide input or has an interest.

62.3 Nothing in this **clause 62** obliges the NBA or the Commonwealth to disclose any internal Commonwealth policy considerations, discussions, decisions or classified or Confidential Information to the Blood Service.

- 62.4 Any changes required to the performance of the Blood Service's obligations under, or the terms of, this Deed or the Funding and Services Agreement will be negotiated by the parties as part of the Funding and Services Agreement three (3) yearly review cycle unless changes are agreed to be implemented earlier by the Parties.
- 62.5 As part of the Funding and Services Agreement negotiations, the NBA must engage in reasonable consultation with the Blood Service and take into account any matters raised by the Blood Service in relation to the manner of implementation of Blood Sector Policies under this Deed or the Funding and Services Agreement, and in particular must consult with the Blood Service in relation to:
- 62.5.1 whether implementation of such Blood Sector Policies conflict with the Fundamental Principles;
 - 62.5.2 the feasibility of, options for, and timing of, implementation of such Blood Sector Policies (including in relation to regulatory issues); and
 - 62.5.3 the cost and necessary resources for implementation of such Blood Sector Policy (taking into account the processes for setting or adjusting Payments under the Funding and Services Agreement).
- 62.6 The Blood Service must not unreasonably refuse, and must take all reasonable steps, to implement Blood Sector Policies in relation to the provision of Products and Services under this Deed as Notified by the NBA, provided that:
- 62.6.1 the NBA has engaged in reasonable consultation under **clause 62.5**;
 - 62.6.2 the Blood Service reserves the right to refuse, by giving Notice to the NBA, to implement a policy of Governments under this **clause 62** if, following reasonable consultation under **clause 62.5**, the Blood Service considers that there is a fundamental and irreconcilable conflict between the implementation of the relevant Blood Sector Policy and the Fundamental Principles; and
 - 62.6.3 if the Blood Service gives a Notice to the NBA under **clause 62.6.2**, the Notice must include an explanation to the NBA of the basis for the Blood Service's refusal to implement a Blood Sector Policy under **clause 62.6**.

63. COMPLIANCE WITH GOVERNMENT POLICY

Equal opportunity

- 63.1 **Clauses 63.1 to 63.5** apply only to the extent that the Blood Service is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) ("**WGE Act**"). The Blood Service must comply with its obligations, if any, under the WGE Act.
- 63.2 If the Blood Service becomes non-compliant with the WGE Act during the Term of this Deed, the Blood Service must Notify the NBA.
- 63.3 Compliance with the WGE Act does not relieve the Blood Service from its responsibility to comply with its obligations under this Deed and the Funding and Services Agreement.
- 63.4 The Blood Service must not enter into any Subcontract with an entity named in a report tabled in the Parliament by the Workplace Gender Equality Agency as an entity that has not complied with the WGE Act.

- 63.5 The Blood Service must comply with such other Commonwealth, State or Territory Laws relevant to anti-discrimination as may be relevant to this Deed.

Indigenous Procurement Policy

- 63.6 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information).
- 63.7 The Blood Service must use Best Endeavours, recognising the nature of its business, to increase its:
- 63.7.1 purchasing from Indigenous enterprises; and
 - 63.7.2 employment of Indigenous Australians,
- in the delivery of the Products and Services.
- 63.8 Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a Subcontractor, and use of Indigenous suppliers in the Blood Service's supply chain.
- 63.9 In this **clause 63**, "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.

Work health and safety

- 63.10 In **clauses 63.10** to **63.21** below:
- 63.10.1 WHS Act means the *Work Health and Safety Act 2011* (Cth); and
 - 63.10.2 Person Conducting a Business or Undertaking ("**PCBU**") as defined by the WHS Act means a person conducting a business or undertaking:
 - 63.10.2.1 whether the person conducts the business or undertaking alone or with others; and
 - 63.10.2.2 whether or not the business or undertaking is conducted for profit or gain.
- 63.11 The Blood Service must:
- 63.11.1 comply with its, and the ensure that all Subcontractors comply with their, obligations under the WHS Legislation; and
 - 63.11.2 consult, co-operate and co-ordinate activities with the NBA and any other person who, concurrently with the NBA, the Blood Service or any Subcontractor (as the case may be), has a WHS duty under the WHS Legislation in relation to the same matter.
- 63.12 The Blood Service must ensure that the Services are provided in a manner that does not pose any avoidable health or safety risk to the Blood Service's Personnel, to the NBA's Personnel or to any other person.

- 63.13 Without limiting in any way the work health and safety obligations that the Blood Service has under this Deed or the Funding and Services Agreement, including those that apply due to the operation of Commonwealth and State or Territory Laws, the Blood Service must:
- 63.13.1 ensure the regulator is Notified in accordance with section 38 of the WHS Act or corresponding State or Territory legislation; and
 - 63.13.2 Notify the NBA of:
 - 63.13.2.1 any work related injury that causes death or serious personal injury; and
 - 63.13.2.2 any Notifiable Incident as defined at sections 35, 36 and 37 of the WHS Act, or corresponding State or Territory legislation,within one (1) Business Day after the incident has occurred or within two (2) hours if the injury causes death.
- 63.14 The Blood Service must perform its obligations specified in this Deed and the Funding and Services Agreement in such a way that does not cause any other person to be in breach of their obligations relating to work health and safety, including under the WHS Legislation.
- 63.15 Without limiting the Blood Service's obligations specified in this Deed, the Funding and Services Agreement or at Law, the Blood Service must, in connection with its obligations specified in this Deed and the Funding and Services Agreement, within ten (10) Business Days (or such longer period as agreed by the parties) provide any information or copies of documentation reasonably requested by the NBA and held by the Blood Service or its Subcontractor (as the case may be) to enable the NBA to comply with its obligations under the WHS Legislation;
- 63.16 The Blood Service must ensure that, if the WHS Legislation requires that:
- 63.16.1 a person (including a Subcontractor):
 - 63.16.1.1 is authorised or licensed to carry out any works at a workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and
 - 63.16.1.2 has prescribed qualifications or experience, or if not, must be supervised by a person who has prescribed qualifications or experience, that person has the required qualifications or experience or is so supervised; and
 - 63.16.2 a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance (or design), or work (or class of work) is so authorised or licensed.
- 63.17 If the Blood Service becomes aware of any intention on the part of a regulatory authority to cancel, revoke, suspend or amend any authorisation granted to the Blood Service or any Subcontractor relating to work health and safety, it must immediately Notify the NBA giving full particulars (so far as they are known to the Blood Service).
- 63.18 Without limiting the Blood Service's obligations specified in this Deed or the Funding and Services Agreement, the Blood Service must ensure that all Subcontracts contain equivalent provisions to those set out in this WHS clause with respect to work health and safety.

- 63.19 Without limiting this **clause 63**, upon reasonable written request by the NBA, the Blood Service must:
- 63.19.1 give, and ensure that any Subcontractor gives, the NBA and any person authorised by the NBA, within a reasonable timeframe dependent on the issue, access to:
 - 63.19.1.1 premises to conduct site inspections for the purpose of monitoring the Blood Service's or the Subcontractor's (as the case may be) compliance with any applicable Laws in connection with work health and safety; and
 - 63.19.1.2 all internal and third party audit results in relation to work health and safety; and
 - 63.19.2 provide reasonable assistance to the NBA or its nominee (including giving the NBA, its nominee and its agents access to the Blood Service's premises, files, information technology systems and Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Products and Services.
- 63.20 To the extent not inconsistent with the express requirements of this Deed, the Funding and Services Agreement or the WHS Legislation, the NBA may direct the Blood Service to take specified measures that the NBA considers reasonably necessary to comply with applicable legislation relating to work health and safety including the WHS Legislation. The Blood Service must comply with that direction unless the Blood Service demonstrates to the reasonable satisfaction of the NBA that it is already complying with the WHS Legislation in relation to the matter to which the direction relates or the direction goes beyond what is reasonably necessary to achieve compliance with the WHS Legislation.
- 63.21 The Blood Service must provide the NBA with such work health and safety information as is reasonably requested by the NBA from time to time. The Blood Service represents and warrants that:
- 63.21.1 it has given careful, prudent and comprehensive consideration to the work health and safety implications of the work to be performed by it pursuant to this Deed and the Funding and Services Agreement; and
 - 63.21.2 the performance of that work complies with, and includes a system for identifying and managing so far as is reasonably practicable, work health and safety risks which complies with all applicable legislation relating to work health and safety, including the WHS Legislation.

Construction projects/principal contractor

- 63.22 The Blood Service must be the principal contractor, or must appoint a principal contractor, in relation to any construction project carried out by the Blood Service if a principal contractor is required under WHS Legislation. NBA authorises the Blood Service or the principal contractor appointed by the Blood Service (whichever is applicable) to have management or control of the workplace and to discharge the duties of a principal contractor under the WHS legislation.

Building and construction work

- 63.23 To the extent applicable, the Blood Service must comply with the *Building Code 2013* (Cth) as it may be amended or replaced from time to time ("**Building Code**") in relation to any building or construction project carried out by the Blood Service.
- 63.24 The Blood Service must maintain adequate records of the compliance with the Building Code by any Subcontractor.
- 63.25 While acknowledging that value for money is the core principle underpinning decisions on government procurement, when assessing tenders, in accordance with the Building Code, the Blood Service may give preference to Subcontractors that have a demonstrated commitment to adding and/or retaining trainees and apprentices; increasing the participation of women in all aspects of the industry; or promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- 63.26 The Blood Service must not appoint a Subcontractor in relation to a building or construction project if the appointment would breach a sanction imposed by the Minister of Employment; or the Subcontractor has had an adverse court or tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the Subcontractor has not fully complied, or is not fully complying with the order.
- 63.27 The Blood Service must require that it and its Subcontractors provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:
- 63.27.1 inspect any work, material, machinery, appliance, article or facility;
 - 63.27.2 inspect and copy any record relevant to a building or construction project; and
 - 63.27.3 interview any person as is necessary to demonstrate its compliance with the Building Code.
- 63.28 Additionally, the Blood Service must comply with any request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.
- 63.29 The Blood Service must ensure that all Subcontracts for building or construction work, entered into after the Commencement Date, impose obligations on Subcontractors equivalent to the obligations under **clauses 63.23 to 63.28**.

Freedom of Information

- 63.30 In **clauses 63.30 to 63.35**, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 63.31 The Blood Service acknowledges that this Deed and the Funding and Services Agreement are Commonwealth contracts.

- 63.32 If the NBA has received a request for access to a document created by, or in the possession of, the Blood Service or any Subcontractor that relates to the performance of this Deed or the Funding and Services Agreement (and not to the entry into either of those documents), the NBA must consult with the Blood Service regarding whether the requested information can be released or is exempted under the *Freedom of Information Act 1982* (Cth).
- 63.33 Following the consultation referred to in **clause 63.32**, the NBA may by written Notice request the Blood Service to provide the document to the NBA and the Blood Service must, at no additional cost to the NBA, promptly comply with the Notice, provided that the Blood Service is not required to provide the NBA with:
- 63.33.1 personal information about any identifiable person unless permitted by the *Privacy Act 1988* (Cth); or
- 63.33.2 any document subject to legal professional privilege,
- provided that any legal professional privilege has not been waived or the document would otherwise not be exempt from disclosure by the NBA under the *Freedom of Information Act 1982* (Cth).
- 63.34 Nothing in **clause 63.32** or **63.33** limits the consultation obligations in the *Freedom of Information Act 1982* (Cth).
- 63.35 The Blood Service must include provisions that enable the Blood Service to comply with its obligations under **clause 63.33** in each Subcontract.

Fraud

- 63.36 The Blood Service must:
- 63.36.1 have in place adequate procedures to prevent fraud and money laundering; and
- 63.36.2 provide information about (including a copy of) the Blood Service's fraud and money laundering prevention procedures as requested by the NBA.
- 63.37 The Blood Service must Notify the NBA immediately if it knows or has reason to suspect that any material fraud or money laundering has occurred, or is occurring in relation to this Deed or the Funding and Services Agreement.

Environmental obligations

- 63.38 Subject to the *Therapeutic Goods Act 1989* (Cth) requirements and licensing requirements and having regard to the nature of the Products and Services, the Blood Service must use Best Endeavours to perform its obligations in accordance with this Deed and the Funding and Services Agreement in an environmentally responsible manner and in accordance with all applicable standards, including as specified in this Deed and the Funding and Services Agreement.

Employer obligations

- 63.39 The Blood Service must at all times and at its own expense:
- 63.39.1 comply with the provisions of any relevant legislation and industrial instruments (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of the Blood Service's Personnel; and
 - 63.39.2 subject to the Funding and Services Agreement, meet all costs associated with payments under any such instruments to Blood Service Personnel.

Illegal Workers

- 63.40 The Blood Service must ensure that no Blood Service Personnel, including those engaged by any Subcontractors (in each case, after the Commencement Date), are Illegal Workers.
- 63.41 The Blood Service must include requirements similar to **clause 63.40** in any Subcontract.
- 63.42 The Blood Service must remove, or cause to be removed, any Illegal Worker from any involvement in the performance of its obligations under this Deed or the Funding and Services Arrangement and arrange for their replacement at no cost to the NBA and immediately upon becoming aware of the involvement of the Illegal Worker.
- 63.43 If requested by the NBA, the Blood Service must provide evidence within ten (10) Business Days that it has taken all reasonable steps to ensure that it has compiled and is complying with its obligations under **clause 63.40** to **63.42**.
- 63.44 For the purposes of **clause 63.40** to **63.43**, "Illegal Worker" means a person who:
- 63.44.1 has unlawfully entered and remains in Australia;
 - 63.44.2 has lawfully entered Australia, but remains in Australia after his or her visa has expired; or
 - 63.44.3 is working in breach of his or her visa conditions.
- 63.45 The Blood Service may check each of its Personnel's entitlement to work in Australia at <http://www.border.gov.au/Busi/Visa>.

Governance and Standards

- 63.46 To the extent relevant and from the Commencement Date, the Blood Service must comply with the standards and codes specified in the Funding and Services Agreement in the performance of its obligations pursuant to this Deed and the Funding and Services Agreement.

Chapter 10

Treatment of Risks

Chapter outline

This Chapter sets out principles in relation to the allocation and treatment of risk by each Party and warranties under this Deed.

64. CONFLICT OF INTEREST

64.1 The Blood Service must not, during the Term, engage in any activity which is a Conflict of Interest or is reasonably able to be perceived as a Conflict of Interest by the Australian public.

64.2 Upon becoming aware or being Notified of any Conflict of Interest, the Blood Service must take action appropriate in the circumstances to eliminate or manage that Conflict of Interest so that the Conflict of Interest does not have an adverse effect on the performance of the Blood Service's obligations in accordance with this Deed or the Funding and Services Agreement.

64.3 If a Conflict of Interest:

64.3.1 represents a risk to the NBA (including in relation to its ability to perform its obligations as part of the Commonwealth); or

64.3.2 may adversely affect the NBA's interests as a Party to this Deed or the Funding and Services Agreement,

the Blood Service must comply with **clause 64.5** in managing that Conflict of Interest.

64.4 During the Term, the Blood Service must not engage in any activity, transaction or arrangement that may, in the reasonable opinion of the NBA, result in a Conflict of Interest arising or continuing unless the Blood Service has complied with **clause 64.5** and the NBA has given its prior written approval for the Blood Service to engage in that activity, transaction or arrangement.

64.5 If a Conflict of Interest arises, the Blood Service must as soon as reasonably practicable Notify the NBA of the Conflict of Interest and provide the NBA with a proposal describing how the Blood Service will manage the Conflict of Interest. The Blood Service must take into account feedback from the NBA on that proposal and act in accordance with that proposal (as revised, as necessary).

65. PRINCIPLES IN RELATION TO THE ALLOCATION OF RISK

65.1 The Parties agree that the provision of the Products and Services in accordance with this Deed and the Funding and Services Agreement gives rise to a range of risks and agree that, as basic principles but subject to this Deed and the Funding and Services Agreement:

65.1.1 each Party must seek to identify, manage and mitigate risks within their control or which they are best placed to identify, manage and mitigate;

65.1.2 risks should be borne in the first instance by the Party best placed to manage those risks;

65.1.3 each Party is liable for the performance of its obligations in accordance with this Deed, and the Funding and Services Agreement, to the extent that any performance or non-performance causes or contributes to any Loss; and

65.1.4 the Blood Service is responsible for performing its obligations and meeting, subject to this Deed, its liabilities in accordance with this Deed and the Funding and Services Agreement as and when they arise, through prudential management and use of Payments and other funds which may be available to the Blood Service for this purpose and through planning and operational decisions within the reasonable control of the Blood Service in accordance with this Deed.

65.2 If the Blood Service is unable to meet its obligations or liabilities under this Deed or the Funding and Services Agreement without materially impacting on its ability to provide Products and Services in accordance with this Deed and the Funding and Services Agreement, it may:

65.2.1 propose a variation to this Deed or the Funding and Services Agreement;

65.2.2 seek Other Payments in accordance with the processes specified in the Funding and Services Agreement; or

65.2.3 request the NBA to meet or waive a liability of the Blood Service under this Deed,

provided that the making of any such proposal by the Blood Service does not, of itself, diminish any obligations or excuse any liabilities of the Blood Service in accordance with this Deed or the Funding and Services Agreement.

65.3 Nothing in this **clause 65** affects or limits any protections available on the terms of this Deed to the Blood Service or the NBA in connection with liabilities under this Deed.

66. RISK MANAGEMENT PLAN

66.1 The Blood Service must ensure that at all times during the Term, the Blood Service has a Risk Management Plan in place, and maintain and update the Risk Management Plan during the Term.

66.2 The Risk Management Plan must:

66.2.1 facilitate the identification, control, management and mitigation of risks in relation to this Deed and the Funding and Services Agreement; and

- 66.2.2 include a Risk Register that:
 - 66.2.2.1 identifies the material risks arising in relation to this Deed and the Funding and Services Agreement;
 - 66.2.2.2 specifies the mitigation strategies required to handle any identified risks (including to ensure on-going supply of the Products and Services); and
 - 66.2.2.3 define the procedures and methodology for capturing, analysing, assessing, prioritising, monitoring and reviewing the key risks and other risks applicable to the obligations of the Blood Service in accordance with this Deed and the Funding and Services Agreement.
- 66.3 The Risk Management Plan must meet International Standard 31010 as that standard is amended or replaced from time to time.
- 66.4 The Blood Service must comply with the Risk Management Plan.
- 66.5 The Blood Service must:
 - 66.5.1 provide a copy of the current Risk Management Plan and Risk Register to the NBA as soon as practicable following a request by the NBA and whenever the Strategic Plan has been updated;
 - 66.5.2 provide to the NBA any information or documentation in relation to the Blood Service's risk management that the NBA reasonably requests as soon as practicable following a request by the NBA;
 - 66.5.3 consider any reasonable suggestions made by the NBA for the development or revision of any aspect of the Blood Service's risk management approach and take such suggestions into account as appropriate; and
 - 66.5.4 report to the NBA on the status of the Risk Management Plan and any significant new or changed risks specified in the Funding and Services Agreement as soon as practicable following a request by the NBA.

67. LOANS

- 67.1 The Blood Service acknowledges and agrees that it does not have any authority to incur encumbrances, debts or loans in the names of the NBA or the Commonwealth.

68. BLOOD SERVICE CAPACITY AND SUITABILITY

- 68.1 Red Cross warrants that, as far as it is aware:
 - 68.1.1 it has the capacity, capability and power to enter into and perform this Deed and any Funding and Services Agreement;
 - 68.1.2 it has all rights, title, licences, interests and property necessary to lawfully enter into, perform and observe its obligations in accordance with this Deed and Funding and Services Agreement;

- 68.1.3 the execution, delivery and performance of this Deed and Funding and Services Agreement has been duly and validly authorised by all necessary corporate action and does not constitute:
- 68.1.3.1 a violation of any judgment, order or decree;
 - 68.1.3.2 a material default under any contract which relates in any way to the provision of the Products or Services, and by which it or any of its assets are bound; or
 - 68.1.3.3 an event that would, with notice or lapse of time, or both, constitute such a default.
- 68.2 The Blood Service warrants that it has disclosed any Conflict of Interest of which it is aware, in writing to NBA prior to or at the Commencement Date.
- 68.3 The Blood Service warrants that:
- 68.3.1 it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012 (Cth)*;
 - 68.3.2 it has not had a judicial decision against it (not including decisions under appeal) relating to Employee entitlements in respect of which it has not paid the judgment amount; and
 - 68.3.3 it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies for the purposes of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* and none of its Personnel are on, or a member of an entity on, that list.
- 68.4 The Blood Service acknowledges that the NBA enters into this Deed and the Funding and Services Agreement in reliance on the warranties given by the Blood Service in this **clause 68**.
- 68.5 The warranties in this **clause 68**:
- 68.5.1 survive the expiration or termination of this Deed and the Funding and Services Agreement; and
 - 68.5.2 are in addition to, do not limit and are not limited by any additional warranties specified in the Funding and Services Agreement.

69. DEED OF SECURITY

- 69.1 The Blood Service must, at its expense, and within thirty (30) Business Days of the Commencement Date, provide to the NBA the security over the Products as specified in, and in accordance with, the requirements of **Schedule 3 - Deed of Security**.

70. INSURANCE AND RESERVES

[Not disclosed. It contains detail of insurance and reserves.]

71. FORCE MAJEURE

71.1 Subject to this **clause 71**, a Party is not entitled to exercise any rights and remedies specified in this Deed or the Funding and Services Agreement (other than a right of termination) upon the default of the other Party, if that default is caused by a Force Majeure Event.

71.2 The Blood Service must:

71.2.1 use Best Endeavours to ensure that the Risk Management Plan sets out appropriate strategies to overcome the occurrence of a Force Majeure Event (and that those strategies provide for the Blood Service to manage and mitigate the risk of such an event occurring); and

71.2.2 implement the strategies set out in the Risk Management Plan if a Force Majeure Event occurs.

71.3 If the Blood Service is prevented from carrying out its obligations in accordance with this Deed or the Funding and Services Agreement as a result of a Force Majeure Event for a period of three (3) Months or more:

71.3.1 the NBA may exercise step-in rights under **clause 109**; or

71.3.2 either Party may terminate this Deed in accordance in accordance with **clauses 115 or 116**.

71.4 If the default continues for a period of time exceeding the period specified in the definition of Force Majeure Event (being twenty (20) Business Days), then the Party in default must:

71.4.1 Notify the other Party immediately of:

71.4.1.1 full particulars of the Force Majeure Event;

71.4.1.2 the reasons for the Force Majeure Event preventing or delaying the performance of its obligations in accordance with this Deed or the Funding and Services Agreement;

71.4.1.3 details of the specific effect the Force Majeure Event will have on the performance of its obligations in accordance with this Deed or the Funding and Services Agreement;

71.4.1.4 details of any extension of time the Party seeks in relation to the attached obligations specified in this Deed or the Funding and Services Agreement; and

71.4.1.5 details of the steps it will take to minimise the effect of circumstances beyond the Party's reasonable control;

71.4.2 request an extension of time for the performance of its obligations specified in this Deed or the Funding and Services Agreement, which the other Party may grant in its absolute discretion; and

71.4.3 if the other Party declines to grant an extension of time under **clause 71.4.2**, it may terminate this Deed under **clauses 115** or **116**, and the provisions of **clause 117** will apply.

72. DISPUTE RESOLUTION

Informal dispute resolution

72.1 The Parties must use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Deed and "reasonable efforts" for the purposes of this **clause 72** may include, but are not limited to, informal discussions between the Parties and each Parties' legal counsel.

Initial Dispute Notice

72.2 If, having used all reasonable efforts to resolve the dispute in accordance with **clause 72.1** the dispute has not been resolved to the satisfaction of both Parties, either Party may give the other Party a Notice of dispute ("**Initial Dispute Notice**") by providing the Notice to the other Party in accordance with **clause 136**.

72.3 Following receipt of the Initial Dispute Notice:

72.3.1 the Chief Executive of the Party receiving the Initial Dispute Notice ("**Receiving Party**") must acknowledge receipt of the Initial Dispute Notice by Notifying the Chief Executive of the Party issuing the Initial Dispute Notice ("**Issuing Party**");

72.3.2 either Party may request the other to provide any additional information about the dispute, and such information must either be provided, or not provided but giving reason(s) why the information is unable to be provided, within five (5) Business Days of the request;

72.3.3 the Chief Executives of each Party must meet within ten (10) Business Days of the receipt of the Initial Dispute Notice and use reasonable efforts to resolve the dispute, including discussing actions that could be taken by the Parties to resolve the dispute; and

72.3.4 the Parties must implement any agreed actions as a result of this meeting of the Chief Executives.

72.4 If, having used all reasonable efforts under **clause 72.3** to resolve the dispute, the dispute has not been resolved to the satisfaction of both Parties within twenty (20) Business Days of receipt of the Initial Dispute Notice, the Chief Executive of either Party may send a letter to the Chief Executive of the other Party stating that it wishes to invoke the Third Party Review Dispute Resolution Processes by referring the dispute to mediation, conciliation, or another dispute mechanism conducted by an appropriately qualified independent expert ("**Independent Expert**").

Third Party Review Dispute Resolution Process

72.5 If either Party gives Notice under **clause 72.4**, the Parties must use Best Endeavours to agree on and appoint an appropriately qualified independent expert as Independent Expert for the purposes of this **clause 72.5**. If the Parties cannot agree upon an appropriately qualified independent expert within seven (7) days of receipt by the receiving Party of the Notice under **clause 72.4**, the Independent Expert will be appointed as follows:

- 72.5.1 in the case of a dispute relating to a financial matter under this Deed or the Funding and Services Agreement, the dispute must be referred to an independent expert nominated by the President of the Institute of Chartered Accountants Australia;
 - 72.5.2 in the case of a dispute relating to a proposed variation to this Deed or the Funding and Services Agreement, the dispute must be referred to an independent mediator appointed by the chairperson of the ACT Law Society;
 - 72.5.3 in the case of a dispute relating to the quality or other characteristics of the Products and Services, the dispute must be referred to an independent expert nominated by the Therapeutic Goods Administration or other suitable body selected by agreement of the Parties; and
 - 72.5.4 in the case of any other dispute, the dispute must be referred to a mediator appointed by the chairperson of the ACT Law Society.
- 72.6 The Independent Expert must not be an arbitrator and may reach a decision from his or her own knowledge and expertise or as the decision pertains to government policy, Laws, guidelines and processes.
- 72.7 The Independent Expert's terms of engagement must include provisions requiring that the Independent Expert:
- 72.7.1 must disclose to the Parties any interest he or she has in the outcome of the relevant dispute; and
 - 72.7.2 must not communicate with one Party without the knowledge of the other.
- 72.8 The Parties must provide the Independent Expert with:
- 72.8.1 written submissions within ten (10) business days of the Independent Expert's appointment; and
 - 72.8.2 such other information or documents as may be reasonably requested by the Independent Expert within ten (10) days of receiving such a request (subject to confidentiality obligations of the Parties under this Deed or under Law).
- 72.9 The Parties must attend any sessions conducted by the Independent Expert for the purposes of resolving the dispute and must at all times act in good faith to genuinely attempt to resolve the dispute.
- 72.10 The Independent Expert must reach a determination or recommendation within three (3) months of the Independent appointment.
- 72.11 The determination or recommendation of the Independent Expert is for the consideration of both Parties and is not binding on either Party.
- 72.12 The Parties must consider the determination or recommendation of the Independent Expert in good faith.
- 72.13 If the determination or recommendation of the Independent Expert would result in a resolution of the dispute to the satisfaction of both Parties, the Parties must together develop an action plan for implementing that determination or recommendation and must do all things reasonably necessary to implement the determination or recommendation.

Unresolved Disputes following Third Party Review Dispute Resolution Process

- 72.14 If the determination or recommendation of the Independent Expert does not result in a resolution of the dispute to the satisfaction of both Parties and the relevant dispute remains unresolved after thirty (30) Business Days of receipt of the determination or recommendation of the Independent Expert the following apply:
- 72.14.1 the NBA must immediately Notify the JBC in writing of the unresolved dispute, giving details of the dispute, the determination or recommendation of the Independent Expert and the reasons why the determination or recommendation of the Independent Expert has not been accepted by either Party;
 - 72.14.2 the Blood Service must immediately notify the Blood Service Board and the Red Cross Board in writing of the unresolved dispute, giving details of the dispute, the determination or recommendation of the Independent Expert and the reasons why the determination or recommendation of the Independent Expert has not been accepted by either Party; and
 - 72.14.3 the JBC and representatives from Red Cross and the Blood Service Boards must meet (either in person or by teleconference) within five (5) Business Days of the receipt of the Notices referred in **clauses 72.14.1** and **72.14.2** (or other period agreed by the JBC and Red Cross and the Blood Service Boards) and use Best Endeavours to agree a process for dispute resolution. If a process for dispute resolution is agreed by the JBC, the Blood Service Board and the Red Cross Board, it must be documented and implemented by the NBA and the Blood Service.

Legal proceedings

- 72.15 If the JBC, the Blood Service Board and the Red Cross Board cannot agree a dispute resolution process within ten (10) Business Days after the meeting referred to in **clause 72.14.3**, either of the Parties may initiate legal proceedings. Written Notice of any such legal proceedings must be provided to the other Party as soon as practicable.
- 72.16 Nothing in this **clause 72** prevents either Party from seeking urgent injunctive relief.

Costs

- 72.17 The Parties must each bear their own costs in any dispute resolution process and must equally share the costs of the Independent Expert, unless otherwise agreed by the Parties.

Timeframes

- 72.18 A time period specified in this **clause 72** will apply unless the Parties otherwise agree in writing to a different time period.

Chapter 11

Indemnities and

Management of Claims

Chapter outline

[Not disclosed. This chapter contain details of indemnities provided by the NBA and Blood Service.]

PART A: BLOOD SERVICE LIABILITIES

73. NATIONAL MANAGED FUND

[Not disclosed]

74. LIABILITY LIMIT TO PROTECT RED CROSS ASSETS

[Not disclosed]

PART B - NBA INDEMNITIES

75. REFERENCE TO THE BLOOD SERVICE

[Not disclosed]

76. IN-TERM INDEMNITY

[Not disclosed]

77. WHEN THE IN-TERM INDEMNITY APPLIES

[Not disclosed]

78. WHEN GOVERNMENT INSTRUCTIONS CAN BE GIVEN

[Not disclosed]

79. SUBMISSION FOR INSTRUCTION

[Not disclosed]

80. GOVERNMENT INSTRUCTIONS IN ABSENCE OF A SUBMISSION FOR INSTRUCTION

[Not disclosed]

81. EFFECTIVE DATE OF GOVERNMENT INSTRUCTION

[Not disclosed]

82. SUBSEQUENT GOVERNMENT INSTRUCTIONS

[Not disclosed]

83. IN-TERM INDEMNITY EXCESS

[Not disclosed]

84. LIABILITY CAP FOR IN-TERM INDEMNITIES

[Not disclosed]

85. IN-TERM INDEMNITY CLAIMS OUTSTANDING AS AT EXPIRY OR TERMINATION

[Not disclosed]

86. ADDITIONAL COSTS AND REQUIREMENTS

[Not disclosed]

87. RISK EVENTS

[Not disclosed]

88. APPLICATION OF IN-TERM INDEMNITY

[Not disclosed]

PART C: THE NBA END OF TERM INDEMNITIES

89. INDEMNITY UPON TERMINATION OR EXPIRY OF THIS DEED

[Not disclosed]

90. INDEMNITY FOR TRANSMISSION OF DISEASE

[Not disclosed]

91. INDEMNITY DURING HANDOVER

[Not disclosed]

92. PROPOSALS FOR ADDITIONAL NBA INDEMNITY TO SUPPORT ESSENTIAL PROCUREMENT CONTRACTS

[Not disclosed]

93. INDEMNITY FOR EMPLOYEE ENTITLEMENTS

[Not disclosed]

94. PROPOSALS FOR THE NBA INDEMNITY FOR IDENTIFIED RISKS OF LIABILITY

[Not disclosed]

95. ADVANCE PAYMENTS

[Not disclosed]

PART D: GENERAL EXCLUSIONS AND OBLIGATIONS

96. NO OBLIGATION TO COMPROMISE INSURANCE OR PRIVILEGE

[Not disclosed]

97. BLOOD SERVICE'S OBLIGATION TO MITIGATE

[Not disclosed]

98. BLOOD SERVICE'S OBLIGATION TO INFORM

[Not disclosed]

99. INDEMNITY INCLUDES LEGAL COSTS

[Not disclosed]

100. INDEMNITY LIMITS AND EXCLUSIONS

[Not disclosed]

101. NO DOUBLE RECOVERY

[Not disclosed]

102. RIGHTS HELD ON TRUST

[Not disclosed]

103. RELEASES

[Not disclosed]

PART E: MANAGEMENT OF CLAIMS

104. NOTIFICATION OF CLAIMS

[Not disclosed]

105. MAKING A CLAIM ON AN INDEMNITY

[Not disclosed]

106. MANAGEMENT OF CLAIMS BY THE BLOOD SERVICE

[Not disclosed]

107. SUBROGATION

[Not disclosed]

108. MANAGEMENT OF CLAIMS BY GOVERNMENT

[Not disclosed]

Chapter 12

Step-In Rights

Chapter outline

This Chapter sets out when step-in may occur and the rights and obligations of the Parties during the step-in period.

109. STEP-IN RIGHTS

- 109.1 Subject to **clause 109.8**, without prejudice to any other right or remedy which the NBA may have in accordance with this Deed or the Funding and Services Agreement or at Law, if a Trigger Event occurs, the NBA may, in its sole discretion, give a Notice ("**Step-In Notice**") to the Blood Service.
- 109.2 The exercise of a Party's rights and obligations under **clause 72** does not limit the NBA's rights or the Blood Service's obligations set out in this **clause 109**. For clarity, the Blood Service must comply with **clause 109** even if the Parties are engaged in dispute resolution.
- 109.3 If the NBA exercises its rights under this **clause 109**, it must do so to ensure operational business continuity of the Blood Service's obligations in accordance with this Deed and the Funding and Services Agreement, and must not assume general executive and strategic management responsibilities of Blood Service, except as required to ensure operational continuity.
- 109.4 For the purposes of this **clause 109**, a "Trigger Event" occurs if:
- 109.4.1 there has been total or substantial non-performance by the Blood Service, or gross mismanagement by the Blood Service, of its obligations under this Deed or the Funding and Services Agreement, which gives rise to real, substantial and critical adverse effects for the national blood supply which puts the continued operation of the whole or part of national blood supply at risk;
 - 109.4.2 an emergency occurs which, in the reasonable opinion of the NBA, requires the NBA to exercise its rights under this **clause 109** to ensure continuity of the whole or part of the national blood supply;
 - 109.4.3 the Blood Service seeks to terminate this Deed or the Funding and Services Agreement other than in accordance with its legal rights under the Deed, the Funding and Services Agreement or at Law or otherwise repudiates or abandons the Deed;
 - 109.4.4 an Insolvency Event occurs in respect of the Blood Service which was not notified by the Blood Service to the NBA, or addressed, in accordance with this Deed; or
 - 109.4.5 the Blood Service requests the NBA to exercise step-in rights under this **clause 109** in accordance with **clause 109.5**.

- 109.5 The Blood Service may request the NBA to exercise its step-in rights under this **clause 109**. If the Blood Service requests that the NBA exercises its step-in rights under this **clause 109**, the Blood Service must provide details of:
- 109.5.1 the reason the Blood Service requests the NBA to exercise its step-in rights;
 - 109.5.2 the specific obligations specified in this Deed and the Funding and Services Agreement in relation to which the Blood Service requests the NBA to exercise its step-in rights;
 - 109.5.3 the period of time for which the Blood Service requests the NBA to exercise its step-in rights, if known in advance; and
 - 109.5.4 any other information requested by the NBA.
- 109.6 The NBA must reasonably consider any reasonable request made under **clause 109.5** and may agree to issue a Step-In Notice in its absolute discretion.
- 109.7 Subject to **clause 109.8**, if the NBA issues a Step-In Notice in accordance with **clause 109.6**, it may impose such conditions as it sees fit in relation to the exercise of its step-in rights, provided those conditions are consistent with this Deed and the Funding and Services Agreement.
- 109.8 If the NBA issues a Step-In Notice on the basis of a Trigger Event that arises because of a Risk Event, it must also issue one or more Government Instructions in relation to the Risk Event and the proposed step-in activities during the period of step-in. Any Government Instructions issued under this clause must be provided at or as soon as possible after step-in and the Effective Date of those Government Instructions will be the date of step-in.

110. UPON ISSUE OF STEP-IN NOTICE

- 110.1 If a Step-In Notice has been issued to the Blood Service in accordance with **clause 109**:
- 110.1.1 the NBA or its nominee may take absolute control of:
 - 110.1.1.1 all or part of the component of the provision of the Products and Services in respect of which the Trigger Event has occurred; and
 - 110.1.1.2 all or part of the Blood Service's obligations specified in this Deed and the Funding and Services Agreement which are necessary to effectively exercise the step-in rights under this **clause 110** and to remedy the Trigger Event;
 - 110.1.2 the NBA or its nominee may obtain similar products or services elsewhere or make any other arrangements considered necessary by the NBA to maintain continuity of provision of Products and Services;
 - 110.1.3 the NBA or its nominee may temporarily assume total or partial possession, management and operation of the Blood Service's facilities and the provision of Products and Services to the extent required to exercise the step-in rights under this **Chapter 12**;

- 110.1.4 the NBA or its nominee may take such other steps as are, in the reasonable opinion of the NBA or its nominee, necessary to safeguard the provision of the Products and Services;
- 110.1.5 the NBA or its nominee may elect to cease exercising any of its rights referred to above, to the extent and for the period reasonably necessary as determined by the NBA or its nominee having regard to the Trigger Event giving rise to the relevant Step-In Notice; and
- 110.1.6 the Blood Service must provide all reasonable assistance to the NBA or its nominee to ensure that the NBA is able to exercise its rights set out in, and take the steps permitted under, this **Chapter 12**, including by:
 - 110.1.6.1 granting the NBA or its nominee, or using Best Endeavours to procure the grant of, all necessary licences (at no additional charge to the NBA or its nominee and royalty free) to the extent necessary for the NBA to effectively exercise its step-in rights under this **Chapter 12**;
 - 110.1.6.2 granting the NBA or its nominee access all or the relevant part of the Blood Service's facilities and use of the Blood Service's equipment, furnishings and fittings (including the Handover Assets);
 - 110.1.6.3 permitting the NBA or its nominee to use any Contract Material or Blood Service procedures, including Intellectual Property in that Material or those procedures, or other Intellectual Property, except that use of Red Cross and Blood Service's symbol, names or trade mark is only licensed for a period of twelve (12) Months commencing on the date of step-in;
 - 110.1.6.4 using Best Endeavours to provide the NBA or its nominee with access to and the use of relevant Blood Service Personnel;
 - 110.1.6.5 providing the NBA with any information reasonably necessary or desirable for the exercise of its step-in rights under this **Chapter 12**; and
 - 110.1.6.6 ensuring that the NBA or its nominee is able to assist the Blood Service to continue to meet the Blood Service's on-going contractual or other obligations to third parties that relate to the Blood Service's activities affected by the Step-In Notice, without any liability accruing to the NBA in respect of those obligations,

but only to the extent and for the period reasonably necessary having regard to the Trigger Event giving rise to the relevant Step-In Notice and the need for the obligations specified in this Deed and the Funding and Services Agreement to be performed.

- 110.2 Upon the NBA issuing a Step-In Notice, the Blood Service's obligations (specified in this Deed and the Funding and Services Agreement) to provide the Products and Services:

- 110.2.1 which are being provided by the NBA; or

- 110.2.2 in respect of which the NBA is exercising its rights under this **Chapter 12**,

are suspended to the extent and for such period as is necessary to permit the NBA to provide those Products and Services or exercise those rights.

- 110.3 The Blood Service must promptly Notify the NBA if, during any period of step-in, the Blood Service believes that the NBA or its nominee has made material changes to the manner of providing the Products or Services which:
- 110.3.1 are inconsistent with the Fundamental Principles; and
 - 110.3.2 prevent or may prevent the Blood Service from providing the Products and Services in a manner that is consistent with the Fundamental Principles during or following the cessation of the step-in rights.
- 110.4 For the avoidance of doubt, after any step-in the Blood Service has no obligation to act in manner inconsistent with the Fundamental Principles.
- 110.5 If exercising its rights under this **Chapter 12**, the NBA must use Best Endeavours to operate the Blood Service's facilities and to use any Handover Assets, Contract Material, Blood Service procedures and Blood Service Personnel in a manner which is consistent with:
- 110.5.1 the provision of the Products and Services in accordance with this Deed and the Funding and Services Agreement to the extent, and for the period, reasonably necessary (as determined by the NBA) having regard to the Trigger Event giving rise to the relevant Step-In Notice; and
 - 110.5.2 any legal obligations of the Blood Service relevant to the provision of the Products and Services, which arise:
 - 110.5.2.1 in accordance with this Deed and the Funding and Services Agreement;
 - 110.5.2.2 under contracts or legally binding industrial instruments of which the NBA is, or ought reasonably be, aware; and
 - 110.5.2.3 otherwise by Law.
- 110.6 Upon issue of a Step-In Notice, the Blood Service must undertake a Soft Close to determine the financial position of the Blood Service as at the date the Step-In Notice was issued.

111. COST OF EXERCISING STEP-IN RIGHTS

- 111.1 If the NBA exercises its rights under this **Chapter 12**, the NBA is entitled to retain from any Payments due in accordance with this Deed or the Funding and Services Agreement an amount reflecting the costs no longer incurred by the Blood Service in respect of activities undertaken by the NBA or its nominee in exercising its step-in rights under this **Chapter 12**, having regard to the requirements of the Blood Service for continued funds to meet any continuing or additional costs of the Blood Service.
- 111.2 Upon the NBA or its nominee ceasing to exercise its step-in rights, the Blood Service must undertake a Soft Close.
- 111.3 Any material difference between the Soft Close at the commencement and the completion of step-in may be subject to a review by the NBA or its nominee, including to determine whether additional payments are required to meet any financial obligations of the Blood Service.

112. CESSATION OF STEP-IN RIGHTS

112.1 The NBA or its nominee may cease to exercise its rights under this **Chapter 12** if, in its reasonable opinion:

112.1.1 the circumstances giving rise to the Trigger Event in **clause 109.4** have ceased or are able to be appropriately managed by the Blood Service; and

112.1.2 the Blood Service must otherwise reasonably be able to provide the Products and Services and otherwise comply with its obligations specified in this Deed and the Funding and Services Agreement,

following the cessation of the exercise of those rights.

112.2 The NBA must give the Blood Service no less than 60 Business Days' Notice, or such shorter time as is agreed by the Parties or specified in the Step-In Notice issued in accordance with **clause 109.1**, of the time when it will cease to exercise its rights under this **Chapter 12**. Immediately after the time specified in that Notice, the Blood Service must retake control of the provision of Products and Services, and thereafter comply with this Deed and the Funding and Services Agreement and all of its other obligations, provided that Blood Service's costs of doing so are reflected in the Payments.

113. CONSULTATION DURING STEP-IN

113.1 The NBA must ensure that during any period of step-in under this **Chapter 12**, so far as is reasonably practicable:

113.1.1 the NBA or its nominee consults with the Blood Service in relation to the exercise of the rights and powers of the NBA or its nominee under this **Chapter 12**;

113.1.2 the exercise of the rights and powers of the NBA or its nominee under this **Chapter 12** is exercised on the basis of documented management plans Notified to the Blood Service; and

113.1.3 the NBA or its nominee keeps the Blood Service informed of progress in exercise of the rights and powers of the NBA or nominee under this **Chapter 12**.

Chapter 13

Termination and Handover

Chapter outline

This Chapter sets out provisions for novation, termination and handover.

114. NOVATION

- 114.1 Without limiting the NBA's rights under **clause 128** or at Law, the NBA may, by giving Notice to the Blood Service, automatically novate this Deed and the Funding and Services Agreement from the Blood Service to an alternative entity if the Blood Service ceases to exist.
- 114.2 Red Cross must execute all documents and do all other things reasonably necessary to effect, facilitate or record any novation under **clause 114.1**.
- 114.3 If Red Cross decides to transfer the operating division (inclusive of all Handover Assets) known as the Blood Service to a corporate body wholly owned by Red Cross ("**New Entity**"), the Blood Service may propose to the NBA the novation of this Deed and the Funding Services Agreement from the Blood Service to that New Entity in which case the New Entity will then assume all rights and obligations of the Blood Service under this Deed and the Funding Service Agreement from the date of novation.
- 114.4 Subject to **clause 114.5**, if this Deed and the Funding and Services Agreement are to be novated in accordance with **clause 114.3**, the NBA must promptly execute all documents and do all other things reasonably necessary to effect, facilitate or record the novation.
- 114.5 The NBA may not unreasonably refuse or delay its consent to a proposal submitted under **clause 114.3** if it is reasonably satisfied, or ought reasonably to be satisfied after making reasonable enquiry (including requesting information from the Blood Service), that following the proposed novation, the proposed New Entity will have the capability, governance and assets, and will otherwise be enabled, to fully perform the obligations of the Blood Service under this Deed.

115. TERMINATION BY RED CROSS

The Blood Service Termination by Red Cross following step-in

- 115.1 Red Cross may terminate this Deed by giving at least three (3) Months prior written Notice to the NBA (or such shorter period as is agreed in writing by the NBA) if, the NBA or its nominee has exercised step-in rights in accordance with **Chapter 12** and the step-in is continuing at the time Red Cross gives Notice.

Termination by Red Cross following changes in Government policy

115.2 Red Cross may terminate this Deed if, and by giving at least three (3) Months prior written Notice to the NBA (or such shorter period as is agreed in writing by the NBA) if:

115.2.1 there is a change in Government policy that applies to the Australian blood sector;

115.2.2 Government policy as so changed:

115.2.2.1 in the reasonable opinion of Red Cross is inconsistent with the Fundamental Principles; and

115.2.2.2 prevents the Blood Service from providing the Products or Services in a manner that is consistent with the Fundamental Principles.

115.3 For the purposes of **clause 115.2**, a "change in Government policy" means a change in policy in respect of the operation of the Australian blood sector.

Termination by Red Cross following a Force Majeure Event

115.4 Red Cross may terminate this Deed in accordance with **clause 71.3.2** by giving the NBA at least twelve (12) Months prior written Notice (or such shorter period as is agreed in writing by the Parties).

Termination by Red Cross following dispute

115.5 In the event that a dispute is not resolved following completion of the process set out in **clause 72**, Red Cross may terminate this Deed by giving the NBA at least three (3) Months prior written Notice (or such period as is agreed in writing by the Parties).

Termination by Red Cross without cause

115.6 Red Cross may terminate this Deed by giving at least twelve (12) Months prior written Notice to the NBA (or such shorter period as is agreed in writing by the Parties).

General

115.7 The rights of Red Cross set out in this **clause 115**, do not limit any other rights or remedies Red Cross or the Blood Service may have against the NBA arising out of or in connection with this Deed or the Funding and Services Agreement.

116. TERMINATION BY THE NBA

Termination by the NBA for cause

116.1 The NBA may terminate this Deed, effective immediately, by giving Notice to the Blood Service:

116.1.1 if the Blood Service commits a Serious Default, and that default is not capable of remedy;

116.1.2 if the Blood Service commits a Serious Default that is capable of being remedied and fails to remedy the default within 60 Business Days (or such other period as is agreed in writing by the Parties) after receiving Notice of the breach; or

116.1.3 if any of the following events happen:

116.1.3.1 an Insolvency Event occurs; or

116.1.3.2 Red Cross or the Blood Service ceases to carry on business.

116.2 If reasonably feasible, the Blood Service must Notify the NBA as soon as possible after it becomes aware of an Insolvency Event that is reasonably expected to occur. The Blood Service must consult with the NBA on the steps either Party may take to avoid the Insolvency Event.

116.3 If the Parties agree on a solution to avoid an Insolvency Event pursuant to **clause 116.2**, the Deed variation procedure in **clause 121** must be followed to amend this Deed.

116.4 The Blood Service must take all reasonable actions to avoid an Insolvency Event.

Termination by the NBA following a Force Majeure Event

116.5 The NBA may terminate this Deed in accordance with **clause 71.3.2** by giving the Blood Service at least twelve (12) Months prior written Notice (or such shorter period as is agreed in writing by the Parties).

Termination by the NBA following dispute

116.6 In the event that a dispute is not resolved following completion of the process set out in **clause 72**, the NBA may terminate this Deed by giving the Blood Service at least three (3) Months prior written Notice (or such shorter period as is agreed in writing by the Parties).

Termination by the NBA following a change in Government policy

116.7 If a development or change in Government policy is substantially inconsistent with the continued existence of this Deed, the NBA may terminate this Deed by giving the Blood Service at least three (3) Months prior written Notice (or such shorter period as is agreed in writing by the Parties).

116.8 For the purposes of **clause 116.7**, a "development or change in Government policy" means a change in policy in respect of the operation of the Australian blood sector.

Termination by the NBA without cause

116.9 The NBA may terminate this Deed by giving at least twelve (12) Months prior written Notice to the Blood Service (or such shorter period as is agreed in writing by the Parties).

General

116.10 The rights of the NBA set out in this **clause 116**, do not limit any other rights or remedies the NBA may have against the Blood Service arising out of or in connection with this Deed or the Funding and Services Agreement.

117. CONSEQUENCES OF TERMINATION OR EXPIRY

117.1 Upon termination of this Deed for any reason or expiry of the Term (as applicable), and subject to this Deed (including any obligations which survive the termination or expiry of this Deed or the Funding and Services Agreement):

117.1.1 except in relation to each Parties' obligations under **clause 118**, the Parties are relieved from future performance, without prejudice to any right or liability that has accrued at the end of the Handover Period;

117.1.2 the Parties' rights (if any) to recover damages are not affected;

117.1.3 the Parties must comply with all obligations specified in this Deed and Funding and Services Agreement relating to Commonwealth Material, Contract Material and Confidential Information;

117.1.4 the Parties must comply with **clause 118**;

117.1.5 the Blood Service must take all reasonable steps to minimise or avoid any Loss or damage resulting from the termination or expiry;

117.1.6 the NBA must make Payments due in accordance with this Deed and Funding and Services Agreement for the Blood Service's compliance with this Deed and the Funding Services Agreement before the end of the Handover Period;

117.1.7 the Blood Service must stop provision of Products and Services except as otherwise required by **clause 118**;

117.1.8 each Party must return the other Party's Confidential Information provided that each Party may retain any copies of the other Party's Confidential Information that the first-mentioned Party has stored for archival or back-up purposes that it is unable to retrieve despite using Best Endeavours; and

117.1.9 the Blood Service must deliver to the NBA any Handover Assets, which include any prepayments made by the NBA to the Blood Service for its performance of this Deed of the Funding and Services Agreement.

117.2 If the Blood Service is unable to return:

117.2.1 all Confidential Information to the NBA as required by this **clause 117**; or

117.2.2 any other records or assets that are required to be returned to the NBA immediately on termination or expiry of this Deed,

immediately on and from termination or expiry of this Deed, the Blood Service must maintain all applicable protective security measures specified in this Deed and the Funding and Services Agreement until such Confidential Information, records and assets are returned to the NBA.

117.3 The obligations in this **clause 117** survive the termination or expiry of this Deed.

118. HANDOVER OBLIGATIONS

Overview

- 118.1 The purpose of this **clause 118** is to allow for the orderly continuation of the blood supply operations of the Blood Service through another body if this Deed is terminated, or expires and is not renewed. For this purpose, this **clause 118** provides for the handover or other management of the assets and liabilities of the Blood Service, taking into account other provisions of this Deed.

Handover Period

- 118.2 The Handover Period starts on the date this Deed is terminated or expires and continues for a period of up to the earlier of:
- 118.2.1 twelve (12) Months following the date this Deed is terminated or expires (or such other date as the Parties may agree in writing);
 - 118.2.2 the date which is thirty (30) days after the date on which the NBA Notifies the Blood Service that it no longer requires any assistance in relation to handover; and
 - 118.2.3 the date when all of the assets and liabilities of the Blood Service referred to in **clause 118** have been transferred to the NBA, or any third party nominated by the NBA ("**NBA Nominee**").

Survival for Clarity

- 118.3 Notwithstanding any other provisions of this Deed, or the Funding Service Agreement, the terms of this Deed (including in relation to Payments):
- 118.3.1 continue in operation during the Handover Period and any references to termination or expiry of the Term must be read as references to expiry of the Handover Period (except in **clause 118.2**) unless the context otherwise requires;
 - 118.3.2 continue to apply to all Products and Services provided by the Blood Service during the Handover Period; and
 - 118.3.3 survive the termination or expiry of this Deed and the Handover Plan,
- provided that, during the Handover Period, neither Party is required under this Deed to agree with the other Party as to any matters in respect of the provision of Products and Services after the Handover Period.
- 118.4 For the avoidance of doubt, this **clause 118** applies in respect of termination or expiry of this Deed for any reason.

Indemnities during the Handover Period

- 118.5 [Not disclosed. It contains detail of indemnities.]

119. REDUCTION IN SCOPE DURING HANDOVER

- 119.1 During the Handover Period, the NBA may by reasonable Notice reduce the scope of this Deed or the Funding and Services Agreement from the date set out in the Notice (or such other date agreed in writing by the Parties).
- 119.2 If the scope of this Deed or the Funding and Services Agreement is reduced in accordance with **clause 119.1**:
- 119.2.1 the Parties are relieved from future performance, without prejudice, to any right of action that has accrued at the effective date of the reduction in scope;
 - 119.2.2 the NBA is only liable for (in relation to the reduced scope) Payments due in accordance with this Deed or the Funding and Services Agreement before the effective date of the reduction in scope;
 - 119.2.3 the Parties must negotiate in good faith to agree on a proportionate reduction in Payments due after the effective date of the reduction in scope;
 - 119.2.4 the Blood Service must take all reasonable steps to minimise or avoid any Loss or damage resulting from the reduction in scope;
 - 119.2.5 the Blood Service must stop provision of the relevant Products and Services affected by the Notice;
 - 119.2.6 the Blood Service must follow any reasonable direction of the NBA; and
 - 119.2.7 the Blood Service must continue to provide any part of the Products and Services not affected by the Notice.
- 119.3 The NBA is not liable to pay the Blood Service any compensation under **clause 119** in an amount which would, if added to any amounts paid or due, or becoming due, to the Blood Service in accordance with this Deed or the Funding and Services Agreement, exceed the total Payments payable to the Blood Service in accordance with this Deed or the Funding and Services Agreement.

120. HANDOVER PLAN

General

- 120.1 The Parties have agreed a Handover Plan which is included in **Schedule 4 - Handover Plan** that sets out:
- 120.1.1 the operational arrangements (including timeframes) for implementation of the review and transfer of the assets and liabilities of the Blood Service to the NBA or NBA Nominee (and appropriate arrangements in respect of Red Cross Assets), and transfer of personnel to the NBA or NBA Nominee, to take effect at the end of the Handover Period;
 - 120.1.2 any process agreed between the Parties for managing or monitoring compliance with the obligations of this **clause 120** and the Handover Plan (or other handover arrangements agreed by the Parties);

- 120.1.3 arrangements for transition of the Blood Service activities other than under this Deed; and
 - 120.1.4 any other matters consistent with this Deed which the Parties consider should be set out in the Handover Plan.
- 120.2 The Parties must comply with **clause 110** if any Step-In Notice is issued in accordance with **clause 109.4** in respect of a Trigger Event occurring during the Handover Period.

Content of Handover Plan

- 120.3 The Handover Plan sets out (and must continue to set out):
- 120.3.1 the arrangements to apply between the Parties and with any relevant third parties in all situations of termination or expiry of this Deed to ensure the orderly handover of provision of the Products and Services, together with any other Products and Services provided by the Blood Service as agreed by the Parties from the Blood Service to the NBA or NBA Nominee;
 - 120.3.2 arrangements for the continued provision of the Products and Services by the Blood Service during the Handover Period;
 - 120.3.3 arrangements for the transfer to (or use by, and assumption of liability for) the NBA or NBA Nominee of:
 - 120.3.3.1 inventories of Products held by the Blood Service, including starting materials or unfinished Products;
 - 120.3.3.2 Handover Assets (excluding any Red Cross Assets);
 - 120.3.3.3 Handover Contracts;
 - 120.3.3.4 Blood Service Personnel;
 - 120.3.3.5 Intellectual Property of the Blood Service solely used in the performance of the Blood Service's obligations under this Deed and the Funding and Services Agreement (but for the avoidance of doubt excluding any trade marks or branding used by the Blood Service or any Intellectual Property of Red Cross not solely used in respect of the Blood Service, including without limitation the red cross emblem, the Red Cross name and the Blood Service symbol and name); and
 - 120.3.3.6 Handover Liabilities;
 - 120.3.4 arrangements for any information, documents or training to be provided by the Blood Service in respect of **clauses 120.3.3.1 to 120.3.3.6** or otherwise to enable the provision of the Products and Services by the NBA or NBA Nominee, including the period and nature of the training;
 - 120.3.5 arrangements for valuation of the assets and liabilities being transferred from the Blood Service to the NBA or NBA Nominee as required by the Parties for general accounting purposes;

- 120.3.6 any process agreed between the Parties for managing or monitoring compliance with the handover process;
 - 120.3.7 other matters consistent with this Deed which the Parties consider should be set out in the Handover Plan; and
 - 120.3.8 information on any Claims.
- 120.4 The Parties agree that the Handover Plan has to be developed on the basis that:
- 120.4.1 all Handover Assets (excluding any Red Cross Assets) must be transferred to or made available for use by the NBA or NBA Nominee;
 - 120.4.2 all Handover Liabilities must be assumed by the NBA or NBA Nominee; and
 - 120.4.3 to the extent possible and to ensure the on-going efficient and effective provision of Products and Services, Blood Service Personnel must be transferred to the NBA or NBA Nominee in a manner which minimises additional costs arising from the need to make redundancy or other payments to Blood Service Personnel in respect of the termination of employment.
- 120.5 The Blood Service's costs in complying with this **clause 120** are recovered from the NBA in the Payments.

Effect of this Deed on some Deed Assets

- 120.6 Nothing in this Deed affects the Parties' rights and obligations in the Separate Property Agreements. The Parties' handover obligations are subject to the provisions of those agreements in respect of Deed Assets that are assets under those agreements.
- 120.7 The handover obligations in this **Chapter 13** must be planned and undertaken on the basis of **clause 120.6**.

Implementation

- 120.8 During the Handover Period, the Parties must undertake all actions, execute all documents, and do all other things reasonably necessary and appropriate to comply with and implement the Handover Plan in accordance with its terms.
- 120.9 The Parties may review the Handover Plan from time to time to ensure that the Handover Plan remains appropriate to the circumstances of the Parties. Any amendments to the Handover Plan must be agreed by both Parties in writing.
- 120.10 The Parties must comply with the Handover Plan (as varied in accordance with **clause 120.9**).
- 120.11 Without limiting **clause 120.10**, the NBA must make Payments to the Blood Service for any Products and Services that the Blood Service provides in accordance with this Deed in complying with its obligations under this **clause 120**.
- 120.12 The Parties agree that the terms and conditions of this Deed including in relation to Payments apply to the provision of any Products and Services by the Blood Service during the Handover Period under this **clause 120**.

- 120.13 Payments for Products under **clause 120.11** must be calculated in accordance with this Deed on the basis of the Product Unit Payment applying at the date the Products are to be delivered (or if there is no Product Unit Payment applying at that time, the last Product Unit Payment applying under this Deed), and are subject to a reasonable reduction in relation to Services normally associated with the provision of the relevant Products that are not provided by the Blood Service in delivering the Products in accordance with the Handover Plan.
- 120.14 The operation of this **clause 120**, and all other provisions of this Deed necessary to give effect to this **clause 120**, including the Handover Plan, survive the termination or expiry of this Deed for any reason.

Chapter 14

General provisions and interpretation

Chapter outline

This Chapter sets out the general provisions and rules of interpretation that apply to this Deed.

121. VARIATION OF DEED AND FUNDING AND SERVICES AGREEMENT

121.1 No changes may be made to this Deed or the Funding and Services Agreement except by written agreement of both Parties in accordance with:

121.1.1 the change control procedures set out in **clause 122**; or

121.1.2 any other process specified in this Deed or the Funding and Services Agreement or agreed by the Parties.

122. CHANGE CONTROL PROCESS

122.1 Either Party may propose a change to the terms of this Deed or the Funding and Services Agreement.

122.2 The Parties must comply with any specific change control processes applying to identified categories of change in this Deed or the Funding and Services Agreement.

122.3 Except for changes referred to in **clause 122.2**, if a Party wants to change this Deed or the Funding and Services Agreement, that Party must provide a draft Variation Deed substantially in the form of **Schedule 2 - Variation Deed** to the other Party setting out:

122.3.1 the detailed reasons for the proposed change;

122.3.2 the detailed change proposed to this Deed or the Funding and Services Agreement;

122.3.3 a detailed description of any risks associated with the proposed change and how those risks will be mitigated;

122.3.4 the details of any timing or transitional implications arising from the proposed change; and

122.3.5 any other matters reasonably requested by the other Party in relation to the proposed change.

- 122.4 A Party must:
- 122.4.1 consider any proposal provided in accordance with **clause 122.3**; and
 - 122.4.2 respond to the other Party in writing indicating whether it agrees or does not agree with the proposed changes as soon as practicable and in any event within forty-five (45) Business Days.
- 122.5 If a Party does not agree with the proposed change, it must provide the other Party with written reasons as to why it does not agree to the proposed change.
- 122.6 Without limiting **clause 122.5**, if at any time (whether before or after a proposed change is provided in accordance with **clause 122.3**) the NBA gives the Blood Service Notice that a change to this Deed or the Funding and Services Agreement:
- 122.6.1 requires a decision by any Governments in accordance with the National Blood Agreement before it can be agreed by the NBA; or
 - 122.6.2 is required by any Governments in accordance with the National Blood Agreement, the NBA must Notify the Blood Service of any:
 - 122.6.3 additional processes;
 - 122.6.4 applicable timeframes; and
 - 122.6.5 other changed requirements for the process of considering the change,
- which are necessary or appropriate to be followed as a consequence of the National Blood Agreement.

123. OTHER AGREEMENTS

- 123.1 Each Party acknowledges and agrees that the NBA, Governments and the Blood Service may in the future enter other agreements relating to the development and supply of blood and blood related Products and Services, for example cross organisation research and development projects.
- 123.2 The Blood Service must not spend, acquit or otherwise deal with any funding or other amounts paid to the Blood Service in accordance with this Deed or the Funding and Services Agreement for purposes other than those contemplated or permitted by this Deed or the Funding and Services Agreement unless otherwise agreed to in writing by the NBA.
- 123.3 **Clause 123** does not affect the Parties' obligations in respect of Non-Deed Activities in **clause 15**.

124. COMPLIANCE WITH LAWS

- 124.1 The Blood Service must, in performing its obligations in accordance with this Deed and the Funding and Services Agreement, comply with all applicable Laws including, to the extent applicable to the Blood Service, the:
- 124.1.1 *Archives Act 1983* (Cth);

- 124.1.2 *Crimes Act 1914* (Cth);
 - 124.1.3 *Criminal Code 1995* (Cth);
 - 124.1.4 *Disability Discrimination Act 1992* (Cth);
 - 124.1.5 *Freedom of Information Act 1982* (Cth);
 - 124.1.6 *Privacy Act 1988* (Cth);
 - 124.1.7 *Public Interest Disclosure Act 2013* (Cth);
 - 124.1.8 *Racial Discrimination Act 1975* (Cth);
 - 124.1.9 *Sex Discrimination Act 1984* (Cth);
 - 124.1.10 *Therapeutic Goods Act 1989* (Cth);
 - 124.1.11 *Work Health and Safety Act 2011* (Cth); and
 - 124.1.12 *Workplace Gender Equality Act 2012* (Cth).
- 124.2 The Blood Service must, at its own expense, comply with the provisions of any applicable legislation and industrial instruments (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of its Employees and contractors.
- 124.3 If requested by the NBA, the Blood Service provide confirmation to the NBA of compliance with any such legislation or industrial instrument.
- 124.4 The Blood Service acknowledges that:
- 124.4.1 any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of information held in any computer (or, in some cases, any storage device) in the course of performing its obligations in accordance with this Deed or the Funding and Services Agreement may be an offence under Part 10.7 of the *Criminal Code Act 1995* (Cth) of which there are a range of penalties, including a maximum of ten (10) years imprisonment;
 - 124.4.2 the giving of false or misleading information to the NBA is a serious offence under Division 137 of the *Criminal Code Act 1995* (Cth); and
 - 124.4.3 the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of this Deed or the Funding and Services Agreement (other than to whom the Blood Service is authorised to publish or disclose the fact or document) may be an offence under sections 70 and 79 of the *Crimes Act 1914* (Cth), the maximum penalty for which is seven (7) years imprisonment.
- 124.5 Nothing in this Deed or the Funding and Services Agreement is to be taken as an admission or acknowledgement on the part of the Blood Service that it or any of its Personnel are Commonwealth officers for the purposes of the *Crimes Act 1914* (Cth).

124.6 For the avoidance of doubt, the Commonwealth does not, by virtue of any clause of this Deed or the Funding and Services Agreement, make any representation about the interpretation or application of any legislation referred to in this Deed or the Funding and Services Agreement.

125. LEGAL CONNECTION OF THE PARTIES

No agency or partnership

125.1 Neither Party nor any of its Personnel is an Employee, agent, representative, or partner of the other Party by virtue of this Deed or the Funding and Services Agreement.

125.2 A Party must not represent itself, and must ensure that its Personnel do not represent themselves, as being an Employee, agent, representative or partner of the other Party.

No authority to act

125.3 Neither Party has any power or authority to:

125.3.1 act for, or to assume any obligation or responsibility on behalf of, the other Party;

125.3.2 bind the other Party to any agreement;

125.3.3 negotiate or enter into any binding relationship for, or on behalf of, the other Party; or

125.3.4 pledge the credit of the other Party,

except as specifically specified in this Deed or the Funding and Services Agreement or by express written agreement between the Parties.

126. DEFINITIONS AND RULES OF INTERPRETATION

Definitions

126.1 The defined terms in this Deed have the meaning given in **Schedule 1 – Glossary**.

Interpretation

126.2 In this Deed and the Funding and Services Agreement, except if the contrary intention is expressed:

126.2.1 a reference to this Deed is to **clauses 1 to 136**, and the Schedules;

126.2.2 a reference to the Funding and Services Agreement includes all Schedules, attachments and annexures to the Funding and Services Agreement (including the National Services Requirements and Standards and the OBFM), as the context requires;

126.2.3 a word which indicates the singular also indicates the plural and a word which indicates that plural also indicates the singular and a reference to any gender includes other genders;

- 126.2.4 if a word or phrase is given a defined meaning, another part of speech or other grammatical form or expression in respect of that word or phrase has a corresponding meaning;
- 126.2.5 a reference to a clause, paragraph, schedule, attachment or annexure is to a clause or paragraph of, or schedule, attachment or annexure to this Deed or the Funding and Services Agreement as the context requires;
- 126.2.6 a reference to a clause includes a reference to a subclause of that clause;
- 126.2.7 a reference to a document, publication, Commonwealth policy or instrument is a reference to the document, publication, Commonwealth policy or instrument as altered, supplemented or replaced from time to time;
- 126.2.8 a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency unless stated otherwise;
- 126.2.9 a reference to time is to the time in the place where the obligation is to be performed;
- 126.2.10a reference to a party is to a party to this Deed and the Funding and Services Agreement, as the context requires, and includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 126.2.11a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them from time to time;
- 126.2.12a word or expression defined in the *Corporations Act 2001* (Cth) or GST Law has the meaning given to it in those Acts as applicable;
- 126.2.13a reference to the word 'include' or 'including' is to be interpreted without limitation and the meaning of general words is not limited by specific examples introduced by 'for example' or similar expressions;
- 126.2.14any agreement, representation, warranty or indemnity by two or more parties (including if two or more persons are included in the same defined term) binds them jointly and severally;
- 126.2.15any agreement, representation, warranty or indemnity in favour of two or more parties (including if two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 126.2.16a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or the Funding and Services Agreement or any part of those documents;
- 126.2.17if a day on or by which an obligation must be performed or an event must occur is not a Business Day in the relevant location, the obligation must be performed or the event must occur on or by the next Business Day in that location; and
- 126.2.18headings are for ease of reference only and do not affect interpretation.

Interpretation of the principles, objectives and mutual goals

126.3 **Clauses 3 and 4** are not intended to create binding obligations on the Parties and are included as background to the obligations in this Deed.

126.4 However, to the extent that any term of this Deed does not address a particular circumstance or is otherwise unclear or ambiguous in a particular circumstance, that term must be interpreted and construed in a manner that is so far as possible consistent with:

126.4.1 all Laws; and

126.4.2 the principles, objectives and goals set out in **clauses 3 and 4**.

127. NBA AS A GOVERNMENT ENTITY

127.1 The Blood Service acknowledges that the NBA may be subject to, required to comply with, or required to implement the decisions of Governments, including under or in accordance with the National Blood Agreement, in exercising any of its rights and obligations under this Deed or the Funding and Services Agreement.

128. ASSIGNMENT

128.1 Except as provided for in **clause 114**, neither Party may assign or novate any of its rights and obligations under this Deed, or enter into consultations or negotiations for the assignment of its rights under, or the novation of, this Deed, without the prior written consent of the other Party (which may not be unreasonably withheld).

129. COSTS

129.1 Except as otherwise agreed by the Parties in writing, each Party must pay its own costs in relation to preparing, negotiating and executing this Deed and any document related to this Deed

130. COUNTERPARTS

130.1 This Deed may be executed in counterparts, in which case, the date of this Deed will be the date by which all Parties have signed a counterpart of this Deed.

131. GOVERNING LAW AND JURISDICTION

131.1 This Deed is governed by the law of the Australian Capital Territory.

131.2 The Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory to decide any matter arising from or in connection with this Deed or the Funding and Services Agreement.

132. SEVERABILITY

132.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

132.2 If any clause, or part of a clause is illegal, unenforceable or invalid, that clause or part must be treated as removed from this Deed, but the rest of this Deed is not affected and continues in force, except to the extent that the effect of treating that part of this Deed as having been removed would be inconsistent with the intentions of the Parties at the time of entering this Deed.

133. WAIVER

133.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of:

133.1.1 any provision of this Deed or any rights of that Party under this Deed; or

133.1.2 any obligation of, or breach of any obligation by, the other Party.

133.2 A waiver by a Party is only effective:

133.2.1 if it is in writing and issued as a Notice from the relevant Party; and

133.2.2 to the extent set out in such Notice.

133.3 A written waiver by a Party is only effective in relation to the particular obligation, right or breach in respect of which it is given and it is not to be taken as an implied waiver of any other obligation, right or breach or as an implied waiver of that obligation, right or breach in relation to any other occasion.

134. ENTIRE AGREEMENT

134.1 This Deed and represents the Parties' entire agreement in relation to the subject matter of this Deed and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.

135. SURVIVAL

135.1 The following clauses survive the termination and expiry of this Deed:

135.1.1 **clause 28** (Set-off or Recovery of Monies);

135.1.2 **clause 47** (Privacy);

135.1.3 **clause 48** (Confidentiality)

135.1.4 **clause 50** (Intellectual Property), **51** (Moral rights), **53** (Commonwealth Material);

135.1.5 **clause 68** (Blood Service Capacity and Suitability);

135.1.6 **Chapter 11** of this Deed (Indemnities and Management of Claims) except expressly provided otherwise;

135.1.7 **clause 117** (Consequences of Termination or Expiry);

135.1.8 **clauses 118** (Handover Obligations) and **120** (Handover Plan);

135.1.9 the termination provisions in so far as they relate to rights and obligations arising on or after termination;

135.1.10 any clause that are expressed to or which by their nature survive or are intended to survive termination or expiry, including warranties, limitations on liability, licensing and Intellectual Property as well as any definitions or interpretation provisions required to give effect to those provisions; and

135.1.11 all clauses required to give effect to the clauses referred to in **clauses 135.1.1 to 135.1.10**.

136. NOTICES

Notices to be in writing

136.1 Subject to **clause 103**, if this Deed provides for a Notice to be given by a Party, that Notice is only given under this Deed if it is:

136.1.1 in writing, in English and signed by the relevant party;

136.1.2 delivered by hand, posted or sent by electronic mail to the relevant contact for the receiving Party at the address specified in this **clause 136**; and

136.1.3 in the format as may specified in this Deed or such other format as may be agreed in writing by the Parties from time to time.

136.2 Both Parties must ensure that all correspondence that is intended to be a Notice is clearly identified as a Notice, for the benefit of the Party receiving the Notice (for example, by ensuring that the Notice specifies that it is a Notice given under **clause 136** and dated by the Party sending the Notice).

Address for Notices

136.3 The contact address for Notices for each Party is, unless otherwise Notified in writing to the other Party:

Australian Red Cross Blood Service

Australian Red Cross Blood Service
Level 3, 417 St Kilda Road
Melbourne, VIC 3182
Email: deed@redcrossblood.org.au

Australian Red Cross

Australian Red Cross Society
155 Pelham Street
Carlton VICTORIA 3053
Email: bloodservicedeed@redcross.org.au

National Blood Authority

National Blood Authority
Level 2, 243 Northbourne Avenue
Lyneham ACT 2602
Email: Supply.Management.Fresh@blood.gov.au

Time Notice is given

- 136.4 A Notice is taken to be received in accordance with this **clause 136** if it is:
- 136.4.1 delivered by hand, when the Notice is delivered to a representative of the other Party at the relevant address;
 - 136.4.2 sent by post, on the third Business Day after the date of posting if posted within Australia and on the eighth Business Day after the date of posting if posted from one country to another or when the Notice is actually received by the other Party;
 - 136.4.3 sent by electronic mail, a Notice is received, if:
 - 136.4.3.1 it is contained in a Portable Document Format (PDF) attached to the email; and
 - 136.4.3.2 the sender receives a human generated (not automatically generated from the recipient's information system) confirmation that the email has been received by the intended recipient,

provided that, if the receipt, transmission or entry into the information system is not on a Business Day or is after 5.00pm (at the recipient's local time) on a Business Day, the Notice is taken to be received, subject to the requirements above, at 9.00am (at the recipient's local time) on the next Business Day.

Notices that must be issued by Red Cross

- 136.5 Any Notice issued to the NBA under **clause 115** will not be effective unless it is issued by Red Cross.
- 136.6 Any Notice issued to the NBA under any clause not referred to in **clause 136.5** will be effective whether it is issued by Red Cross or the Blood Service.
- 136.7 Subject to **clauses 136.5** and **136.6**, the NBA is entitled to assume that any Notice received from either Red Cross or the Blood Service has been properly issued in accordance with Red Cross and the Blood Service procedures and that any Red Cross or the Blood Service Personnel who have issued the Notice holds the appropriate delegation to allow that person to issue such a Notice on behalf of Red Cross or Blood Service.

Change of address

- 136.8 Each Party must Notify the other of any change in its address or other details for Notices.
- 136.9 If a Party gives the other Party five (5) or more Business Days written Notice of a change to the details specified in this **clause 136** for that Party, any Notice issued in accordance with this Deed is only given or made by that other Party if it is given or made in accordance with those changed details.

EXECUTED AS A DEED on

2016

Executed for and on behalf of **THE
COMMONWEALTH OF AUSTRALIA**
acting through the **NATIONAL BLOOD
AUTHORITY** by its duly authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name of delegate (print)

.....
Position of delegate (print)

Executed by the **AUSTRALIAN RED CROSS
SOCIETY** acting by the following persons or, if
the seal is affixed, witnessed by the following
persons:

.....
Signature of Red Cross board member /
authorised representative

.....
Signature of Red Cross board member /
authorised representative

.....
Name of Red Cross board member / authorised
representative (print)

.....
Name of Red Cross board member / authorised
representative (print)

SCHEDULE 1: GLOSSARY

DEFINITION	MEANING
Action Plan	Has the meaning given in clause 60 .
Additional Activities	Means activities of a type specified in the OBFM for which Additional Payment may be requested by the Blood Service and approved by the NBA.
Additional Payments	Means an Additional Payment which may be requested by the Blood Service and approved by the NBA in respect of Additional Activities or other changed circumstances as specified in the OBFM.
Adverse Event	Means an event or circumstance in which a person who is a recipient of a Product supplied by the Blood Service suffers a non-infectious Blood Product Injury as a direct result of a blood transfusion or donation of a Product.
Annual Supply Estimates ("ASEs")	Means the supply planning estimates of that name specified in the Funding and Services Agreement.
Australian Health Providers	Means those persons specified in, or determined under, the Funding and Services Agreement to be Australian Health Providers, and a reference to a class of Australian Health Providers is to a Class as defined in the Funding and Services Agreement.
Asset Register	Means a register of that name as defined in clause 55.7 .
Auditor-General	Means the Auditor-General for the Commonwealth or equivalent office-holder with jurisdiction over the National Blood Authority.
Australian Red Cross Oversight Cost Reimbursement Payments	<p>Means the amount specified as such in the Funding and Services Agreement.</p> <p>The Australian Red Cross Oversight Cost Reimbursement Payment compensates the Blood Service for the reasonable and verifiable direct cost of the Australian Red Cross Board and senior Australian Red Cross management, and their necessary support staff, in overseeing the operations of, and providing for increased accountability of, the Blood Service.</p>
Authorised Investigator	Has the meaning given in clause 58.2 .

DEFINITION	MEANING
Background IP	Means Intellectual Property (other than Foreground IP and Third Party IP) that was in existence prior to the Commencement Date or is subsequently brought into existence other than by virtue of the performance of this Deed or the Funding and Services Agreement.
Best Endeavours	<p>Means taking such steps that a prudent, determined and reasonable person would consider practicable and would take (or would be expected to take) in the circumstances and as if:</p> <ul style="list-style-type: none"> (a) taking such steps was in that reasonable person's own interests; and (b) that reasonable person desired to achieve the relevant result, having regard to that person's own financial situation and capability. <p>Subject to the requirements in this definition, Best Endeavours may include taking any steps, utilising any mechanisms, and enforcing any rights that may be available to a Party in relation to this Deed or the Funding and Services Agreement.</p>
Blood Product Injury	<p>Means any bodily injury, illness or disease (including death) or mental injury, illness or disease but does not include any injury, illness or disease:</p> <ul style="list-style-type: none"> (a) to the extent that it is pre-existing at the time the injured person received (or should have received) the Product; (b) that results from the Product failing to produce the intended medical effect; (c) that results from a medically inherent or foreseeable risk or outcome related to the treatment of an injury, illness or disease which, if left untreated, would be fatal or might cause injury, illness or disease; (d) that results from an error by non-Blood Service Personnel in administering the Product to the person or if the administering of the Product was not medically justifiable; (e) that results from non-Blood Service Personnel administering the Product to a person for purposes for which the Product was not medically intended or recognised; or (f) that results from medical experimentation.
Blood Sector Policies	Has the meaning given in clause 62 .

DEFINITION	MEANING
Blood Service	The Australian Red Cross Blood Service, a part of the operations of the Australian Red Cross Society whose principal operations relate to processing blood donations from donors for the purpose of provision of the Products and Services.
Blood Service Procurement Contract	A contract or arrangement to which the Blood Service is a party, for any supply of goods or services or provision of property the principal purpose of which is to support the performance by the Blood Service of its obligations under this Deed, and includes a Subcontract.
Business Day	Any day that is not a Saturday or Sunday or a public holiday in a place in which any obligation under this Deed is to be performed and excludes 25 to 31 December inclusive.
Business Plan	Means the annual business plan of that name referred to in clause 34.1 .
Capital Payments	Has the meaning given in the Funding and Services Agreement.
Capital Plan	Means the plan of that name referred to in clause 34.1 .
CERT Australia	Means the national computer emergency response team of that name and which is the point of contact in the Commonwealth for cyber security issues (or the Commonwealth entity which is from time to time responsible for performing that role). As at the Commencement Date, CERT Australia is part of the Commonwealth Attorney-General's Department.
Chief Executive	Means the chief executive (however described) of the relevant Party.
Claim	Means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.
Commencement Date	Means 1 July 2016.
Commonwealth Material	Any Material created by, or provided by, or on behalf of, the National Blood Authority to the Blood Service in accordance with, or for the purposes of, this Deed or the Funding and Services Agreement, or which is copied or derived from Material so provided.
Compliance Statement	Means the statement referred to in clause 40 .
Confidential Information	Means information that is by its nature confidential, and is: (a) agreed in writing by the Parties to be confidential for the purposes of this Deed or the Funding and Services Agreement, prior to the information being disclosed by one Party to the other; or

DEFINITION	MEANING
	<p>(b) is specified in writing by either Party to be confidential information,</p> <p>but does not include information that is or becomes public knowledge other than by breach of this Deed or the Funding and Services Agreement or any other obligation of confidentiality. The Parties agree that the terms and conditions of this Deed and the Funding and Services Agreement are not Confidential Information.</p>
Conflict of Interest	<p>Means, in relation to:</p> <p>(a) the Blood Service or its Personnel (including its board members); and</p> <p>(b) the board of Red Cross or any Red Cross Personnel involved in the Blood Service's activities,</p> <p>except Personnel who are donor centre non remunerated blood donors and who have no management responsibilities, any circumstance, interest or activity which is known to be an actual, potential or perceived conflict between:</p> <p>(c) a duty that any person described in paragraph (a) or (b) of this definition has to the NBA under this Deed or the Funding and Services Agreement; and</p> <p>(d) a personal interest of that person, or a duty of that person to a person other than the NBA,</p> <p>that is likely to:</p> <p>(e) materially adversely impact the Blood Service's ability to perform its obligations under this Deed or the Funding and Services Agreement;</p> <p>(f) lead to the obtaining of an inappropriate benefit; or</p> <p>(f) attract public attention that is likely to disparage Governments or the NBA.</p>
Contingency Plan	<p>Means all plans established by a Party setting out procedures to be followed when events occur which disrupt the ordinary course of business and the obligation of the Blood Service to supply Products and Services to ensure an adequate supply of Products, and includes:</p> <p>(a) in relation to the Blood Service:</p> <p>(i) business continuity plans including pandemic management plans;</p> <p>(ii) the NBSCP; and</p>

DEFINITION	MEANING
	(b) in relation to the NBA: <ul style="list-style-type: none"> (i) the NBSCP; and (ii) pandemic management plans.
Contract Material	Means all Material: <ul style="list-style-type: none"> (a) brought into existence for the purpose of providing the Products or Services in connection with this Deed or the Funding and Services Agreement; (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or (c) copied or derived from Material referred to in paragraphs (a) or (b), but does not include Commonwealth Material. For avoidance of doubt this definition also applies to information created under Subcontracts.
Contracts Register	Means the register referred to in clause 55.9 .
Core KPI Targets	Means the core key performance targets set out in the Funding and Services Agreement.
Core KPIs	Means the core key performance indicators set out in the Funding and Services Agreement.
Corporate Risk Reserve	Has the meaning given in the Funding and Services Agreement.
Corporations Act	Means the <i>Corporations Act 2001</i> (Cth).
Correctly Rendered Invoice	Means an invoice complying with the requirements of clause 26.1 .
Data Governance Procedure ("DGP")	Has the meaning given in clause 49.15 .
Deed	Means this Deed.
Deed Asset	Means all property (whether real, personal, tangible or intangible) owned by the Blood Service or in relation to which the Blood Service has any right of possession, control or use and which: <ul style="list-style-type: none"> (a) is used by the Blood Service, or is available or held ready for use by the Blood Service, for or in connection with the carrying out of the Blood Service's obligations specified in this Deed or the Funding and Services Agreement (including Intellectual Property);

DEFINITION	MEANING
	<p>(b) is made available to the Blood Service by the NBA or a Government for or in connection with the carrying out of the Blood Service's obligations in accordance with this Deed or the Funding and Services Agreement;</p> <p>(c) is created, acquired or made available through the use of money paid to the Blood Service in accordance with this Deed or the Funding and Services Agreement for the purpose of the Blood Service performing its obligations under this Deed or the Funding and Services Agreement;</p> <p>(d) was created, acquired or made available through the use of money paid to the Blood Service by the NBA or a Government prior to the Commencement Date if the money was paid for the purposes of activities relating to Products and Services (or similar products or services) including under the Previous Deed of Agreement; or</p> <p>(e) was made available to the Blood Service by the NBA or a Government prior to the Commencement Date for the purposes of activities relating to Products and Services (or similar products or services) including under the Previous Deed of Agreement,</p> <p>but does not include any asset owned by Red Cross and not principally used by the Blood Service in providing the Products and Services.</p>
Dispute Notice	Has the meaning given in clause 72 .
Effective Date	Means the date of commencement of a Government Instruction referred to in clause 81 .
Emergency Infectious Disease	Has the meaning given in the Funding and Services Agreement.
Emerging, Re-emerging and Emerged Infectious and Non-Infectious Disease (" EREEID ")	Has the meaning given in clause 32.3.2 .
Employee	Means a person who has entered into or works in accordance with a contract of service, whether by way of manual labour, clerical work or otherwise and whether such contract is express or implied, oral or in writing.
Expiry Date	Means 30 June 2025.
Extraordinary Circumstances	Has the meaning given in the Funding and Services Agreement.
Extraordinary Review	Has the meaning given in clause 56.1 .

DEFINITION	MEANING
Fault	Means any tortious (including without limitation, negligent) or unlawful act or omission, but for avoidance of doubt does not include breach of contract.
Force Majeure Event	Means an act or event that: <ul style="list-style-type: none"> (a) is beyond the reasonable control of that other Party (not including its Personnel); (b) continues for 20 Business Days or more (or such other period as is agreed between the Parties); and (c) was not reasonably foreseeable by the other Party.
Foreground IP	Means any Intellectual Property which is created under or otherwise in connection with this Deed or the Funding and Services Agreement, other than Third Party IP.
Financial Year	Meaning any 12 Month period from 1 July to 30 June.
Fundamental Principles	The Fundamental Principles of the International Red Cross and Red Crescent Movement adopted by the International Conference of the Red Cross and Red Crescent from time to time which are, as at the Commencement Date, set out in clause 3.4 .
Funding and Services Agreement	The agreement entered into between the Parties referred to in clause 6 and 8 , as varied, replaced or subsequently agreed from time to time.
Government(s)	Means the Government of the Commonwealth of Australia or of any Australian State or Territory which is a signatory to the National Blood Agreement.
Government Instruction	Means an instruction issued by the NBA in accordance with the process set out in clause 78 .
Grant	Has the meaning given in the Funding and Services Agreement.
GST	Means Goods and Services Tax.
GST Law	Has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Guidance Letter	Has the meaning given in the Funding and Services Agreement.
Handover Assets	Means: <ul style="list-style-type: none"> (a) Deed Assets; and

DEFINITION	MEANING
	<p>(b) all consumables (including Products and starting blood or blood components for the manufacture of Products) owned by the Blood Service or in relation to which the Blood Service has any right of possession, control or use, and which wholly or partly:</p> <ul style="list-style-type: none"> (i) are used by the Blood Service, or are available or held ready for use by the Blood Service, for or in connection with the carrying out of the Blood Service's obligations in accordance with this Deed or the Funding and Services Agreement; (ii) are made available to the Blood Service by the NBA or a Government for or in connection with the carrying out of the Blood Service's obligations in accordance with this Deed or the Funding and Services Agreement; (iii) are created, acquired or made available through the use of money paid to the Blood Service in accordance with this Deed or the Funding and Services Agreement; (iv) were created, acquired or made available through the use of money paid to the Blood Service by the NBA or a Government prior to the Commencement Date if the money was paid for the purposes of activities relating to Products and Services (or similar products or services) including under the Previous Deed of Agreement; and (v) were made available to the Blood Service by the NBA or a Government prior to the Commencement Date for the purposes of activities relating to Products and Services (or similar products or services) including under the Previous Deed of Agreement; and <p>(c) any cash reserves held by the Blood Service in accordance with the Funding and Services Agreement.</p>
Handover Contracts	Means all contracts entered into by the Blood Service in the ordinary course of its business under this Deed, including leases, each of the Subcontracts, Blood Service Procurement Contracts and contracts with National Blood Suppliers.
Handover Liabilities	Includes all Claims and demands against or involving the Blood Service and liabilities or obligation (whether actual, contingent or prospective) including for any Loss of the Blood Service, whensoever occurring, relating to or arising from the ordinary course of business under this Deed or the Previous Deed.
Handover Period	Means the period referred to in clause 118.2 .
Handover Plan	Means the plan referred to in clause 120 .

DEFINITION	MEANING
Hard Close	Means the accounting processes undertaken by an organisation in order to generate the annual financial statements. This process includes undertaking the full range of accruals, provisions, contingencies, stock takes and reconciliations with the financial information determined in a robust manner, with a high degree of materiality, so that the reports are capable of being scrutinised by external auditors and meet the requirements of external governing accounting and auditing authorities/statutory reporting.
Health Crisis Situation	Means the circumstances which constitute an emergency and which require action to be taken other than in the ordinary course of business to ensure an adequate supply of Products and Services, including without limitation any situation in which the National Blood Supply Contingency Plan is activated in respect of any Products under this Deed.
Horizon Scanning Report	Means the report referred to in clause 32.4 .
Identified Safety Initiative	Means a business case submitted by the Blood Service for a new or varied activity within the Scope of Activities which is intended to reduce or avoid the risk of harm arising from the collection of blood and Products or in the use of a Product.
Illegal Worker	Has the meaning given in clause 63.44 .
Indemnity Claim	Means any request or claim made by the Blood Service to be indemnified pursuant to any indemnity granted by the NBA in accordance with this Deed.
Independent Expert	Has the meaning given in clause 72.4 .
Information Security Manual ("ISM")	Means the manual produced by the Australian Signals Directorate ("ASD") which governs the security of government ICT systems available at http://www.asd.gov.au/infosec/ism/ .
Initial Dispute Notice	Has the meaning given in clause 72.2 .
Insolvency Event	<p>In respect of the Blood Service means the occurrence of:</p> <ul style="list-style-type: none"> (a) the Blood Service ceasing to exist or to provide Products and Services; (b) the Blood Service or Red Cross ceasing to be able to pay its debts as they fall due; (c) Red Cross or the Blood Service entering into liquidation, bankruptcy or any similar arrangement or has an external controller, liquidator or other form of administrator appointed; (d) any action being commenced to wind up the affairs of Red Cross or the Blood Service; or

DEFINITION	MEANING
	<p>(e) Red Cross or the Blood Service becoming insolvent or presumed insolvent for the purposes of the Corporations Act,</p> <p>where:</p> <p>(f) the Blood Service will be Insolvent for the purposes of this Deed if an Insolvency Event has incurred in respect of the Blood Service;</p> <p>(g) Insolvency has a corresponding meaning; and</p> <p>(h) for the purposes of determining the application of this definition, that part of Red Cross comprising the Blood Service must be treated as if it were a separate legal entity from other parts of Red Cross.</p>
Intellectual Property ("IP")	<p>Means:</p> <p>(a) any copyrighted work, trade mark, trade secret, service mark, design, drawing, patent, know-how, secret process and other property to which similar proprietary rights attach, and the rights to the registration of those rights; and</p> <p>(b) any application or right to apply for registration of any of the rights in the property in paragraph (a),</p> <p>whether created, formed or arising before or after the date of this Deed in Australia or elsewhere, but, for the avoidance of doubt, for the purpose of this Deed does not include the symbol and names of Red Cross and the Blood Service.</p>
Internal Audit Plan	Means the plan of that name referred to in clause 58.19 .
International Standard 31010	Means International Standard ISO/IEC 31010:2009–Risk Management.
Inventory Register	Means the register referred to in clause 55.8 .
IP Register	Means the register referred to in clause 55.4 .
Jurisdictional Blood Committee ("JBC")	Means the committee of that name referred to in the National Blood Agreement.
Known Blood Borne Disease	Means a blood borne disease as specified in the Funding and Services Agreement or as otherwise agreed by the Parties in writing from time to time.
Law	Means any applicable Commonwealth, State, Territory or local Government statute, regulation, by-law, ordinance, proclamation or other or subordinate legislation in force from time to time, including the common law and equity.

DEFINITION	MEANING
Legal Services Directions	Means the Legal Services Directions 2005 made under section 55ZF of the <i>Judiciary Act 1903</i> (Cth) (as amended from time to time).
Loss	Means all losses, liabilities, damages, fines, costs, interest, fees and expenses (including legal costs and expenses on a solicitor/own client basis and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties and the value of internal management and staff time).
Material	Includes documents, equipment, software, goods, information and data stored by any means, but does not include any Products.
Month	Means calendar month.
Moral rights	Rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world.
Movement	Means the International Red Cross and Red Crescent Movement referred to in clause 3.4.1 .
National Blood Agreement	Means the agreement of that name referred to in the <i>National Blood Authority Act 2003</i> (Cth).
National Blood Arrangements	Has the meaning given in the <i>National Blood Authority Act 2003</i> (Cth).
National Blood Supplier	Means any person who is or might reasonably be expected to become a party to a contract, agreement or other arrangement with the Commonwealth for the supply of Products and Services in accordance with the <i>National Blood Authority Act 2003</i> (Cth) and Notified (by name or by class) by the NBA.
National Blood Supply Contingency Plan ("NBSCP")	Means the plan designed to guide the National Blood Authority, and other relevant stakeholders, in facilitating and coordinating an appropriate national response in the event of a domestic threat or disaster that affects the provision of a safe and adequate blood supply in Australia.
National Haemovigilance Program	Means the National Haemovigilance Program defined in the Strategic Framework for the National Haemovigilance Program by the National Blood Authority, as amended from time to time
National Managed Fund ("NMF") Memorandum of Understanding ("MoU")	Means the financial and administrative arrangement reflected in a Memorandum of Understanding (MOU) dated 1 July 2005, and as subsequently amended, entered into by the Commonwealth of Australia, the States, the Territories and the Blood Service to provide, subject to the terms of the MOU, certain blood and blood products liability cover to the Blood Service.

DEFINITION	MEANING
NBA	The Commonwealth entity of that name established under the <i>National Blood Authority Act 2003</i> (Cth).
NBA Nominee	Means an entity nominated by the NBA.
New Entity	Has the meaning given in clause 114.3 .
Non-Handover Assets	Means an asset that is not a Handover Asset.
non-corporate Commonwealth entity	Has the meaning given in the <i>Public Governance, Performance and Accountability Act 2014</i> (Cth).
Non-Deed Activities	Has the meaning given in clause 15.1 .
Notice	A written notice, consent, information, application, request, proposal, approval or agreement under this Deed that is sent in accordance with clause 136 . Notify and Notified have a corresponding meaning.
Notifiable Event	Has the meaning given in the Notifiable Event NSR&S.
NSR&S	Means the National Service Requirements and Standards specified in the Funding and Services Agreement.
OBFM	Means the Output Based Funding Model included in the Funding and Services Agreement.
Official Information	Means any classified information developed, received or collected by or on behalf of the Commonwealth, whether through the NBA or any other agency or any other Commonwealth contracted service provider.
Other Payments	Means Other Payments determined in accordance with the Funding and Services Agreement.
Parliament	Means the Parliament of the Commonwealth of Australia.
Party	Means the NBA or the Blood Service, as the context requires. Parties has a corresponding meaning.
Payments	Means those amounts which are to be paid by the NBA to the Blood Service under this Deed, in accordance with the Funding and Services Agreement.
Person	Includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal entity and any executor, administrator or successor in law of the person.
Personal Information	Has the meaning given in the <i>Privacy Act 1988</i> (Cth).
Personnel	In relation to a Party means its officers and Employees, agents, and Subcontractors.

DEFINITION	MEANING
Plasma Fractionator	Means a Party to a contract with the NBA for the fractionation of Australian plasma.
Previous Deed of Agreement	Means the Deed of Agreement between the Commonwealth of Australia acting through and represented by the National Blood Authority and the Australian Red Cross dated 21 August 2006 in relation to national blood and blood product supply activities as amended from time to time.
Privacy Commissioner	The Privacy Commissioner for the Commonwealth or equivalent office-holder (if any) with jurisdiction over the NBA.
Procedures Register(s)	Means a register referred to in clause 55.5 .
Procurement Standards	Means the Blood Service procurement policies, procedures and templates referred to in clause 16.1 .
Product	Means a product specified in the Funding and Services Agreement, and a reference to a Product Group is to a Product Group specified in Funding and Services Agreement.
Product Unit Payment	Has the meaning given in the Funding and Services Agreement.
Proposed Contract	Has the meaning given in clause Error! Reference source not found..
PSPF	Means the Commonwealth Protective Security Policy Framework.
Public Announcement	Means any announcement that is intended for distribution to the general public or to a specific class of the public, or any matter of public notice, interest or debate and includes: <ul style="list-style-type: none"> (a) an announcement that is intended for distribution to the general public or to a specific class of the public; or (b) any matter of public notice, interest or debate that arises out of or in connection with this Deed or the subject matter of this Deed.
Quarterly Performance Report	Has the meaning given in the Funding and Services Agreement.
Recipient	Has the meaning given in clause 29 .
Red Cross Assets	Means the assets owned by Red Cross and not principally used by the Blood Service in providing Products and Services.
Red Cross (Australian Red Cross Society)	Means the Australian Red Cross Society, a body corporate and politic established by Royal Charter.
Relevant Claim	Means a Claim arising out of, or based upon, attributable to, or in respect of a single act, error or omission, or a series of acts, errors or omissions, consequent upon or attributable to one source or original cause, or in respect of a number of similar or related matters.

DEFINITION	MEANING
Repayment Notice	A written Notice requiring the Blood Service to repay the part of the Payments set out in the Notice, referred to in clause 28.3 .
Reporting Indicators	Means the areas of reporting that the Blood Service must report against, as notified by the Blood Service to the NBA in accordance with clause 39.6 .
Research and Development Framework ("R&D Framework")	Means the framework referred to in clause 35.1 .
Risk Event	Means an event specified in clause Error! Reference source not found..
Risk Register	Means the register referred to in clause 66.2 .
Risk Management Audit	Means an audit of that name referred to in clause 58.13 .
Risk Management Plan	Means the plan referred to in clause 66.1 .
Royal Charter	The Red Cross Royal Charter referred to in clause 1.1.2 , as varied by Supplemental Charters issued by Letters Patent.
Rules	The Rules of Red Cross as approved by the Governor-General of the Commonwealth of Australia.
Scope of Activities	Means the scope of activities set out in the Funding and Services Agreement.
Senior Executive	Means the Chief Executive Officer of the Blood Service and his/her direct reports.
Separate Property Agreements	Means the agreements in force at the Commencement Date between the NBA, the Blood Service and certain third parties, relating to the financing, construction, leasing, and maintenance of the Blood Service's principal manufacturing sites in Sydney and Melbourne.
Serious Default	For the purposes of clauses 56.1.3 , Error! Reference source not found., Error! Reference source not found. and 116.1 , a serious default is a breach by the Blood Service that: <ul style="list-style-type: none"> (a) results in a total or substantial failure to provide the Products and Services in accordance with this Deed; or (b) otherwise is a total or substantial failure to meet the requirements of this Deed, and which arises from an act or omission within the reasonable control of the Blood Service.
Service	Means a service which is, or is required to be, provided by the Blood Service under this Deed.

DEFINITION	MEANING
Soft Close	Means the accounting processes used to facilitate periodic financial statements, at various times throughout the Financial Year (usually monthly), in order to provide an organisation's management and governing body with key financial information for internal use. The process is very similar to a Hard Close, but a soft close usually has less attention to detail, especially with regard to balance sheet items (i.e. no physical stock take of inventory, asset valuation etc).
Specified Act	Has the meaning given in clause 51.2 .
Specified Payments	Has the meaning given in the Funding and Services Agreement.
Starting Plasma	Has the meaning given in the Funding and Services Agreement.
Statement of Expectations	Means the document referred to in clause 12 .
Step-In Notice	A Notice referred to in clause 109.1 .
Strategic Plan	A plan of that name referred to in clause 34.1.1 .
Subcontractor	Means an entity engaged under a Subcontract and that entity's directors, officers, Employees, subcontractors, agents and consultants.
Subcontract	Means a contract under which a material obligation to be performed by the Blood Service under or in accordance with this Deed or the Funding and Services Agreement is to be outsourced to any entity or person.
Submission for Instruction	Means a submission for instruction under Chapter 11, Part B which meets the requirements set out in the Funding and Services Agreement.
Supplier	Has the meaning given in clause 29 .
Tax Invoice	Means an invoice that complies with <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Technical Master File or TMF	Means the Blood Service's Technical Master File as approved by the TGA from time to time.
Term	Means the term of this Deed, calculated in accordance with clause 7 (including any extension of the Term).
Third Party IP	Means Intellectual Property that is owned by a party other than the Commonwealth, Red Cross, Blood Service or any Subcontractors of Red Cross or the Blood Service.

DEFINITION	MEANING
<i>Therapeutic Goods Act 1989</i> (Cth)	Means the <i>Therapeutic Goods Act 1989</i> (Cth) and all regulations and subordinate legislation or instruments made under that Act (or, if that Act is repealed or substantially amended in whole or in part, the other Act or Acts which substitute for or replace that Act in whole or in part).
TGA	Means the Therapeutic Goods Administration or the body responsible for administering the provisions of the <i>Therapeutic Goods Act 1989</i> (Cth) from time to time.
TG Listing	Means listing under the <i>Therapeutic Goods Act 1989</i> (Cth).
TG Registration	Means registration under the <i>Therapeutic Goods Act 1989</i> (Cth).
Trigger Event	Has the meaning given in clause 109.4 .
Value Added Services	Has the meaning given in the Funding and Services Agreement.
Variation Deed	Means a document substantially in the form of the document at Schedule 2 - Variation Deed which is used to implement and record changes to this Deed and Funding and Services Agreement.
Whole-of-Government Policies	Means any whole-of-government policies specified in this Deed or the Funding and Services Agreement.
WHS Legislation	Means any legislation relating to work health and safety including: <ul style="list-style-type: none"> (a) the <i>Work Health and Safety Act 2011</i> (Cth); (b) the <i>Work Health and Safety Regulations 2011</i> (Cth); and (c) any corresponding WHS law as defined in section 4 of the <i>Work Health and Safety Act 2011</i> (Cth).

SCHEDULE 2: VARIATION DEED

This Variation Deed (including its attachments, if any) serves to vary the *[Deed/Funding and Services Agreement]* executed by the NBA and the Blood Service on *[date]* (the *[Deed/Funding and Services Agreement]*) in accordance with the terms set out below. Unless specifically stated in this Variation Deed, all terms and conditions of the *[Deed/Funding and Services Agreement]* (including all accrued rights and liabilities of the Parties) continue unaffected.

[Note: This Variation Deed must be used to vary this Deed and the Funding and Services Agreement unless this Deed or the Funding and Services Agreement otherwise provide or permit a change to be made in another manner.]

1	Variation Deed number	[...INSERT...]
2	Raised by	[...INSERT...]
3	Details of change (use attachments if required)	[...INSERT...]
4	Reasons for the change	[...INSERT...]
5	Risks associated with the change and how risks will be mitigated	[...INSERT...]
6	Date the changes set out in this Variation Deed will take effect	[...INSERT...]
7	Transitional implications arising from the change	[...INSERT...]
8	Business case(s) required by the Deed or Funding and Services Agreement in relation to the change	[...INSERT...]
9	Specific matters required to be addressed in relation to the change	[...INSERT...]
10	Effect on activities under the [Deed/Funding and Services Agreement]	[...INSERT...]

11	Plan for implementing the change	[... <i>INSERT</i> ...]
12	Effect on Payments	[... <i>INSERT</i> ...]
13	Effect on Key Performance Indicators	[... <i>INSERT</i> ...]
14	Other relevant matters (including matters requested by the other Party)	[... <i>INSERT</i> ...]

SCHEDULE 3: DEED OF SECURITY

PARTIES

THE COMMONWEALTH OF AUSTRALIA, acting through and represented by the National Blood Authority (**Commonwealth**)

AUSTRALIAN RED CROSS SOCIETY (Red Cross), a body corporate and politic established by Royal Charter dated 28 June 1941, acting through that part of its operations known as the Australian Red Cross Blood Service (**Blood Service**)

BACKGROUND

- A The NBA and the Blood Service are parties to the Deed.
- B Under the Deed, the Blood Service is required to provide security over the Products.
- C The Parties have agreed that security be given on the terms of this Deed of Security.

OPERATIVE PROVISIONS

1. Charge

- 1.1 To secure performance of the Secured Obligations under the Deed, the Blood Service as beneficial owner charges in favour of the NBA all its right, title and interest in, to, under or derived from the Charged Property.
- 1.2 The charge created by **clause 1.1** of this Deed of Security is a first ranking charge.
- 1.3 The charge created by **clause 1.1** of this Deed of Security operates subject to **clause 1.5** of this Deed of Security, as a floating charge, over all the Charged Property.
- 1.4 Subject to **clauses 1.5** and **3** of this Deed of Security, the Blood Service may, in the ordinary course of its operations and as permitted by the Deed, dispose of or deal with any of the Charged Property from time to time.
- 1.5 This Charge will cease to operate as a floating charge and will operate as a fixed charge, and the right conferred by **clause 1.4** of this Deed of Security for the Blood Service to dispose of or deal with the Charged Property must be withdrawn, automatically and immediately in respect of all the Charged Property:
 - 1.5.1 in the event of the Blood Service's Insolvency; or
 - 1.5.2 upon this Charge being enforced by the NBA under **clause 2** of this Deed of Security.

1.6 If by virtue of **clause 1.5** of this Deed of Security this Charge comes to operate as a fixed charge in respect of the Charged Property, the NBA may, in its discretion, and at any time by notice of the Blood Service, restore to the Blood Service the right in the ordinary course of its operations and in accordance with the Deed to dispose of or deal with the Charged Property and thereupon this Charge will again operate as a floating charge and not as a fixed charge in respect of the Charged Property.

2. Enforcement

2.1 This Charge will at the option of the NBA become enforceable in each of the following events:

2.1.1 if a Trigger Event occurs; or

2.1.2 if the Deed is terminated or expires.

2.2 This Charge may be enforced without the necessity of any notice to or of any consent or concurrence on the part of the Blood Service or any other person, and any statutory requirement for notice or lapse of time is waived by the Blood Service.

3. Powers of the NBA on enforcement

3.1 The NBA may, at any time after this Charge becomes enforceable and without giving any notice, do any act or thing which the Blood Service is permitted to do under the Deed in respect of the Charged Property.

4. Protection of the NBA

4.1 The NBA is not obliged to give any notice of this Charge to any person, or to enforce payment of any moneys payable to the Blood Service, or to take any steps or proceedings for any such purpose, but the NBA may do so if it thinks fit. The NBA will not be answerable for any omission or delay or for any involuntary losses or irregularities which may happen in or about the exercise or non-exercise of any powers, rights or remedies conferred on the NBA by this Deed of Security.

5. Continuing security

5.1 This Charge is a continuing security despite partial satisfaction or performance of any Secured Obligation or any other matter or thing whatever until a final discharge of this Charge is given to the Blood Service and will continue to apply to all remaining present and future Secured Obligations.

6. Representations and warranties

6.1 The Blood Service represents and warrants to the NBA that:

6.1.1 the obligations of the Blood Service under this Charge rank and will continue to rank at all times in priority to its present and future unsecured and unsubordinated obligations (including, without limitation, contingent obligations) other than those which are mandatorily preferred by law; and

6.1.2 the Charged Property is and will remain free from all other Security interests.

7. Statutory powers

- 7.1 The powers conferred on the NBA by any statute are in addition to the powers expressly conferred by this Deed of Security but are negated or varied only so far as they are inconsistent with the terms and provisions expressed in this Deed of Security.
- 7.2 Any statute, proclamation, order, regulation, ordinance or moratorium whether now existing or to come into force in the future which operates directly or indirectly so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers or remedies given by this Deed of Security or accruing to the NBA, or to modify, vary or affect in favour of the Blood Service the obligations of the Blood Service under this Deed of Security, is hereby negated and excluded to the full extent that the Blood Service may lawfully so agree.

8. Discharge

- 8.1 When the NBA is satisfied that all the present and future Secured Obligations have been performed or satisfied in accordance with the provisions of the Deed, the NBA agrees, at the request of the Blood Service, to recovery, surrender or release (whatever the case requires) to the Blood Service or as it directs, the Charged Property or such part of it as then remains charged in favour of the NBA, freed and discharged from this Charge and all of its powers, authorities and provisions.

9. Definitions and interpretation

10. Definitions

- 10.1 In this Deed of Security, the definitions set out in the Deed apply and, unless the context otherwise requires, the following definitions also apply:
- 10.1.1 "**Charge**" means, as the context requires, this Deed of Security or the security constituted by this Deed of Security.
- 10.1.2 "**Charged Property**" means all the right, title and interest of the Blood Service in the Products.
- 10.1.3 "**Deed**" means the Deed of Agreement between the NBA and the Blood Service executed on [Date to be completed].
- 10.1.4 "**Secured Obligation**" means the supply obligations of the Blood Service.
- 10.1.5 "**Security Interest**" means:
- 10.1.5.1 a mortgage, pledge, lien, charge, assignment, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement (including, without limitation, any set-off or 'flawed-asset' arrangement) having the same or equivalent commercial effect as a grant of security; or
- 10.1.5.2 an agreement to create or give any arrangement referred to in **clause 10.1.5.1**.
- 10.1.6 "**Trigger Event**" has the same meaning as applies in the Deed.

EXECUTED AS A DEED

Executed for and on behalf of **THE COMMONWEALTH OF AUSTRALIA** acting through the **NATIONAL BLOOD AUTHORITY** by its duly authorised delegate:

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness (print)

.....
Name of delegate (print)

.....
Position of delegate (print)

Executed by the **AUSTRALIAN RED CROSS SOCIETY** acting by the following persons or, if the seal is affixed, witnessed by the following persons:

.....
Signature of Red Cross board member or authorised representative

.....
Signature of Red Cross board member or authorised representative

.....
Name of Red Cross board member or authorised representative (print)

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SCHEDULE 4: HANDOVER PLAN



Deed of Agreement Handover Plan

1. Introduction

- 1.1 The Deed of Agreement ("**Deed**") requires the Parties to develop and agree a Handover Plan.¹
- 1.2 This Handover Plan sets out the arrangements to apply between the Parties, and with any relevant third parties, in all situations of termination or expiry of the Deed to ensure the orderly handover of the business and assets of the Australian Red Cross Blood Service ("**Blood Service**") to the NBA or any third party nominated by the NBA ("**NBA Nominee**") on an "as is" basis. The Parties intend the handover process will result in a single transfer of the business and assets of the Blood Service from the Australian Red Cross Society ("**Red Cross**") to the NBA, or the NBA Nominee, on one transfer date ("**Transfer Date**").
- 1.3 In the event of termination or expiry of the Deed, the Deed requires Red Cross, the Blood Service and NBA to undertake all actions, execute all documents, and do all things necessary and appropriate to comply with and implement this Handover Plan in accordance with its terms.²
- 1.4 Unless otherwise defined or the context otherwise requires, terms defined in the Deed have the same meanings when used in this Handover Plan.

2. Handover Process

Handover Period

- 2.1 The Handover Period is prescribed by the Deed³ and commences on termination or expiry of the Deed ("**Commencement Date**").
- 2.2 During the Handover Period the Blood Service will continue to provide the Products and Services in accordance with the Deed and the NBA will continue to fund and receive the Products and Services in accordance with the Deed.
- 2.3 The NBA must use reasonable endeavours to nominate to whom the business of the Blood Service will be transferred to as soon as practicable after the Commencement Date.

Transition Committee

- 2.4 The NBA will appoint and manage a Transition Committee. The Blood Service will be represented on the Transition Committee by a person(s) nominated by Red Cross. The Transition Committee will develop a Transition Plan to be agreed with Red Cross and NBA, which will detail the activities, timing and deliverables of activities to enable the business and assets of the Blood Service to be transferred to the NBA or the NBA Nominee in accordance with the Deed as soon as practicable and in any event within twelve (12) months from the Commencement Date.

¹ See clause 120

² See clause 120.8

³ See Schedule 1: Glossary

- 2.5 In particular the Transition Plan will detail the activities, timing and deliverables of activities for the transfer to, or in certain limited circumstances, use by, the NBA or NBA nominee of:
- 2.5.1 Inventories of Products held by the Blood Service, including starting materials or unfinished Products;
 - 2.5.2 Handover Assets (excluding Red Cross Assets);
 - 2.5.3 Handover Contracts;
 - 2.5.4 Blood Service Personnel;
 - 2.5.5 Intellectual Property of the Blood Service and Blood Service Procedures (but for the avoidance of doubt excluding any trademarks or branding used by the Red Cross or the Blood Service, including without limitation the red cross emblem, the Red Cross name and the Blood Service symbol and name); and
 - 2.5.6 Handover Liabilities,
- (together "**the Undertaking**").
- 2.6 The Transition Plan will set out how handover of the Undertaking ('Handover') will be effected including assignment, novation or termination of contracts, transfers of land or leases and transfer of employees.
- 2.7 The Transition Plan must be developed within one month of the Commencement Date, and submitted to the NBA and Red Cross for approval. The Transition Plan may be amended as agreed by the NBA and Red Cross as required. The Transition Plan will only cover activities relevant to Handover and preparation for Handover, and not standard Blood Service activities. Once Red Cross has approved the Transition Plan, Red Cross agrees to undertake all actions, execute all documents and do all other things reasonably necessary to comply with and implement the Transition Plan.
- 2.8 If the Transition Plan is inconsistent with the obligations of Red Cross under the Deed (in the sense that it is not practicable to comply with both), the Deed will prevail.
- 2.9 For avoidance of doubt, for the purposes of the Deed the Transition Plan is part of the Handover Plan.
- 2.10 NBA and Red Cross acknowledge that certain activities carried on by the Blood Service (such as organ donation, tissue typing, and bone marrow registry) are not funded under the Deed. Consequently, each Party acknowledges that arrangements for the transfer or discontinuance of such services are to be made prior to the Transfer Date. Transfer of any of these services may be to third parties or to the NBA or to the NBA nominee.

Provision of financial information and registers

- 2.11 For the purposes of establishing the scope of the Undertaking and the assets and liabilities of the Undertaking, Red Cross will make available to the Transition Committee all registers, records, data and information (including financial information) related to the Blood Service, as are in existence and readily available, as soon as practicable and where possible within 5 Business Days of request. These may include but are not limited to:
- 2.11.1 inventories of Products held by the Blood Service, including starting materials, consumables or unfinished Products;
 - 2.11.2 lists of Handover Assets, including:
 - 2.11.2.1 plant and equipment registers, with asset numbers, serial numbers, maintenance histories, end of life details acquisition/lease details, warranty details and location if applicable;
 - 2.11.2.2 copies of leases for any Handover Asset that is under lease;
 - 2.11.2.3 all software including product descriptions, version numbers, vendor details and licence and maintenance details; and
 - 2.11.2.4 the most current version of the Capital Plan.
 - 2.11.3 de-identified details of Blood Service personnel by position, ie position, salary and other benefits, leave entitlements;
 - 2.11.4 the Blood Service Intellectual Property register;
 - 2.11.5 Blood Service Standard Operating Procedures;
 - 2.11.6 the Blood Service Contract register;
 - 2.11.7 copies of current standard form employment contracts; and
 - 2.11.8 other relevant items held by the Blood Service reasonably requested by the Transition Committee.

Blood Service Personnel

- 2.12 To the extent possible within the constraint of maintaining the efficient and effective provision of Products and Services, Blood Service Personnel will be transferred to the NBA or the NBA Nominee in a manner which minimises additional costs arising from the need to make redundancy or other payments to Blood Service Personnel in respect of termination of employment in accordance with the Deed.

Funding and payments including payroll and payments of contracts

- 2.13 All normal financial transactions will continue within the Blood Service Delegation Policy during the Handover Period.
- 2.14 Payments will be made by the NBA to Red Cross in relation to Products delivered to or at the direction of the NBA in accordance with the Deed, including clause 58.19 of the Deed.

Access

- 2.15 Red Cross will provide the Transition Committee and the NBA access to all information, systems, personnel and property in accordance with Part H of the Deed. During the Handover Period, Red Cross will use reasonable endeavours to provide regular reports to the Transition Committee and the NBA on the performance by Red Cross of its obligations under this Handover Plan and the Transition Plan.
- 2.16 All efforts will be made by Red Cross and the NBA to expedite the resolution of issues restricting access to particular information, systems, personnel, property (for example, where there are privacy clauses that restrict access by a party other than the owner). The parties acknowledge that there are constraints that may impact on the progress of a Handover; Red Cross and the NBA will therefore regularly report to each other any constraints having an effect on the progress of the Handover, including details of the issue and proposed solutions.
- 2.17 If required, the Blood Service staff will brief and train any new staff, or staff incoming at the end of the Handover Period, provided that the NBA will pay the reasonable cost of providing any such briefing and training.

Risk management

- 2.18 Once NBA has nominated to whom the Undertaking will be transferred on the Transfer Date, Red Cross will develop and update a risk management plan to reflect the application of the Transition Plan to Handover to that specified entity, Red Cross will use its reasonable endeavours to monitor risks and implement appropriate strategies to manage these risks with the NBA. The NBA and Red Cross will agree payment arrangements for these services through the Transition Committee.

Stakeholder engagement and communication

- 2.19 The expiration or termination of the Deed will have a significant impact on the media and community interest and concern regarding the Handover processes. During the Handover Period it is important that clear and consistent messages are provided to all stakeholders. The Parties agreed Public Announcement and Communication protocol applies during the Handover Period.

Audit or Third Party Review

- 2.20 During the Handover Period the NBA may initiate an audit or third party review of the Blood Service in accordance with Clause 37 of the Deed. Red Cross will cooperate and participate in the audit or third party review.

Financial reconciliation

- 2.21 Red Cross will complete a **soft financial close** at the end of the month in which the Commencement Date occurs, in line with normal business practice, to establish the financial position of the Undertaking. The results of the soft financial close will be used by the Transition Committee to compare against the position of the Undertaking at the end of the Handover Period, in order to assess the operation of the Undertaking during the Handover Period.

- 2.22 If the Deed has been terminated by the NBA due to a default by Red Cross, Red Cross will complete a **hard financial close** at the first opportunity at the end of the month in which the Commencement Date occurs reasonably determined by the Transition Committee in line with normal business practice, to establish the financial position of the Undertaking in accordance with applicable Australian accounting practices.
- 2.23 Each of the soft financial close and the hard financial close will be audited by an external auditor agreed by the Parties (except where the Deed has been terminated by the NBA due to a default by Red Cross, in which case the auditor may be appointed by the NBA) for the purpose of confirming the financial position in each case. For the purposes of each financial close, the valuation of the Handover Assets, contracts, Intellectual Property and liabilities will be undertaken in accordance with applicable Australian accounting practices.
- 2.24 A **hard** financial close refers to the accounting processes undertaken by an organisation in order to generate the annual financial statements. These include the full range of accruals, provisions, contingencies, stock takes and reconciliations with the financial information determined in a robust manner, with a high degree of materiality, that the reports are capable of being scrutinised by external auditors and meet the requirements of external governing accounting and auditing authorities/statutory reporting.
- 2.25 A **soft** financial close refers to the accounting processes used to facilitate periodic financial statements, at various times throughout the financial year (usually monthly), in order to provide management and the governing body with key financial information for internal use. The processes are very similar, and best practice suggests the differences between the two should not be very marked but a soft close would usually have less attention to detail, especially with regard to balance sheet items (i.e. no physical stock take of inventory, asset valuation etc).

Completion of the Handover

- 2.26 On the Transfer Date as determined by the Transition Committee, the Undertaking will be transferred from Red Cross to the NBA or the NBA Nominee in accordance with the Deed and the Transition Plan.
- 2.27 For the purposes of valuation of the final position of the Undertaking following Handover, a hard financial close must be completed as at the Transfer Date by Red Cross and audited by an external auditor agreed by the Parties (except where the Deed has been terminated by the NBA due to a default by Red Cross, in which case the auditor may be appointed by the NBA).

SCHEDULE 5: INSURANCE

Part 1 - Minimum Level of Required Insurances

[Not disclosed. It contains detail of insurances required to be maintained.]

Part 2 - Minimum Level of Required Insurances (Professional Indemnity)

[Not disclosed. It contains detail of insurances required to be maintained.]