

Deed of Agreement

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

Australian Red Cross Society

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Parties

THIS DEED OF AGREEMENT is made on the _____ day of _____ 2006

BETWEEN

Commonwealth of Australia, acting through and represented by the **National Blood Authority**, a Commonwealth agency established under the *National Blood Authority Act 2003 (NBA)*

Australian Red Cross Society, (ARCS) 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 (**ARCBS**)

Recitals

- A The Australian Red Cross Society is a charitable organisation which collects and distributes blood and blood related products from volunteer donors in Australia through that part of its operations known as the 'Australian Red Cross Blood Service'.
- B The Commonwealth, States and Territories have previously provided funding to ARCBS in relation to the operations and capital requirements of ARCBS in accordance with funding arrangements with the Commonwealth and the States and Territories.
- C The Commonwealth established the National Blood Authority (**NBA**), as an administrative agency of the Commonwealth, with effect from 1 July 2003.
- D The Commonwealth and the States and Territories have established national arrangements to meet the requirements for blood and blood products and services of all States, Territories and the Commonwealth, in accordance with the National Blood Agreement and the *National Blood Authority Act 2003 (Cth)*.
- E From 1 July 2003 until 30 June 2005, ARCBS provided products and services under a Letter of Agreement (which incorporated by reference, and in a specified manner, an unexecuted Deed of Agreement) executed by the ARCS on 27 June 2003 and by the Commonwealth on 30 June 2003. From 1 July 2005 until the Commencement Date ARCBS provided products and services under a Contingency Supply and Funding Agreement entered into by the ARCS and the NBA on 1 July 2005.
- F ARCBS recognises the need for the NBA to be accountable to governments for its expenditure and ARCBS to be accountable to the NBA, and wishes to conform to improved governance arrangements.
- G The Parties now wish to set out their agreed arrangements in relation to national blood and blood product supply activities, including that ARCBS agrees to provide the Products and Services, and the NBA agrees to pay the Payments, on the terms and conditions of this Deed.

Operative provisions

Part A: Interpretation and Term

1. Definitions

1.1 In this Deed, unless the contrary intention appears:

Annual Business Plan means an ARCBS annual business plan prepared in accordance with **clause 11**.

Annual Capital Plan means a plan of that name referred to in **clause 14**.

Annual Report means the report of that name referred to in **Schedule 5 (Communications and Reporting)**.

Annual Supply Estimates or **ASEs** means the supply planning estimates of that name referred to in **Schedule 3 (Products and ARCBS Functions)**.

Approved Health Providers means those persons specified in, or determined under, **Schedule 3 (Products and ARCBS Functions)** to be Approved Health Providers, and a reference to a **Class** of Approved Health Provider is to such a Class as defined in **Schedule 3 (Products and ARCBS Functions)**.

ARCBS Functions means the operational functions carried out by ARCBS in order to provide Products and related services and otherwise fulfil its obligations under the Deed, as set out in **Schedule 3 (Products and ARCBS Functions)**.

ARCBS Portfolios means the organisational structures and management arrangements by which ARCBS conducts the ARCBS Functions and otherwise fulfils its obligations under the Deed, as notified by ARCBS to the NBA from time to time in accordance with **Schedule 5 (Communications and Reporting) Table A Item 25**.

ARCBS Procedure means a policy, guideline, rule or operating procedure of ARCBS referred to in **clause 40.11**.

ARCBS Procurement Contract means a contract or arrangement to which ARCBS is a party, for any supply of goods or services or provision of property which in any way, wholly or partly, supports the performance by ARCBS of its obligations under this Deed, and includes a Subcontract.

ARCS Asset means an asset of ARCS used by ARCBS for the ARCBS Functions, which is specified on a list of ARCS Assets agreed from time to time between the Parties for the purpose of this definition.

ARCS Fundamental Principles means the principles set out in **clause 4.12**.

ARCS Oversight Cost Reimbursement Payments means the Payments referred to in **clause 29.13**.

Australian Health Ministers Conference (or **AHMC**) means the body referred to in **clause 4.7**.

Business Day means a day that is not a Saturday, Sunday or a public holiday in a place in which any obligation under this Deed is to be performed and, except in relation to ARCBS' obligations under Part E of this Deed, excludes 25 to 31 December inclusive.

Capital Payments means the Payments referred to in **clause 29.7**.

Change Program Funding Pool Payments means Change Program Funding Pool Payments determined in accordance with **Schedule 6 (Payments)**.

Commencement Date means the date set out in **clause S1-1.1**.

Commonwealth means the Commonwealth of Australia.

Commonwealth Material means any Material provided by, or on behalf of, the NBA to ARCBS for the purposes of this Deed, or which is copied or derived from Material so provided.

Confidential Information means information that is by its nature confidential, and which is:

- (a) agreed in writing by the Parties to be confidential for the purposes of this Deed, prior to the information being disclosed by one Party to the other; or
- (b) listed or otherwise identified in **Schedule 5 (Communications and Reporting)** as Confidential Information;

but does not include information which is or becomes public knowledge other than by breach of this Deed or any other confidentiality obligation. The Parties agree that the terms and conditions of the Deed (including the Payment or Product Unit Payment amounts specified in **Schedule 3 (Products and ARCBS Functions)**) are not Confidential Information.

Conflict of Interest means, in relation to ARCBS or its Personnel, any circumstances which:

- (a) constitute a conflict;
- (b) constitute a known risk of conflict; or
- (c) may be perceived by others to constitute a conflict,

between the interests of the NBA and those of ARCBS or its Personnel (or between the duties of ARCBS or its Personnel to the NBA and their duties to another person) in relation to the provision of the Products or Services, whether through corporate, professional or personal relationships or otherwise.

Contract Material means all Material:

- (a) brought into existence for the purpose of providing the Products or Services;
- (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.

Corporations Act means the *Corporations Act 2001* (Cth).

Deed means this Deed, including the Schedules.

Deed Change Proposal or **DCP** means a change proposal in accordance with **clause 17**.

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 the date set out in **clause S1-2.1** or any revised Expiry Date following an extension of the Term under **clause 5.3**.

Force Majeure Event has the meaning set out in **clause 52**.

Governance Standards means the standards for ARCBS governance specified in **Schedule 8 (Governance Standards)**.

Government means the government of the Commonwealth of Australia or of any Australian State or Territory which is a signatory to the National Blood Agreement.

Handover Assets means:

- (a) SCIP Assets; and
- (b) all inventories of consumables (other than Products or starting blood or blood components for the manufacture of Products) owned by ARCBS or in relation to which ARCBS has any right of possession, control or use, and which (taking into account **clause 3.1.2**) wholly or partly:
 - (i) are used by ARCBS, or are available or held ready for use by ARCBS, for or in connection with the carrying out of ARCBS Functions or otherwise for the purpose of fulfilling obligations under the Deed;
 - (ii) are made available to ARCBS by a Government for or in connection with the carrying out of ARCBS Functions or otherwise for the purpose of fulfilling obligations under the Deed;
 - (iii) are created, acquired or available through the use of money received under the Deed;

- (iv) were created, acquired or available through the use of money paid to ARCBS by a Government prior to the Commencement Date, where the money was paid for the purposes of activities relating to Products and Services (or similar products or services) or within the scope of the ARCBS Functions; or
- (v) were made available to ARCBS by a Government prior to the Commencement Date, for the purposes of activities relating to Products and Services (or similar products or services) or within the scope of the ARCBS Functions.

Handover Plan means the plan referred to in **clause 58.1**.

Insolvency Event, in respect of ARCBS, means the occurrence of:

- (a) ARCBS ceasing to exist, for whatever reason;
- (b) ARCBS ceasing to be able to pay its debts as they fall due;
- (c) any action being commenced to wind up the affairs of ARCBS; or
- (d) ARCBS being insolvent or presumed insolvent for the purposes of the Corporations Act;

where:

- (e) ARCBS will be **Insolvent** for the purposes of this Deed if an Insolvency Event has occurred in respect of ARCBS;
- (f) **Insolvency** has a corresponding meaning; and
- (g) for the purposes of determining the application of this definition, that part of the ARCS comprising the ARCBS will be treated as if it were a separate legal entity from other parts of ARCS.

Intellectual Property or IP means:

- (a) any copyright, trade mark, trade secret, service mark, design, drawing, patent, know-how, secret process and other similar proprietary rights and the rights to the registration of those rights; and
- (b) any application or right to apply for registration of any of the rights in paragraph (a);

whether created, formed or arising before or after the date of this Deed in Australia or elsewhere.

Intensive Product Management means arrangements referred to in **clause 24.6**.

Jurisdictional Blood Committee (or **JBC**) means the committee referred to in **clause 4.8**.

Key Performance Indicators (or **KPIs**) means the performance indicators set out in, or established in accordance with, **Schedule 7 (Performance Measurement)**.

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, and includes the common law.

Loss means:

- (a) 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) and includes in respect of that loss:
 - (i) the cost of taking reasonable preventative, protective, remedial or mitigatory action; and
 - (ii) the cost of obtaining any replacement products or services to rectify, remedy or mitigate the damage caused by the relevant event; and
- (b) [not disclosed].

Material includes documents, equipment, software, goods, information and data stored by any means, but does not include any Products.

Moral Rights means 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.

National Blood Agreement means the agreement of that name referred to in the *National Blood Authority Act 2003 (Cth)*.

National Blood Arrangements has the meaning given in the *National Blood Authority Act 2003 (Cth)*.

National Blood Suppliers has the meaning given in **clause 21.1**.

National Managed Fund means the financial and administrative arrangement reflected in a Memorandum of Understanding dated 1 July 2000, and subsequently amended, entered into by the Commonwealth of Australia, the States, the Territories and ARCBS to provide, subject to the terms of the MOU, certain blood and blood products liability cover to ARCBS.

Order means an order for Products placed under this Deed as set out in **Schedule 3 (Products and ARCBS Functions)**. **Ordering** has a corresponding meaning.

Other Payments means Other Payments determined in accordance with **Schedule 6 (Payments)**.

Party means the NBA or ARCBS, as the context requires. **Parties** has a corresponding meaning.

Payments means those amounts which are to be paid by the NBA to ARCBS under this Deed, in accordance with **Schedule 6 (Payments)**.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

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.

Personnel in relation to a Person means its officers, Employees, agents, volunteers, subcontractors and their Personnel.

Privacy Act means the *Privacy Act 1988* (Cth).

Procedures Register means a register referred to in **clause 40.11**.

Procurement Standards means the ARCBS procurement policies, procedures and templates referred to in **clause 20**.

Product means a product specified in **Schedule 3 (Products and ARCBS Functions)**, and a reference to a **Product Group** is to a Product Group as defined in **Schedule 3 (Products and ARCBS Functions)**.

Product Unit Payment or **PUP** has the meaning set out in **Schedule 6 (Payments)**.

Public Affairs includes:

- (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 the Deed or the subject matter of the Deed.

Quarterly CEO Meeting means the meetings of that name referred to in **Schedule 5 (Communications and Reporting)**.

Registrable Asset means assets of ARCBS within the meaning of ARCBS asset management policies under **clause 42.1** as applicable to property, plant and equipment with an original cost of \$1000 or more (or as otherwise agreed from time to time) which (taking into account **clause 3.1.2**) wholly or partly:

- (a) are used by ARCBS, or are available or held ready for use by ARCBS, for or in connection with the carrying out of ARCBS Functions or otherwise for the purpose of fulfilling obligations under the Deed;
- (b) are made available to ARCBS by a Government for or in connection with the carrying out of ARCBS Functions or otherwise for the purpose of fulfilling obligations under the Deed;

- (c) are created, acquired or available through the use of money received under the Deed;
- (d) were created, acquired or available through the use of money paid to ARCBS by a Government prior to the Commencement Date, where the money was paid for the purposes of activities relating to Products and Services (or similar products or services) or within the scope of the ARCBS Functions; or
- (e) were made available to ARCBS by a Government prior to the Commencement Date, for the purposes of activities relating to Products and Services (or similar products or services) or within the scope of the ARCBS Functions;

but does not include an ARCS Asset.

Review means a review under **clause 19**.

Reviewed Six Monthly Requirements means the supply planning documents of that name referred to in **Schedule 3 (Products and ARCBS Functions)**.

Reviewed Quarterly Requirements means the supply planning documents of that name referred to in **Schedule 3 (Products and ARCBS Functions)**.

Reviewed Requirements means the Reviewed Six Monthly Requirements or the Reviewed Quarterly Requirements or both, as the context requires.

Risk Management Plan means the plan referred to in **clause 47**.

SCIP Assets means:

- (a) Registrable Assets;
- (b) all other items of real or personal property (other than Intellectual Property and consumables) owned by ARCBS or in relation to which ARCBS has any right of possession, control, use or occupation, and which (taking into account **clause 3.1.2**) wholly or partly:
 - (i) are used by ARCBS, or are available or held ready for use by ARCBS, for or in connection with the carrying out of ARCBS Functions or otherwise for the purpose of fulfilling obligations under the Deed;
 - (ii) are made available to ARCBS by a Government for or in connection with the carrying out of ARCBS Functions or otherwise for the purpose of fulfilling obligations under the Deed;
 - (iii) are created, acquired or available through the use of money received under the Deed;
 - (iv) were created, acquired or available through the use of money paid to ARCBS by a Government prior to the Commencement Date, where the money was paid for the purposes of activities relating to Products

and Services (or similar products or services) or within the scope of the ARCBS Functions; or

- (v) were made available to ARCBS by a Government prior to the Commencement Date, for the purposes of activities relating to Products and Services (or similar products or services) or within the scope of the ARCBS Functions; and

- (c) ARCS Assets.

Service means a service which is, or is required to be, provided by ARCBS under this Deed, including ARCBS Functions.

Significant ARCBS Procurement Contract means an ARCBS Procurement Contract that:

- (a) has a term exceeding three years; or
- (b) requires ARCBS to make payments exceeding \$1,000,000 on average per Financial Year;

providing that:

- (c) any two or more contracts which would separately not be a Significant ARCBS Procurement Contract may, if they form part of a single procurement with a single contractor (whether or not entered into at the same time), constitute a Significant ARCBS Procurement Contract if taken together they satisfy the requirements in paragraphs (a) or (b) above; and
- (d) a Significant ARCBS Procurement Contract does not include a contract of employment.

Step in Notice has the meaning set out in **clause 53.2**.

Strategic Capital Investment Plan means the plan of that name referred to in **clause 14**.

Strategic New Initiative means a new initiative identified as part of ARCBS business planning in accordance with **clause 11**.

Strategic Plan means the plan of that name referred to in **clause 11**.

Subcontract means a Significant ARCBS Procurement Contract under which:

- (a) the whole or a significant part of an ARCBS Function; or
- (b) an express obligation to be performed by ARCBS under or in accordance with this Deed;

is to be performed by another person.

Term means the term of this Deed, calculated in accordance with **clause 5** (including any extension of the Term under that clause).

TG Act means the *Therapeutic Goods Act 1998* (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 body responsible for administering the provisions of the TG Act.

TG Listing means listing under the TG Act.

TG Registration means registration under the TG Act.

Third Party Review means a third party review under **clause 16**, and **Third Party Reviewer** has a corresponding meaning.

Trigger Event has the meaning set out in **clause 53.3**.

2. Rules of interpretation

2.1 The rules set out in **Schedule 2 (Interpretation)** apply to the interpretation of this Deed.

2.2 Where any clause or schedule of this Deed refers to or provides for the determination of any other document by one Party or by agreement of both Parties, the document referred to or developed in accordance with that clause from time to time will have the effect given by the provisions of this Deed, and the Parties agree to comply with this Deed accordingly.

3. Parties to this Deed

3.1 The Parties acknowledge and agree that for the purposes of this Deed, and for avoidance of doubt:

3.1.1 the **NBA** means the Commonwealth of Australia represented by the National Blood Authority, or any other Department, body or agency of the Commonwealth which from time to time has responsibility for the administration of this Deed; and

3.1.2 **ARCS** means the entire organisation established by Royal Charter dated 28 June 1941 (as amended) as the 'Australian Red Cross Society', and all parts of that organisation, including:

(a) all Divisions operating in a State or Territory (Divisions are also sometimes referred to as 'Chapters'); and

(b) that part of its operations known as the 'Australian Red Cross Blood Service'.

4. Principles

Intention and effect of the Principles

- 4.1 The intention of this **clause 4** is to acknowledge the respective frameworks under which each Party must act and conduct their respective operations according to their respective governance charters.
- 4.2 The Parties acknowledge that they are satisfied that this Deed is consistent with their respective principles stated in this **clause 4**.
- 4.3 This **clause 4** is not intended to affect the interpretation of any other provision of this Deed.
- 4.4 The Parties agree to consider the principles in this **clause 4**, but are not legally bound to take those principles into account, when:
- 4.4.1 performing their obligations under, and administering this Deed;
 - 4.4.2 exercising any discretions, rights or powers pursuant to this Deed;
 - 4.4.3 considering changes to this Deed; and
 - 4.4.4 when resolving disputes under **clause 59**.
- 4.5 The Parties acknowledge that this Deed:
- 4.5.1 establishes arrangements for government funding in connection with the provision of certain blood and blood related products and services by ARCBS;
 - 4.5.2 in no way contemplates, intends or effects the sale by ARCBS, or the purchase by the NBA, Approved Health Providers or any other person, of such products or services; and
 - 4.5.3 does not provide for the transfer or passage of property.

Mutual Goals of NBA and ARCS

- 4.6 The NBA and the ARCS share the common goals in respect of their roles within the blood sector in Australia of:
- 4.6.1 saving and improving lives through a world class blood system;
 - 4.6.2 creating an integrated, efficient and effective blood supply, having regard to the primary policy objectives and secondary policy aims set out in Part 1 of the National Blood Agreement;
 - 4.6.3 ensuring an adequate, secure, and safe supply of blood, blood related products and services to meet the needs of the Australian community, in accordance with the National Blood Arrangements established by Governments;

- 4.6.4 improving equity of access to blood and blood related products and 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 provides that States and Territories may alter the range of blood and blood related products that are prescribed and received in their jurisdiction); and
- 4.6.5 support and respect of Australia's voluntary non-remunerated donors and their contribution to a safe and adequate supply.

NBA

- 4.7 The Australian Health Ministers' Conference (AHMC) is responsible for general oversight and determination of national policy and government funding for the Australian blood sector with the advice of the Jurisdictional Blood Committee (JBC) and for overseeing the implementation of the National Blood Agreement between the Commonwealth and States and Territories.
- 4.8 The JBC is responsible for jurisdictional issues relating to the national blood supply, including planning, production, supply and budgeting. It provides national policy and funding advice to AHMC, as well as settling less significant issues as authorised by AHMC.
- 4.9 The NBA was established in accordance with the *National Blood Authority Act 2003* (Cth), and in accordance with that Act and the National Blood Arrangements holds responsibility for improving and enhancing the coordination and management of the Australian blood banking and plasma product sector at the national level, including the following specific roles and responsibilities:
 - 4.9.1 to liaise with and continuously gather information from Governments and other persons or bodies involved in the use of blood products or blood related products in relation to the demand for those products;
 - 4.9.2 in consultation with each Government, and for the approval under the National Blood Arrangements, to undertake annual supply and production planning and budgeting;
 - 4.9.3 to use best endeavours to manage the national blood supply to provide a sufficient level of supply to meet the demand in all States and Territories and to ensure that patients continue to access the blood products and blood related products their clinicians determine will best meet their needs so far as practicable in accordance with national best practice based on clinical guidelines;
 - 4.9.4 to negotiate, enter into, vary, administer and enforce funding and supply contracts with bodies involved in the collection, production and distribution of products for the purposes of the national blood supply (but in doing so, not to act directly as a supplier of blood products, blood related products or blood related services);
 - 4.9.5 to administer payments to suppliers under funding and supply contracts;

- 4.9.6 based on its annual supply and production planning and budgeting, and on the funding and supply contracts with suppliers, to develop the national price list for products for the purpose of the joint funding arrangements for the national blood supply established under the National Blood Arrangements;
- 4.9.7 to refer national blood supply change proposals to Governments for consideration for evidence-based evaluation in accordance with the National Blood Arrangements;
- 4.9.8 to administer provisions of the legislation establishing the NBA and other applicable legislation relevant to the administration or enforcement of funding and supply contracts;
- 4.9.9 to establish and manage contingency and risk mitigation measures in relation to the national blood supply, including specific strategies developed and approved under the National Blood Arrangements;
- 4.9.10 to report annually, and on an ad hoc basis in relation to significant new developments, to Governments;
- 4.9.11 to provide information and advice to Governments;
- 4.9.12 to liaise with, obtain information and advice from, and provide information and advice to, Governments or Government agencies, relevant non-government persons or bodies, and relevant international governments or other bodies, on matters relevant to the national blood supply;
- 4.9.13 to monitor the national and international environment in which the Australian blood sector operates for new technological, clinical, risk or other developments that may impact on the national blood supply;
- 4.9.14 under the direction of Governments under the National Blood Arrangements, to facilitate and fund appropriate research, policy development or other action in relation to new developments by relevant government or non-government persons or bodies;
- 4.9.15 to undertake or facilitate national information management, benchmarking and cost and performance evaluation for the national blood supply;
- 4.9.16 to ensure that funding and supply contracts for the national blood supply include appropriate obligations on suppliers to meet safety and quality standards, and enforce those contractual obligations;
- 4.9.17 to maintain a systematic approach to identifying new developments, and providing a clearinghouse and coordination function for information in relation to new developments;
- 4.9.18 to facilitate coordination, integration, cooperation and information exchange between the NBA and other bodies with a safety and quality role in the Australian blood sector, and between those other bodies; and

- 4.9.19 to facilitate the development of national information systems for safety and quality issues in relation to the Australian blood sector.
- 4.10 With respect to the ARCBS (and other National Blood Suppliers), the NBA must ensure that all arrangements it makes in connection with the provision of blood and blood related products and services are made in accordance with Commonwealth legislative and policy frameworks, particularly in relation to financial management and accountability and Commonwealth Procurement Guidelines, and must represent efficient, effective and ethical use of public money. In this regard, the NBA acknowledges that references in this Deed to 'transparency' in relation to ARCBS reflect the concept that ARCBS operations funded under this Deed must be transparent to the NBA and, subject to **clause 43**, transparent as a matter of public accountability through the NBA.

ARCS

- 4.11 The International Red Cross and the Red Crescent Movement (the Movement) is the largest humanitarian network in the World, incorporating the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (the Federation).
- 4.12 The Movement operates under seven Fundamental Principles that shape and inform services and programs around the World:

4.12.1 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 human life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all people.

4.12.2 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.

4.12.3 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.

4.12.4 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.

4.12.5 Voluntary Service

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

4.12.6 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 its humanitarian work throughout its territory.

4.12.7 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.

- 4.13 The ARCS is a member of the Federation and provides services to meet local need in each State and Territory. The ARCS has as its mission to be a leading humanitarian organisation in Australia, improving the lives of vulnerable people through services delivered and promotion of humanitarian laws and values. It has a responsibility to assist other members of the Federation during major disasters and national emergencies. In 1929 the ARCS established a service for the collection, processing, screening and distribution of blood and blood products in Australia.
- 4.14 The ARCBS was established as an operating division of the ARCS in 1996, and has assumed a responsibility in relation to the provision of quality blood products, tissues and related services for the Australian community. The ARCBS has a commitment to providing a blood service for the Australian community that represents the highest possible quality within the policy and funding frameworks established by Governments.
- 4.15 The ARCS operates as a humanitarian, not-for-profit organisation and receives a high proportion of its funding for its blood and blood related operations from Australian Governments (through the NBA).
- 4.16 The continued supply of blood is dependent upon the generous and voluntary donations of the Australian people and is supported by the continued commitment of all stakeholders in the blood system in general.
- 4.17 ARCBS provides blood and blood products on the basis that they will be given free of charge to patients, in accordance with the ARCS humanitarian and charitable purposes. It is acknowledged that this does not restrict ARCBS from cost recovering in respect of its activities.
- 4.18 ARCS' primary objectives and expectations in entering this Deed are:
- 4.18.1 to enhance the ability of ARCS to fulfil its objectives as a humanitarian, non-profit organisation engaged in the collection of blood and blood related products and services from voluntary donations, and the supply of those products and services to the Australian community;

- 4.18.2 to ensure that it has sufficient funding to carry out its activities in the blood supply sector under this Deed and to meet the associated costs and liabilities incurred in relation to those activities;
- 4.18.3 to have the costs of ARCBS' activities under and in accordance with this Deed (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, except to the extent to which the ARCS elects to contribute, or the extent to which it is agreed by the Parties that other revenues or donations received by ARCS from third parties are available for this purpose; and
- 4.18.4 the ARCS does not expect to profit (other than through recognition) from the activities of ARCBS.

5. Term

- 5.1 This Deed commences on the Commencement Date, and continues until the Expiry Date or until terminated in accordance with this Deed (whichever is the earlier).
- 5.2 The Parties acknowledge that where a provision of this Deed which operates after the Commencement Date requires reports or plans to be produced or provided, or other activities to be undertaken, which relate to a period before the Commencement Date, such reports, plans or activities will relate to the entire period specified in the provision, notwithstanding that it includes a period before the Commencement Date, and despite **clause S2-1.3**.
- 5.3 Subject to **clause 5.4**, the Parties may extend the Term at any time prior to the Expiry Date, by agreement in writing.
- 5.4 Each Party agrees, to the extent that it is reasonably able to do so one year prior to the Expiry Date, to give the other Party notice of its intentions at that time in relation to the possibility of expiry or extension (with or without variation) of this Deed, or entering into an alternate agreement or arrangement, following the Expiry Date.
- 5.5 Despite **clause 5.3**, if either Party proposes any changes to this Deed as a condition precedent to agreeing to extend the Term under **clause 5.3**, it agrees to notify the other Party of the changes it proposes to be made to this Deed no later than 12 months prior to the Expiry Date. The Parties agree to negotiate the proposed changes in good faith and if not agreed in writing by 6 months prior to the Expiry Date of the current Term, the NBA may, acting reasonably, by further notice in writing:
 - 5.5.1 extend the Term on the current terms of this Deed for a reasonable period in which the negotiations may continue, so as to safeguard supply of the Products and provision of the Services; or
 - 5.5.2 elect not to extend the Term.

6. Implementation

- 6.1 The Parties agree that the nature of the Products and Services requires appropriate and comprehensive processes in place to ensure continuity of supply during any period of implementation of this Deed.
- 6.2 The Parties agree that **Schedule 11 (Transition)** may modify any of the terms of this Deed for the period between the Commencement Date and a date specified in **Schedule 11 (Transition)** in respect of the implementation of any obligation. Where an obligation in this Deed is to be delayed by agreement between the Parties for an interim period, the extent of the agreed delay, and the obligations that will apply during that interim period, are set out in **Schedule 11 (Transition)**.
- 6.3 The Parties agree to:
- 6.3.1 unless, otherwise agreed between the Parties, comply with and implement **Schedule 11 (Transition)**;
 - 6.3.2 jointly and individually develop project plans to achieve the objective and milestones in **Schedule 11 (Transition)**;
 - 6.3.3 regularly monitor progress against **Schedule 11 (Transition)** and project plans;
 - 6.3.4 communicate and cooperate to ensure that this clause is complied with; and
 - 6.3.5 update **Schedule 11 (Transition)** and project plans as appropriate, where necessary by negotiation and agreement.
- 6.4 Each Party agrees to undertake all actions required of it to ensure that the obligations under **Schedule 11 (Transition)** are completed in accordance with **Schedule 11 (Transition)** on or before the date specified in **Schedule 11 (Transition)** for implementation.

7. Other agreements

- 7.1 The Parties acknowledge and agree that the NBA, Governments of the States and Territories and ARCBS may in the future enter other agreements relating to the development and supply of blood and blood related products and services, for example relating to research and development projects.

Part B: ARCBS Governance and relationship management

8. ARCBS governance

- 8.1 ARCBS agrees to comply with the Governance Standards.
- 8.2 The Governance Standards may be amended or supplemented from time to time in accordance with **clause 17**, to ensure that they continue to reflect best practice in governance.
- 8.3 The Parties agree to conduct annual (or as otherwise agreed between the Parties) Third Party Reviews of the governance arrangements of ARCBS in accordance with **clause 16**.
- 8.4 The Third Party Review must:
- 8.4.1 include analysis of the extent to which ARCBS has complied with the Governance Standards, and the extent to which this has resulted in good governance within the ARCBS;
 - 8.4.2 detail any identified failures by ARCBS to comply with the Governance Standards and when and how these failures were addressed (if at all);
 - 8.4.3 provide recommendations for areas of improvement in governance by ARCBS;
 - 8.4.4 provide recommendations for any changes to the Governance Standards; and
 - 8.4.5 be completed by a time which will allow the requirements of **Schedule 8 (Governance)** in relation to the ARCBS Annual Report to be met.
- 8.5 ARCBS agrees to include a statement relating to compliance with the Governance Standards in the Annual Report, in accordance with **Schedule 8 (Governance Standards)** and **Schedule 5 (Communications and Reporting)**.

9. Relationship of the Parties

Communications

- 9.1 In recognition of the importance of their relationship, the Parties agree to communicate openly and co-operatively whenever practicable on matters relevant to this Deed, in accordance with the requirements set out in **Schedule 5 (Communications and Reporting)**.
- 9.2 The NBA agrees to endeavour to share information with ARCBS concerning changes in Government policy or processes which are likely to affect performance of this Deed by ARCBS. However ARCBS recognises that the NBA's ability to do so may be

constrained by confidentiality or secrecy requirements and by the National Blood Arrangements.

Public affairs management

- 9.3 ARCBS and the NBA agree to comply with **Schedule 5 (Communications and Reporting)** in relation to public communications and the management of Public Affairs generally, in relation to this Deed.

Acknowledgement of Governments' funding

- 9.4 ARCBS agrees to acknowledge the funding provided by Governments in publications, promotional material, and activities relating to this Deed. The appropriate forms and appropriate instances of acknowledgment will be agreed in consultation between the Parties.

No agency or partnership

- 9.5 Neither Party is an employee, agent, representative, or partner of the other Party by virtue of this Deed.
- 9.6 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

- 9.7 Neither Party has any power or authority to:
- 9.7.1 act for, or to assume any obligation or responsibility on behalf of, the other Party;
 - 9.7.2 bind the other Party to any agreement;
 - 9.7.3 negotiate or enter into any binding relationship for, or on behalf of, the other Party; or
 - 9.7.4 pledge the credit of the other Party,

except as specifically provided in this Deed or by express written agreement between the Parties.

Part C: Planning and improvement

10. Integrated planning and review framework

- 10.1 The Parties acknowledge, without limitation or modification to any specific obligation of either Party under any other clause of this Deed, that:
- 10.1.1 the effective operation of this Deed depends on a set of related planning and review processes conducted by the Parties pursuant to this Deed and in particular identified in **Schedule 4 (Planning and Review Cycle)**;
 - 10.1.2 the planning needs of each Party will be facilitated by close cooperation of the Parties in the review and planning processes under the Deed; and
 - 10.1.3 the ability of the Parties to carry out particular steps required in these planning and review processes may depend on timely and adequate implementation of earlier steps by either or both of the Parties, or the complexity or magnitude of issues raised in earlier steps.

11. ARCBS business planning

- 11.1 The Parties acknowledge the importance of appropriate business management and prioritisation, including prioritisation for funding purposes, of activities regarding the supply of blood products and services. For this purpose, ARCBS agrees to maintain a corporate business planning program in accordance with this **clause 11**. The NBA agrees to work cooperatively to assist ARCBS in its business planning activities.
- 11.2 For the purpose of **clause 11.1**, ARCBS agrees to prepare, provide to the NBA, implement, review and update a Strategic Plan and an Annual Business Plan, in accordance with the processes set out in **Schedule 4 (Planning and Review Cycle)**, and taking into account the other review and planning processes set out in this **Part C** of the Deed and in **Schedule 3 (Products and ARCBS Functions)**.
- 11.3 The Strategic Plan must include the following information:
- 11.3.1 organisational vision and mission;
 - 11.3.2 organisational strategic initiatives, specified on a 3 to 5 year basis;
 - 11.3.3 objectives within each strategic initiative.
- 11.4 The ARCBS Annual Business Plan must include the following information for each Financial Year:
- 11.4.1 planned activities and expected outcomes for each objective within each strategic initiative, including any performance indicators and planned expenditure; and

- 11.4.2 identification of Strategic New Initiatives, subject to prior approval by the NBA or JBC, where required.
- 11.5 ARCBS agrees to:
- 11.5.1 seek the advice of the NBA as to any priorities that Governments would wish to have reflected in the Strategic Plan and Annual Business Plan, and generally consult with the NBA in the preparation of the Strategic Plan and Annual Business Plan, and take into account any priorities or comments notified by the NBA, in accordance with **Schedule 4 (Planning and Review Cycle)**;
- 11.5.2 conduct the ARCBS Functions consistent with the Strategic Plan and Annual Business Plan;
- 11.5.3 consider the impact of any new or changing circumstances affecting the provision of Products and Services, and advise the NBA of any consequential change or reprioritisation of activities, in the context of the Annual Business Plan; and
- 11.5.4 report to the NBA on progress against the Annual Business Plan at the Quarterly CEO Meeting, including advice on the actions to be taken by ARCBS to correct any material under-performance against the Annual Business Plan.
- 11.6 ARCBS acknowledges and agrees that receipt of the Strategic Plan or Annual Business Plan by the NBA does not, in itself, indicate prior approval of activities or expenditure specified in those plans.
- 11.7 The NBA agrees to provide a copy of each NBA Corporate Plan to ARCBS as soon as it is reasonably able to do so.

12. Horizon scanning

- 12.1 ARCBS agrees to inform the NBA on new and emerging trends and developments that are relevant to this Deed.
- 12.2 Any new or emerging trends and developments which either party considers require a change to this Deed (whether required by the TGA, part of a government initiative or policy, or proposed by either of the Parties) will be considered in the context of **clause 11** and the Commonwealth's budget planning process timeframes, and if appropriate, proposed as a variation under **clause 17**.
- 12.3 ARCBS agrees to actively participate in activities related to trends and new developments (including planning, policy development and public health investigation activities) as reasonably requested by the NBA, including by:
- 12.3.1 providing high level written analyses of new technology or services relevant to this Deed; and
- 12.3.2 attendance at, and participation in, meetings with the NBA.

13. Research and development

- 13.1 The Parties agree to cooperate in the development and implementation of a research and development program which includes the objectives of enhancing the quality and safety of the Products and Services and where relevant supporting the achievement of the objectives agreed in ARCBS business planning. The ARCBS agrees to document the research and development program annually in a research and development report in accordance with **Schedule 5 (Communications and Reporting)**, and to provide the report to the NBA.
- 13.2 The NBA may nominate one representative from time to time to participate in any committee established by the ARCBS to advise on priorities and selection of projects for Research and Development funding.
- 13.3 The NBA may nominate two representatives, one of whom may, if reasonably practicable, be the person nominated by the NBA for the committee referred to in **clause 13.2**, to participate in any workshops held by ARCBS for the purpose of discussing strategic options for ARCBS research.

14. Strategic Capital Investment Plan

- 14.1 ARCBS agrees to develop, provide to the NBA for approval, and implement, the Strategic Capital Investment Plan and Annual Capital Plan in accordance with this **clause 14**, to take into account the priorities set by forward and annual supply planning, the Strategic Plan and Annual Business Plan, and the maximum level of Capital Payments applicable under **Schedule 6 (Payments)**.
- 14.2 ARCBS acknowledges that:
- 14.2.1 NBA approval of the Strategic Capital Investment Plan or Annual Capital Plan, or any amendment of those plans, may be subject to approval by Governments under the National Blood Arrangements; and
 - 14.2.2 the NBA may, acting reasonably, withhold its approval or provide its approval subject to such conditions it considers appropriate.
- 14.3 The Strategic Capital Investment Plan must contain the following:
- 14.3.1 detailed planning and methodology for the prioritisation of expenditure in respect of SCIP Assets (whether funded through Product Unit Payments, Capital Payments or other available funds) over a rolling 5 year period;
 - 14.3.2 risk analysis to support this prioritisation and in particular risk assessment of any inability to fund prioritised requirements;
 - 14.3.3 costing and purchase options for the treatment of major facility requirements such as buildings;
 - 14.3.4 replacement policies for major and minor infrastructure requirements;

- 14.3.5 the accounting classification of the expenditure which will result from the implementation of the SCIP;
 - 14.3.6 any expected costs and savings in capital expenditure which will result during the term of the SCIP from the implementation of the SCIP; and
 - 14.3.7 any expected costs and savings in operational expenditure which will result during the term of the SCIP from the implementation of the SCIP;
- and:
- 14.3.8 must be based on and give effect to the asset management policies and procedures developed under, and other requirements of, **clause 42**; and
 - 14.3.9 may, if required by ARCBS, include specified areas of flexibility and discretion for expenditure by ARCBS.
- 14.4 The Annual Capital Plan in respect of each Financial Year must be based on the Strategic Capital Investment Plan for that year and must detail the specific management actions required to implement the Strategic Capital Investment Plan in that year.
- 14.5 The Strategic Capital Investment Plan and Annual Capital Plan must be prepared and submitted to the NBA in accordance with **Schedule 4 (Planning and Review Cycle)**.
- 14.6 ARCBS agrees to:
- 14.6.1 subject to **clause 14.6.3**, amend the Strategic Capital Investment Plan and Annual Capital Plan as frequently as is reasonably necessary to facilitate the proper business planning and management of ARCBS, and in any case no less than annually;
 - 14.6.2 consider the impact of any new or changing circumstances affecting the provision of Products and Services (and in particular demand trends), and where required advise the NBA of any consequential change or reprioritisation of activities, in the context of the Strategic Capital Investment Plan; and
 - 14.6.3 except to the extent of any specified areas of flexibility and discretion for expenditure by ARCBS within the approved Strategic Capital Investment Plan or Annual Capital Plan, provide any substantial amendment of the Strategic Capital Investment Plan or Annual Capital Plan to the NBA for approval.
- 14.7 ARCBS acknowledges and agrees that no significant change (where the circumstances leading to the change are not within the reasonable control of ARCBS) that is not provided for as part of the SCIP or Annual Capital Plan can be made in SCIP Asset holding that will:
- 14.7.1 impact on Strategic Capital Investment Plan or Annual Capital Plan priorities or outcomes; or

14.7.2 require associated operational expenditure;

without NBA approval.

14.8 ARCBS agrees to report on progress on implementation of agreed capital and expenditure priorities against the approved Strategic Capital Investment Plan at the Quarterly CEO Meeting, and meet any other reporting requirements in relation to the Strategic Capital Investment Plan set out in **Schedule 5 (Communications and Reporting)**.

14.9 ARCBS acknowledges and agrees that receipt of the Strategic Capital Investment Plan or Annual Capital Plans by the NBA does not, in itself, indicate prior approval of strategies, activities or expenditure specified in those plans.

15. Supply planning and review

15.1 The Parties agree to undertake supply planning and review processes under this Deed in accordance with **Schedule 3 (Products and ARCBS Functions)**, **Schedule 4 (Planning and Review Cycle)**, **Schedule 5 (Communications and Reporting)** and **Schedule 6 (Payments)**, including to achieve the following objectives:

15.1.1 aligning approved and actual levels of supply;

15.1.2 analysis of future supply scenarios;

15.1.3 identification of emerging trends and deviations from historical trends;

15.1.4 early identification of scenarios, including safety issues, where ARCBS capacity or funding may be insufficient, or excessive, to meet forecast demand levels; and

15.1.5 early analysis of supply impacts of changes in TG Act requirements.

Part D: Management of this Deed

16. Third Party Review processes

- 16.1 The Parties agree that the processes in this **clause 16** apply where another clause of this Deed provides for a Third Party Review to be conducted in accordance with this **clause 16**.
- 16.2 The Parties agree to establish joint arrangements for the conduct of Third Party Reviews under this Deed, on the following basis:
- 16.2.1 the Quarterly CEO Meeting will determine the terms of reference and scope, and oversee the progress, of the Third Party Reviews;
- 16.2.2 day to day administrative arrangements for the Third Party Reviews will be managed and undertaken jointly by suitable representatives nominated by each Party;
- 16.2.3 the Parties must jointly:
- (a) determine a schedule for the conduct of Third Party Reviews, in accordance with the relevant clauses of the Deed which provide for the reviews;
 - (b) consider the extent to which Third Party Reviews can be based on or conducted in conjunction with related review processes conducted by ARCBS as part of its normal management arrangements;
 - (c) determine specific terms of reference for each Third Party Review, based on the relevant clause of the Deed which provides for the review;
 - (d) select, engage and commission the Third Party Reviewer;
 - (e) monitor progress and provide input and guidance, including by reviewing and commenting on draft reports;
 - (f) receive the written report of the Third Party Review; and
 - (g) pay for the services of the Third Party Reviewer, in equal shares.
- 16.2.4 ARCBS must provide assistance, and access to information and documents relevant to the review, as reasonably requested by the reviewer; and
- 16.2.5 each Third Party Review must be documented in a written report by the reviewer, which must include a description of the scope, method, findings, recommendations and qualifications of the review, and any other specific matters required to be covered in the report.

16.3 Following joint receipt of the final report by the Parties, each Party agrees to give the other Party, at the next practicable Quarterly CEO Meeting (as agreed between the Parties):

16.3.1 the Party's response to the report, including justification for any rejection of findings or recommendations by that Party; and

16.3.2 the Party's proposed action plan and timetable to implement recommendations and address deficiencies or non-conformities identified in the report;

in so far as the report reasonably requires a response or a proposed action plan and timetable from that Party, taking into account the terms of reference for the Third Party Review determined under **clause 16.2.3(c)**.

16.4 For certainty, any document produced pursuant to this clause may be subject to **clause 43**.

17. Variations to this Deed

General

17.1 No change may be made to this Deed except:

17.1.1 by written agreement of both Parties in accordance with the process set out in this **clause 17**; or

17.1.2 as otherwise expressly provided by this Deed.

17.2 The Parties acknowledge that proposals for changes to this Deed may arise for a variety of reasons, including:

17.2.1 due to changes in circumstances relevant to this Deed, such as safety, regulatory or government policy changes;

17.2.2 from the business planning and improvement processes in **Part C** of this Deed;

17.2.3 from the implementation of a National Blood Supply Change Proposal under schedule 4 of the National Blood Agreement;

17.2.4 as a result of the findings of a Third Party Review under **clause 16**; or

17.2.5 from the day to day administration of this Deed by the Parties.

Change control

17.3 A Party which proposes a change to this Deed must prepare a Deed Change Proposal (DCP) for agreement by the other Party in accordance with this **clause 17**.

17.4 The Parties agree to cooperate to assist each other in the preparation of a DCP, by providing such information as is reasonably requested.

- 17.5 For any DCP, the proposer must provide detailed written information about:
- 17.5.1 the underlying rationale and necessity for the DCP;
 - 17.5.2 the risks and a risk management strategy for the DCP;
 - 17.5.3 the detailed requirements and specifications of the DCP and any change to Key Performance Indicators required by the DCP;
 - 17.5.4 any timing implications arising from the DCP (including, without limitation, the NBA assessment period in proposing implementation timeframes);
 - 17.5.5 the amendments proposed to this Deed (including the Schedules);
 - 17.5.6 if the change cannot be implemented within the existing payment regime in the Deed, as substantiated by ARCBS, the proposed changes to the Payments based on the payment basis set out in **Schedule 6 (Payments)**; and
 - 17.5.7 the extent to which the Deed as amended by the DCP will represent an efficient and effective use of resources.

- 17.6 Subject to **clause 23**, a Party is not obliged to agree to any DCP made by the other Party. In particular, the NBA is not liable for any additional work undertaken or expenditure incurred by ARCBS unless the change has been effected in accordance with this Deed.

Timeframes

- 17.7 A Party must respond to a DCP submitted to it under this **clause 17** with its decision as soon as practicable, and in any case within 45 Business Days, unless it contains a proposal to which **clause 17.9** or **clause 17.12** apply.
- 17.8 Where a DCP contains a proposal which requires an urgent response, the Parties may agree to waive any of the requirements for a DCP under **clause 17.5**. The Parties acknowledge that this **clause 17.8** may apply in relation to a sudden and unexpected change in circumstances which may have a significant effect on the availability, sufficiency, or safety of Products and Services.

Decisions requiring consideration under National Blood Arrangements

- 17.9 The NBA may notify ARCBS from time to time that **clause 17.10** applies to a change or decision proposed by ARCBS in relation to any matter arising under this Deed, where that change or decision is required to be considered by Governments under the National Blood Arrangements, including through AHMC or JBC. Without limitation, **clause 17.10** may apply to:
- 17.9.1 a proposal for a change to this Deed under **clause 17**;
 - 17.9.2 a proposal relating to changes to the Products or ARCBS Functions;
 - 17.9.3 a proposal relating to the setting or increase of Payments under **Schedule 6 (Payments)**;

- 17.9.4 a proposal arising from changed regulatory requirements under the TG Act;
 - 17.9.5 a proposal for changes or new initiatives in ARCBS Business Plans under **clause 11**; or
 - 17.9.6 a proposal in relation to the Strategic Capital Investment Plan under **clause 14**.
- 17.10 The Parties agree, to the extent reasonably practicable, to establish standing protocols for changes or decisions to which this **clause 17.10** applies. However, despite any other provision of this Deed, where the NBA notifies ARCBS at any time of any:
- 17.10.1 additional or altered processes;
 - 17.10.2 increased or decreased timeframes;
 - 17.10.3 deadlines;
 - 17.10.4 information requirements; or
 - 17.10.5 new or altered requirements for the process of considering the proposal;
- which are necessary to be followed in respect of the process of consideration of a change or decision to which this clause applies, the notified requirements apply to the process of consideration of that change or decision.
- 17.11 Despite **clause 17.10**, NBA agrees to respond to ARCBS in relation to a change or decision to which **clause 17.10** applies as soon as reasonably practicable and to the extent it is authorised to do so. An assessment of what timeframe is 'reasonably practical' for the purpose of this clause must have regard to governmental and Commonwealth budget approval processes, where applicable, and to the urgency of the change proposal.

Proposals requiring business case analysis

- 17.12 The NBA may notify ARCBS from time to time that:
- 17.12.1 a change or decision in relation to any matter arising under this Deed proposed by ARCBS; or
 - 17.12.2 a possible change or decision in relation to any matter arising under this Deed which is under consideration by Governments under the National Blood Arrangements;
- requires business case analysis to be undertaken by ARCBS.
- 17.13 Business case analysis required under **clause 17.12** may, without limitation, include analysis of the proposed change or decision in relation to:
- 17.13.1 effectiveness;
 - 17.13.2 feasibility and options;

- 17.13.3 risks and risk management;
 - 17.13.4 cost and/or efficiency;
 - 17.13.5 implementation; or
 - 17.13.6 consequential impacts.
- 17.14 The Parties agree, to the extent reasonably practicable, to establish standing protocols for business case analyses (which may include a process for the NBA to undertake initial in-principle consideration of potential proposals by ARCBS prior to ARCBS undertaking a full business case analysis).
- 17.15 ARCBS agrees to use reasonable endeavours to undertake business case analyses required under **clause 17.12**.
- 17.16 Business cases must be prepared and submitted at ARCBS cost, provided that the NBA acknowledges that ARCBS may make a request under **Schedule 6 (Payments)** for extraordinary costs of business case analyses, to the extent that these cannot be undertaken within the level of funding for business cases analyses assumed for the purposes of setting the Product Unit Payments under **Schedule 6 (Payments)**, and that such funding or a portion of such funding is provided to ARCBS before it commences preparation of a business case analysis requested under **clause 17.12.2**.
- 17.17 The Parties agree to consult and cooperate to the extent reasonably practicable in relation to the scope, content, requirements and timing of any business case analysis.
- 17.18 Nothing in this Deed limits the ability of ARCBS to initiate a national blood supply change proposal under schedule 4 of the National Blood Agreement.

18. Proposals for NBA indemnity for identified risks of liability

[not disclosed]

19. Review of this Deed

- 19.1 The NBA may conduct reviews in relation to the operation of this Deed (either solely or in conjunction with ARCBS) as set out in this Deed. Reviews under this clause may be conducted annually or at such other times as are specified in this Deed or agreed by the Parties.
- 19.2 ARCBS agrees, at its own expense, to participate in each Review under **clause 19.1** as is reasonably requested by the NBA, including by providing any information, access to records and advice in relation to the Review which is reasonably requested by the NBA.
- 19.3 Following a Review under this **clause 19**, the NBA or ARCBS may propose one or more changes to this Deed to implement the results of the Review in accordance with **clause 17**.

20. ARCBS Procurement and Subcontracting

ARCBS Procurement

- 20.1 ARCBS agrees to continue to develop, maintain and implement national procurement policies and procedures (the Procurement Standards) consistent with the provisions of this Deed and based, as reasonably appropriate, on best practice procurement models.
- 20.2 The Procurement Standards must include:
- 20.2.1 policies and procedures for ARCBS procurement;
 - 20.2.2 standard form documentation for the procurement process; and
 - 20.2.3 monitoring and compliance policies and procedures to ensure that the Procurement Standards are implemented.
- 20.3 The Procurement Standards should take account of, implement, and enable ARCBS to comply with, the provisions of this Deed, and in particular:
- 20.3.1 those relating to Intellectual Property, rights and ownership and dealing with Contract Material, the confidentiality of information, and rights of access and audit by the NBA, the Auditor General and Privacy Commissioner or their nominees; and
 - 20.3.2 the right of ARCBS to assign, novate or terminate the contract in the event of step-in, handover or termination under this Deed.
- 20.4 If reasonably requested to do so by the NBA, ARCBS agrees to provide the Procurement Standards, and any significant revision of the Procurement Standards, to the NBA, and to take into account any comments given to ARCBS by the NBA in relation to the Procurement Standards.
- 20.5 If after the Commencement Date, ARCBS is unable to negotiate:
- 20.5.1 a Significant ARCBS Procurement Contract which provides for the leasing or licensing of real property by ARCBS in a manner which meets the Procurement Standards in relation to the matters in **clause 20.3.2**; or
 - 20.5.2 any other proposed Significant ARCBS Procurement Contract in a manner which meets the Procurement Standards in relation to matters referred to in **clause 20.3.1** or **20.3.2**;
- then ARCBS agrees to notify the NBA of the inability to meet the Procurement Standards prior to entering the proposed contract, and where practicable to take into account any comments given to ARCBS by the NBA in relation to the proposed contract in relation to the inability to meet the Procurement Standards.
- 20.6 The Parties agree, if reasonably required by the NBA, to conduct a Third Party Review of the procurement arrangements of ARCBS in accordance with **clause 16**.
- 20.7 The Third Party Review will be limited to consideration of Significant ARCBS Procurement Contracts, and within this scope must:

- 20.7.1 include analysis of the extent to which ARCBS has complied with the Procurement Standards, and the extent to which this has resulted in good procurement practices within the ARCBS;
- 20.7.2 detail any identified failures by ARCBS to comply with the Procurement Standards and when and how these failures were addressed (if at all);
- 20.7.3 provide recommendations for areas of improvement in procurement by ARCBS; and
- 20.7.4 provide recommendations for any changes to the Procurement Standards.

Subcontracting

- 20.8 In addition to any other requirements of this **clause 20**, ARCBS agrees that it will not enter into or vary in a significant way (including extend the term of), a Subcontract without the prior written approval of the NBA.
- 20.9 For the purposes of seeking the approval of the NBA as required by **clause 20.8**, at the time of seeking approval, ARCBS agrees to provide to the NBA a complete and legible copy of the proposed Subcontract.
- 20.10 If at any time the NBA has any concern in relation to the performance of a Subcontractor, then (without limitation to any other rights of the NBA under the Deed or at Law):
 - 20.10.1 the NBA may notify ARCBS of the concern and the reasons for the concern; and
 - 20.10.2 ARCBS must, as soon as practicable after notification, investigate and consider the concern, and notify the NBA of its finding and conclusions and any appropriate remedial action in relation to the concern.

Register

- 20.11 ARCBS agrees to create and maintain a register of all Significant ARCBS Procurement Contracts and Subcontracts, including the following information:
 - 20.11.1 the name of the contractor;
 - 20.11.2 purpose of the contract;
 - 20.11.3 the annual and total value of the contract; and
 - 20.11.4 the term of the contract.

and agrees to provide a copy of the register to the NBA on request.

General

- 20.12 ARCBS remains fully responsible for the performance of this Deed notwithstanding any ARCBS Procurement Contract or Subcontract to which ARCBS is a party from time to time.

- 20.13 For the avoidance of doubt, the NBA has the right to audit any Subcontract and any Subcontractor's compliance with a Subcontract at any time, in accordance with **clause 37**.

Proposals for NBA indemnity or guarantee to support essential contracts

[not disclosed]

21. National Blood Suppliers

- 21.1 In this **clause 21**:

blood products and services has the meaning defined in the *National Blood Authority Act 2003* (Cth), and includes, without limitation, Products and Services within the meaning of this Deed.

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 NBA for the supply of blood products and/or services in accordance with the *National Blood Authority Act 2003* (Cth) and notified (by name or by class) by the NBA to ARCBS from time to time.

Relevant Products and Services means those blood products and/or services that the NBA currently contracts for, or may reasonably be expected to seek to contract for, as advised by the NBA from time to time.

- 21.2 ARCBS agrees that it will not enter into or vary in a significant way (including extend the term of), a contract, arrangement or agreement between ARCBS and a National Blood Supplier for or in relation to the supply of Relevant Products and Services without the prior written approval of the NBA.
- 21.3 For the purposes of seeking the approval of the NBA as required by **clause 21.2**, at the time of seeking approval, ARCBS agrees to provide to the NBA a complete and legible copy of the proposed contract, arrangement or understanding.

22. Compliance with Laws

- 22.1 Without limiting any other clause in this Deed, ARCBS agrees to perform its obligations under this Deed so as to comply with all applicable Laws.

Part E: Products and Services

23. Government policies in relation to Products

Determination of Product list

- 23.1 Subject to **clause 23.3**, the list of Products to be provided under this Deed will be determined by the NBA in accordance with **Schedule 3 (Products and ARCBS Functions)** and **Schedule 4 (Planning and Review Cycle)**, to give effect to decisions of Governments under or in accordance with the National Blood Arrangements.
- 23.2 The process of consultation under **clause 23.4** applies to any determination of the NBA under **clause 23.1** in relation to:
- 23.2.1 the addition of a Product to the list of Products to be provided under this Deed; or
- 23.2.2 the removal of a Product from the list of Products to be provided under this Deed, where this has consequential impacts for the continued provision of other Products under this Deed.

Implementation of Government policies for the provision of Products and Services

- 23.3 Despite any other provision of this Deed but subject to **clause 23.4** and **23.5**, ARCBS agrees to provide the Products and Services in accordance with any policy of Governments determined under or in accordance with the National Blood Arrangements in relation to:
- 23.3.1 criteria or indications;
- 23.3.2 guidelines;
- 23.3.3 constraints or conditions;
- 23.3.4 applications, approvals or authorisations;
- 23.3.5 record keeping or reporting requirements; or
- 23.3.6 other requirements or processes;

applicable to the provision of Products and Services under this Deed, as notified to ARCBS by the NBA from time to time.

Consultation

- 23.4 The NBA agrees to engage in reasonable consultation with ARCBS and take into account any matters raised by ARCBS in relation to the manner of implementation of Government policies under this Deed, in accordance with **clauses 23.2** and **23.3**, and in particular must consult with ARCBS in relation to:

- 23.4.1 whether implementation conflicts with the Fundamental Principles of ARCS;
- 23.4.2 the feasibility of, options for, and timing of, implementation (including in relation to regulatory issues); and
- 23.4.3 the cost and necessary resources for implementation (taking into account the processes for setting or adjusting Payments under **Schedule 6 (Payments)**).

ARCBS obligation to implement policies

- 23.5 ARCBS agrees not to unreasonably refuse, and to take all reasonable steps, to implement policies of Governments in relation to the provision of Products under this Deed notified by the NBA under this **clause 23**, provided that:
 - 23.5.1 the NBA has engaged in reasonable consultation under **clause 23.4**; and
 - 23.5.2 ARCBS reserves the right to refuse to implement a policy of Governments under this **clause 23** where, following reasonable consultation under **clause 23.4**, ARCBS considers that there is a fundamental and irreconcilable conflict between the implementation of the policy of Governments and the ARCS Fundamental Principles.
- 23.6 ARCBS agrees to provide written explanation to the NBA of the basis for ARCBS refusal to implement a policy of Governments under **clause 23.5.2**.

24. Provision of Products

- 24.1 ARCBS agrees to provide the Products and Services in accordance with this Deed, and in particular as set out in **Schedule 3 (Products and ARCBS Functions)**.
- 24.2 ARCBS acknowledges and agrees that Products may only be provided under this Deed in response to Orders from Approved Health Providers in relation to Products for which the Approved Health Providers are approved, in accordance with **Schedule 3 (Products and ARCBS Functions)**.
- 24.3 Subject to **clause 24.4**, ARCBS agrees to provide the Products and Services:
 - 24.3.1 in accordance with any reasonable instruction of the NBA, given after reasonable consultation with ARCBS and taking into account any matters raised by ARCBS, that is consistent with this Deed and given for the purpose of giving effect to the Deed; and
 - 24.3.2 in a manner which satisfies any targets agreed from time to time in relation to the Key Performance Indicators.
- 24.4 Where ARCBS fails to provide Products, or otherwise perform any obligation or meet any warranty, in accordance with this Deed, then to the extent the failure is due to:
 - 24.4.1 an insufficiency of suitable blood collections or eligible donors;
 - 24.4.2 loss of donations or Products in the ordinary course of the ARCBS Functions up to a level contemplated in the agreed collection to Product conversion

rates agreed by the Parties in relation to the relevant Financial Year under **Schedule 6 (Payments)**; and

24.4.3 Product recalls arising due to events beyond the reasonable control of ARCBS;

the Parties agree that:

24.4.4 the failure will not constitute a breach of this Deed; and

24.4.5 the NBA will take into account the insufficiency of suitable blood collections and/or eligible donors, the agreed collection to Product conversion rates, and the circumstances giving rise to Product recalls, in any consideration of the performance of ARCBS for the purposes of this Deed;

provided that ARCBS has used its best endeavours to:

24.4.6 obtain sufficient and suitable blood collections and attract eligible and suitable donors;

24.4.7 maximise the collection to Product conversion rates; and

24.4.8 minimise the occurrence of Product recalls where reasonably avoidable, and mitigate the effects of Product recalls;

and has complied with any relevant processes specified in the Risk Management Plan.

Provision of starting materials to Class 5, 6 or 7 Approved Health Providers

24.5 Where ARCBS provides Products to Class 5, 6 or 7 Approved Health Providers under this Deed as starting materials for a process of manufacture conducted by those Approved Health Providers, ARCBS agrees to:

24.5.1 comply with instructions, if any, in relation to the provision of such Products to such Approved Health Providers as are notified by the NBA from time to time, following reasonable consultation with ARCBS;

24.5.2 where the same or similar Products are provided to a number of Approved Health Providers for manufacture into the same or similar Products – conduct its dealings with each of those Approved Health Providers on an equitable basis;

24.5.3 where the instructions notified by the NBA under **clause 24.5.1** allow for or require ARCBS to charge a handling fee for the provision of the Products:

(a) not invoice the NBA under this Deed for the provision of the Products; and

(b) determine the handling fee on an equitable basis, and in accordance with **clause 24.5.2** and **25.2.3**.

Intensive Product Management

- 24.6 The NBA may, following consultation with ARCBS, nominate Products to be subject to Intensive Product Management from time to time. Intensive Product Management arrangements may operate in addition to or in place of any other provision of this Deed, including **Schedule 3 (Products and ARCBS Functions)**, as notified by the NBA, and may include any special arrangements for a nominated Product in relation to supply planning, production, inventory management, Ordering, delivery, reporting, invoicing or payment as may reasonably be notified by the NBA, following reasonable consultation with ARCBS.
- 24.7 ARCBS agrees to comply with any reasonable Intensive Product Management arrangements nominated by the NBA from time to time.

25. ARCBS activities other than under this Deed

- 25.1 The NBA acknowledges that, in accordance with the humanitarian principles of the ARCS, ARCBS may from time to time provide blood products, provide services to persons within or outside Australia, or allow the use of ARCBS resources, assets or facilities including SCIP Assets, other than under this Deed.
- 25.2 ARCBS agrees, in relation to activities referred to in **clause 25.1**, to ensure that:
- 25.2.1 the provision of the products or services or use of resources, assets or facilities will not be detrimental to the provision of Products or Services (including, where applicable, the meeting of inventory targets) under and in accordance with this Deed;
 - 25.2.2 if relevant, donors have given consent to the use of their blood for the purpose;
 - 25.2.3 subject to **clause 25.3**, the provision of the products or services or use of resources, assets or facilities will be funded or charged on a basis that will ensure that all operational and capital costs of ARCBS incurred (on an average cost basis or other basis agreed by the NBA) in relation to the provision of the products or services or use of resources, assets or facilities are met (other than with Payments under the Deed), where and to the extent that the provision of the products or services or use of resources, assets or facilities would otherwise be funded under the Deed on the basis of the Payments determined under **Schedule 6 (Payments)**;
 - 25.2.4 no claim for Payment is made in any way under this Deed for the provision of the products or services or use of resources, assets or facilities; and
 - 25.2.5 ARCBS obtains all necessary licences, permits or other permissions required to provide the products or services or use of resources, assets or facilities in accordance with Law.
- 25.3 The Parties agree to jointly develop, and implement, protocols for the application of **clause 25.2.3** for particular Products or circumstances as considered by the Parties to be appropriate. Such protocols may, without limitation, include:

- 25.3.1 circumstances where it is appropriate for ARCBS to apply a cost basis other than average cost;
 - 25.3.2 prior production or acquisition costs which should be taken into account by ARCBS in relation to Group 3 or 4 Products; and
 - 25.3.3 the appropriate method of accounting for the recovery of prior production or acquisition costs referred to in **clause 25.3.2**.
- 25.4 ARCBS agrees to provide an annual overview report to the NBA on the provision of products or services or use of resources, assets or facilities referred to in **clause 25.1**, including:
- 25.4.1 a description of activities conducted in accordance with **clause 25.1**; and
 - 25.4.2 the quantities of any products provided in accordance with **clause 25.1**;
- in accordance with **Schedule 5 (Communications and Reporting)**.

26. Reports

General

- 26.1 ARCBS agrees to provide the NBA with the reports required under **Schedule 5 (Communications and Reporting)** or any other clause or schedule of this Deed, and agrees to comply with this Deed in relation to the content, format, means of provision, frequency and due dates for all reports.
- 26.2 ARCBS agrees to use best endeavours to ensure that all reports are accurate, complete and not misleading in any material respect.

Notifiable events

- 26.3 ARCBS agrees to comply with **Schedule 5 (Communications and Reporting)** in relation to notifiable events.

NBA requests for information and ad hoc reports

- 26.4 The NBA may at any time, on reasonable grounds, request the ARCBS to provide information or ad hoc reports to the NBA on any matter relating to this Deed including the Products or Services.
- 26.5 ARCBS agrees to comply with a request from the NBA under **clause 26.4** in the manner and form and within any reasonable timeframe requested by the NBA, if any, at its own expense.
- 26.6 On receipt of a request for information or an ad hoc report under **clause 26.4**, ARCBS may notify the NBA in writing that it objects to the request, and its reasons for that objection, in relation to:
- 26.6.1 the matters covered by the requested information or ad hoc report;
 - 26.6.2 the time by which the information or ad hoc report is requested;

- 26.6.3 the form in which the information or ad hoc report is requested; or
 - 26.6.4 the resources or costs which would be involved in meeting the request;
- in which case the NBA agrees to promptly:
- 26.6.5 take into account the objection by ARCBS; and
 - 26.6.6 if it considers it appropriate to do so, modify or withdraw the request.

However, ARCBS agrees to comply with the request in all respects unless the NBA modifies or withdraws the request pursuant to **clause 26.6.6**, and the existence of an objection by ARCBS under this **clause 26.6** will not constitute a reason to delay or fail to fulfil the request provided that the NBA has promptly complied with **clause 26.6.5**, where relevant.

27. Obligations under Therapeutic Goods Act

- 27.1 In addition to ARCBS' general obligations under **clause 22**, ARCBS agrees at all times during the Term to comply with obligations applying under the TG Act in relation to Products and ARCBS Functions provided under the Deed.
- 27.2 ARCBS agrees, for all Products:
 - 27.2.1 to the extent that ARCBS is the sponsor or otherwise responsible at law for procuring the TG Registration or TG Listing of any of the Products:
 - (a) to do all things necessary to obtain and maintain TG Registration or TG Listing for the Products during the Term; and
 - (b) to notify the NBA in writing immediately upon ARCBS becoming aware that the TG Registration and TG Listing has ceased, or that ARCBS has reasonable grounds to consider that the TG Registration or TG Listing may cease, and to take any consequential action reasonably required by the NBA to ensure that the obligations of ARCBS under this Deed are met following the cessation of the TG Registration or TG Listing; and
 - 27.2.2 to the extent that ARCBS is the licensed manufacturer of any of the Products:
 - (a) to use reasonable endeavours to obtain and maintain such licensing during the Term; and
 - (b) to notify the NBA in writing immediately upon ARCBS becoming aware that a licence has been suspended or has ceased, or that ARCBS 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 take any consequential action reasonably required by the NBA to ensure that the obligations of ARCBS under this Deed are met following the suspension or cessation of such a licence.

- 27.3 If from a particular date ARCBS ceases altogether to be able to legally supply or manufacture in Australia a particular Product under the TG Act:
- 27.3.1 the ASEs are deemed to be amended to remove that particular Product from that date; and
 - 27.3.2 the Parties will agree on consequential variations to this Deed in accordance with **clause 17**.

Product compliance and return

- 27.4 ARCBS must not supply a unit of Product under the Deed if ARCBS is aware that the unit of Product does not meet the applicable requirements of the TG Act, or that there are reasonable grounds to believe that the unit of Product may not meet the applicable requirements of the TG Act.
- 27.5 If the NBA or an Approved Health Provider notifies ARCBS that it considers on reasonable grounds that a Product does or may not meet the applicable requirements of TG Act, ARCBS agrees to:
- 27.5.1 liaise with the NBA or Approved Health Provider, as appropriate, in relation to the grounds on which the person considers that the Product may not meet the applicable requirements of the TG Act;
 - 27.5.2 accept return of the relevant units of Product, where reasonably practicable;
 - 27.5.3 promptly conduct any necessary investigations to determine whether or not the Product met the requirements of the TG Act; and
 - 27.5.4 where the non compliance with the applicable requirements of the TG Act involves a potential risk of harm to persons, notify the NBA and the TGA of the results of that investigation.

Other remedies

- 27.6 The rights, obligations and remedies in this **clause 27** do not limit or affect in any way, and are not a waiver or release of, a Party's other rights, obligations or remedies under or in relation to this Deed or at Law.

Part F: Performance measurement

28. Performance measurement

28.1 The Parties agree to comply with **Schedule 7 (Performance Measurement)**, including those aspects which set out:

28.1.1 which Party is responsible for measuring ARCBS' performance against the Key Performance Indicators;

28.1.2 when ARCBS' performance against the Key Performance Indicators is to be measured; and

28.1.3 the reporting obligations in respect of ARCBS' performance against the Key Performance Indicators.

Consequences of failure to meet Key Performance Indicators

28.2 If ARCBS does not meet a Key Performance Indicator, the consequences set out in **Schedule 7 (Performance Measurement)** in relation to that Key Performance Indicator apply.

28.3 **Schedule 7 (Performance Measurement)** may indicate that more than one consequence applies in respect of any particular failure to meet one or more Key Performance Indicators. If more than one consequence applies in respect of any particular failure to meet a Key Performance Indicator, the NBA may elect (in its absolute discretion) that one or more of the listed consequences applies.

28.4 ARCBS acknowledges and agrees that the listed consequences in **Schedule 7 (Performance Measurement)**, as applied under this Deed:

28.4.1 are reasonable and appropriate for managing adherence to the Key Performance Indicators; and

28.4.2 do not limit the NBA's rights or remedies arising from any defective performance under this Deed.

28.5 Key Performance Indicators may be amended, added or removed in accordance with the processes set out in **clause 17**.

Part G: Financing arrangements

29. Payments to be made by the NBA for Products provided by ARCBS

29.1 The Parties acknowledge the importance of the NBA's obligation to achieve value for public money, and the resulting importance of ARCBS accounting to the NBA for its use of public money. Therefore, the Parties agree to perform this Deed in a manner which permits the NBA to account for public funds readily, transparently and properly, and in a manner that achieves value for money.

Payments

29.2 Subject to this Deed, the NBA agrees to make Payments to ARCBS in accordance with **Schedule 6 (Payments)**, for Products and Services provided by ARCBS under and in accordance with the Deed.

29.3 Unless otherwise specified in **Schedule 6 (Payments)**, all Payments under this Deed are subject to the receipt by the NBA of a correctly rendered invoice issued by ARCBS in relation to the relevant period.

29.4 ARCBS acknowledges that any Payments by the NBA will not constitute an admission on the part of the NBA that the Products or Services have been properly performed or provided, or a waiver or release of ARCBS' obligations under this Deed.

29.5 Where after a Payment has been made by the NBA, the Products or Services in respect of which the Payment was made are found not to meet the requirements of this Deed, or are recalled, an adjustment will be made in accordance with **Schedule 6 (Payments)**.

Product Unit Payments

29.6 The Product Unit Payments will be determined and paid in accordance with **Schedule 6 (Payments)**.

Capital Payments

29.7 The Capital Payments will be determined and paid in accordance with **Schedule 6 (Payments)**.

29.8 The Parties may agree on an interim arrangement for providing necessary funds for SCIP or Annual Capital Plan items where approval of the SCIP or Annual Capital Plan is delayed, which may include approval of funding for items on a case by case basis or on a partial program basis where ARCBS establishes a need to proceed and funds are available.

29.9 If in the reasonable opinion of the NBA, in relation to a particular Financial Year:

29.9.1 there has been substantial lack of progress against the Annual Capital Plan for that Financial Year (except to the extent that the Strategic Capital Investment Plan or Annual Capital Plan provide for accumulation of capital

requirements funding from one Financial Year to another for specific purposes); or

29.9.2 there has been substantial non-compliance by ARCBS with **clause 29.14.2**;

the NBA, acting reasonably and without limitation to any other rights of the NBA under this Deed or at Law, may:

29.9.3 in the circumstances referred to in **clause 29.9.1** - delay or reduce the Capital Payments otherwise payable to ARCBS in accordance with the Annual Capital Plan for that Financial Year; or

29.9.4 in the circumstances referred to in **clause 29.9.2** – reduce the Capital Payments otherwise payable to ARCBS in accordance with the Annual Capital Plan for that Financial Year, and if appropriate, set-off the reduction against future Payments in accordance with **clause 32**;

but only to the extent of the proportion of the Capital Payments which is related to the substantial lack of progress or non-compliance.

Change Program Funding Pool or Other Payments

29.10 Change Program Funding Pool Payments or Other Payments may be payable by the NBA to ARCBS, as determined under **Schedule 6 (Payments)**.

29.11 ARCBS agrees to comply with any reasonable conditions determined by the NBA in relation to Change Program Funding Pool Payments or Other Payments under **Schedule 6 (Payments)**.

29.12 The NBA, acting reasonably and without limitation to any other rights of the NBA under this Deed or at Law, may:

29.12.1 delay, withhold or reduce Change Program Funding Pool Payments or Other Payments otherwise payable to ARCBS; or

29.12.2 pursuant to **clause 32**, set-off amounts equal to Change Program Funding Pool Payments or Other Payments previously paid to ARCBS against future Payments;

if, and to the extent that, in the opinion of the NBA ARCBS has not complied with any conditions determined by the NBA in relation to other Payments under **Schedule 6 (Payments)**.

ARCS Oversight Cost Reimbursement Payments

29.13 ARCS Oversight Cost Reimbursement Payments will be determined and payable in accordance with **Schedule 6 (Payments)**.

Management and use of Payments

29.14 ARCBS agrees that amounts equal to the Payments (other than ARCS Oversight Cost Reimbursement Payments) will be used only for ARCBS' purposes under or in accordance with this Deed, and that:

- 29.14.1 amounts equal to the ARCBS research and development component of the Product Unit Payments will be used only for research and development purposes; and
 - 29.14.2 Capital Payments will be used only for capital purposes in accordance with the approved Strategic Capital Investment Plan or Annual Capital Plan.
- 29.15 ARCBS agrees:
- 29.15.1 to separately identify the operational, research and development and capital requirements components of the Payments, and associated expenditures, in relevant accounts and financial reports;
 - 29.15.2 if ARCBS holds financial provisions or reserves derived from the Payments, to hold these separately in respect of the operational, research and development and capital requirements components of the Payments; and
 - 29.15.3 to credit interest or other income earned by ARCBS in respect of the Payments separately in respect of the operational, research and development and capital requirements components of the Payments.

Changes to the Payments

- 29.16 The Parties agree that changes to the Payments will be determined in accordance with **Schedule 6 (Payments)** and, where applicable, **clause 17**, and:
- 29.16.1 in ordinary circumstances, will be determined annually; and
 - 29.16.2 may be determined at other times in circumstances specified in **Schedule 6 (Payments)**.

30. Taxes

- 30.1 In this **clause 30**, in **clause 31** and in **Schedule 6 (Payments)**:
- 30.1.1 the expression 'GST Law' means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - 30.1.2 words or expressions which are defined in the GST Law have that defined meaning;
 - 30.1.3 the meaning of 'Supplier' is limited to a Party who makes a taxable supply to the other Party;
 - 30.1.4 the meaning of 'taxable supply' is limited to a taxable supply made by one Party to the other Party under or in connection with this Deed; and
 - 30.1.5 the meaning of 'Recipient' is limited to a Party who receives a taxable supply from the other Party.

- 30.2 Subject to **clause 30.3**, unless the consideration is expressed in this Deed to be inclusive of GST, for each taxable supply the Recipient agrees to make a payment to the Supplier equal to the GST liability of the Supplier in respect of the taxable supply.
- 30.3 The Parties agree to comply with all applicable requirements of the GST Law (including without limitation in relation to tax invoices and adjustment events) in respect of all taxable supplies.
- 30.4 Except as provided in this clause, each Party is responsible for complying with all taxes, duties and government charges imposed or levied on that Party in Australia or overseas in connection with this Deed, without requiring any additional payment from the other Party.

31. Invoicing obligations

- 31.1 ARCBS agrees to:
- 31.1.1 comply with all invoicing obligations set out in **Schedule 6 (Payments)**; and
- 31.1.2 ensure that each invoice given by ARCBS to the NBA complies with the requirements of a Tax Invoice under the GST Legislation.

32. Set-off or recovery of moneys

- 32.1 Each Party agrees to consult with the other Party, to the extent that is reasonable and practicable in the circumstances, prior to exercising any rights of recovery or set-off under this **clause 32**.

Recovery by the NBA

- 32.2 If, at any time during the Term or on the expiry or termination of this Deed, any Payments cannot be shown by ARCBS (after having been requested by the NBA) to the reasonable satisfaction of the NBA to have been properly paid in accordance with this Deed, the NBA may set-off the amount of those Payments against any Payments due or which become due to ARCBS.
- 32.3 If the amount of set-off is not sufficient to cover the amount recoverable by the NBA under this **clause 32**, the NBA may give ARCBS a written notice (Repayment Notice) requiring ARCBS to repay that part of the Payments set out in the notice, and ARCBS agrees to pay that amount by credit note within 28 days (or such longer period as may be set out in the Repayment Notice) of receipt of the Repayment Notice.
- 32.4 If ARCBS fails to repay the amount specified in the Repayment Notice:
- 32.4.1 ARCBS agrees to pay the NBA interest on the amount set out in the Repayment Notice from the date that it was due, for the period it remains unpaid, calculated at an interest rate equal to the weighted average yield of the 13 week Commonwealth Treasury notes allotted in the latest tender of those notes prior to the date on which the amount was payable, plus 1%; and

32.4.2 the amount set out in the Repayment Notice, and interest owed under this clause, will be recoverable by the NBA as a debt due to the NBA by ARCBS.

32.5 ARCBS acknowledges that interest calculated in accordance with **clause 32.4.1** represents a reasonable pre-estimate of the loss incurred by the NBA as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid.

Recovery by ARCBS

32.6 If, at any time during the Term or on the expiry or termination of this Deed, ARCBS can demonstrate to the reasonable satisfaction of the NBA that ARCBS has made a miscalculation in invoicing which has resulted in Payments made to ARCBS being less than the Payments due under the Deed, the NBA agrees to pay to the ARCBS an amount equal to the amount of the shortfall, subject to ARCBS issuing a correctly rendered invoice for that amount in accordance with **clause 31**.

Right of set-off

32.7 Despite any other provision of this Deed, if ARCBS is required to pay an amount to the NBA under this Deed, whether by way of indemnity or repayment or otherwise, it is agreed that such amount will be set-off against future Payments by the NBA, at a reasonable rate determined by the NBA after consultation with ARCBS, and that 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

32.8 Nothing in this **clause 32** affects any other rights or remedies available to the NBA at law.

32.9 This **clause 32** will survive the expiration or termination of this Deed.

33. ARCS funding

33.1 ARCS agrees to make an annual funding contribution to ARCBS for the purposes of the provision of Products and Services under this Deed.

33.2 ARCBS agrees to notify the NBA of the amount of any funding received by ARCBS from ARCS, and the purposes for which such funding is given, in accordance with **Schedule 5 (Communications and Reporting)**.

34. Financial management obligations of ARCBS

34.1 ARCBS agrees to:

34.1.1 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 ARCBS;

- 34.1.2 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;
- 34.1.3 at the reasonable request of the NBA, provide information to the NBA concerning, and substantiate to the NBA, ARCBS performance of the obligation in **clause 34.1.2**;
- 34.1.4 provide financial statements to the NBA in accordance with **Schedule 5 (Communications and Reporting)**; and
- 34.1.5 participate in Chief Finance Officer meetings with the NBA in accordance with **Schedule 4 (Planning and Review Cycle)**.

Part H: Information management and audit processes

35. Records

- 35.1 ARCBS agrees to keep records and accounts of all matters related to its performance of this Deed, that are sufficiently comprehensive for the purposes of reviews and audits conducted under this Deed, for a period of 7 years from the date the record or account was created or obtained.
- 35.2 ARCBS agrees to ensure that all records and accounts:
- 35.2.1 are kept in suitable storage facilities, having regard to issues of security, privacy and confidentiality;
 - 35.2.2 are true and accurate in all substantive respects and are not misleading in any material respect;
 - 35.2.3 are complete and maintained so as to be up-to-date (as at the end of each quarter);
 - 35.2.4 are kept in a manner that permits them to be conveniently and properly audited, recognising that ARCBS as a national organisation maintain records at different locations around Australia;
 - 35.2.5 are prepared and maintained in accordance with any applicable Australian accounting standards; and
 - 35.2.6 enable the extraction of all information which is substantive and relevant to this Deed.

36. Access to information and premises

- 36.1 ARCBS agrees to allow the NBA, the Auditor-General, the Privacy Commissioner or their nominees access for the purposes of an audit under this Deed or the exercise of statutory powers or duties, to ARCBS' premises and data, records, accounts and other financial material or other Material relevant to this Deed, however and wherever stored or located, under ARCBS' custody, possession or control for inspection and/or copying. ARCBS agrees to promptly and co-operatively assist with the audits, including with provision of records and other information related to this Deed.
- 36.2 In the case of documents or records stored on a medium other than in writing, ARCBS agrees to make available on request at no additional cost to the NBA such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- 36.3 This **clause 36** applies for the Term (as extended, if applicable) and for a period of 7 years from the date of its expiration or termination.

- 36.4 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 NBA, the NBA agrees to give ARCBS:
- 36.4.1 reasonable notice of its intention to access ARCBS' premises, and data, records, accounts and other financial material or other Material relevant to this Deed; and
 - 36.4.2 where reasonably practicable, an indication of the documents or classes of documents to which it may require access.
- 36.5 In the exercise of the general rights granted by **clauses 36** and **37**, the NBA agrees to use reasonable endeavours not to:
- 36.5.1 interfere with;
 - 36.5.2 delay; or
 - 36.5.3 disrupt;
- ARCBS' performance of its obligations under this Deed in any material respect.
- 36.6 If in exercising the rights granted under **clauses 36** or **37**, the NBA or its nominee interferes with, delays or disrupts ARCBS' performance of its obligations under this Deed in any respect and that interference, delay or disruption delays ARCBS in performing its obligations, ARCBS may request an extension of time to perform its obligations.
- 36.7 The NBA agrees to not refuse a request pursuant to **clause 36.6** where ARCBS substantiates the request, within a reasonable time, to the satisfaction of the NBA, acting reasonably, provided that:
- 36.7.1 ARCBS advised the NBA of the delay within 14 days of the event which caused the delay; and
 - 36.7.2 ARCBS has taken or takes all reasonable steps to minimise any delay.
- 36.8 Nothing in this Deed reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Commonwealth under this Deed are in addition to any other power, right or entitlement of the NBA, the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.
- 36.9 The operation of this **clause 36** does not limit the operation of **clause 43**.
- 36.10 In the process of accessing information under this **clause 36**, the NBA, Auditor-General or Privacy Commissioner, or nominee, must give ARCBS a reasonable opportunity to specifically mark or otherwise identify information which may be Confidential Information. The NBA and ARCBS may agree a protocol in relation to this process.

- 36.11 The obligations of ARCBS to comply with this **clause 36** in relation to the Auditor-General and the Privacy Commissioner do not limit ARCBS from seeking confidentiality undertakings from the Auditor-General or the Privacy Commissioner or their nominees but only on terms that are consistent with and no more restrictive than the NBA's confidentiality rights and obligations under this Deed, and only in relation to information which is Confidential Information under this Deed.
- 36.12 Where the NBA, Auditor-General or Privacy Commissioner appoint a nominee for the purpose of this **clause 36**:
- 36.12.1 the NBA, Auditor-General or Privacy Commissioner (as relevant) must ensure that any nominee so appointed complies with this clause; and
- 36.12.2 ARCBS may seek confidentiality undertakings from the nominee but only on terms that are consistent with the NBA's confidentiality obligations under this Deed, and only in relation to information which is Confidential Information under this Deed.

37. Audit

- 37.1 The NBA, the Auditor-General or Privacy Commissioner or their respective nominees, may, from time to time, conduct audits of ARCBS compliance with this Deed.
- 37.2 The NBA agrees not to unreasonably exercise its rights under this clause.
- 37.3 Except in the event of significant non-compliance with this Deed, as determined by the NBA, the NBA agrees to consult in good faith with ARCBS to determine the scope of, information required for, and program of, any audit conducted under this clause.
- 37.4 ARCBS agrees to promptly and cooperatively participate in audits of this Deed at the frequency and in relation to the matters specified by the NBA, (including on an ad hoc basis if requested by the NBA), for the purpose of ensuring that this Deed is being properly performed and administered. The NBA may appoint an independent person to assist in the audits.
- 37.5 ARCBS agrees to promptly prepare and provide to the NBA, 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 ARCBS has:
- 37.5.1 supplied any Products or Services;
- 37.5.2 maintained any accounts or records;
- 37.5.3 calculated Payments, or any other amounts billed to or claimed from the NBA; or
- 37.5.4 otherwise complied with its obligations;
- under this Deed.

- 37.6 If the NBA agrees with the recommendations made by ARCBS in a proposal under **clause 37.5**, then it agrees to notify ARCBS of its agreement (which may be subject to such conditions as the NBA considers appropriate) promptly, and ARCBS agrees to implement the recommendations as agreed by the NBA in any agreed timeframes.
- 37.7 This **clause 37** will survive the termination or expiration of this Deed.
- 37.8 The operation of this **clause 37** does not limit the operation of **clause 43**.
- 37.9 In the process of accessing information under this **clause 37**, the NBA, Auditor–General or Privacy Commissioner, or nominee, must give ARCBS a reasonable opportunity to specifically mark or otherwise identify information which may be Confidential Information. The NBA and ARCBS may agree a protocol in relation to this process.
- 37.10 The obligations of ARCBS to comply with this **clause 37** in relation to the Auditor-General and the Privacy Commissioner do not limit ARCBS from seeking confidentiality undertakings from the Auditor-General or the Privacy Commissioner or their nominees but only on terms that are consistent with and no more restrictive than the NBA's confidentiality rights and obligations under this Deed, and only in relation to information which is Confidential Information under this Deed.
- 37.11 Where the NBA, Auditor–General or Privacy Commissioner appoint a nominee for the purpose of this **clause 37**:
- 37.11.1 the NBA, Auditor–General or Privacy Commissioner (as relevant) must ensure that any nominee so appointed complies with this clause; and
- 37.11.2 ARCBS may seek confidentiality undertakings from the nominee but only on terms that are consistent with the NBA's confidentiality obligations under this Deed, and only in relation to information which is Confidential Information under this Deed.

38. Privacy

- 38.1 ARCBS agrees, with respect to all Personal Information relating to or concerning the Products and Services:
- 38.1.1 to comply with the provisions of the Privacy Act as if it were an agency as defined in that Act, concerning the security, use and disclosure of information to which the NBA is subject in respect of that information and which affects the Products and Services;
- 38.1.2 to only use such information for the purposes of fulfilling its obligations under this Deed or as required or permitted by Law;
- 38.1.3 to not disclose any Personal Information obtained in connection with this Deed except as permitted, authorised or required by Law;
- 38.1.4 to co-operate with any reasonable demands or inquiries made by the Privacy Commissioner;

- 38.1.5 to ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the NBA has obligations under the Privacy Act is made aware of the provisions of this **clause 38**;
 - 38.1.6 to take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised Personnel of ARCBS have access to it. For the avoidance of doubt, the Personal Information will not be used for, or in any way relating to, any direct marketing purpose unless all requirements of the Privacy Act have been complied with;
 - 38.1.7 to give to any person, on his or her request, and on payment of a reasonable charge and having taken reasonable steps to satisfy itself of that person's identity, access to that person's Personal Information held by ARCBS, except to the extent that ARCBS is required or authorised by Law to refuse to provide the person with access to that information;
 - 38.1.8 if requested to do so by a person to whom the Personal Information relates, to take reasonable steps to correct or update the Personal Information, unless otherwise required by Law;
 - 38.1.9 to inform any person, on his or her request, in writing of the content of any provision of this Deed that is inconsistent with an approved privacy code binding ARCBS or a National Privacy Principle as set out in the Privacy Act;
 - 38.1.10 to promptly notify the NBA when ARCBS becomes aware of a material breach of any obligation concerning security, use or disclosure of Personal Information;
 - 38.1.11 subject to prior consultation with the NBA, to destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected by or on behalf of the ARCBS; and
 - 38.1.12 to promptly notify the NBA of, and co-operate with the NBA in the resolution of, any complaint alleging an interference with privacy.
- 38.2 ARCBS agrees to take such steps as are reasonable in the circumstances to enable any person, on request, to ascertain in respect of Personal Information relating to or concerning the Products and Services:
- 38.2.1 whether ARCBS has possession or control of any records that contain such information;
 - 38.2.2 the nature of the information;
 - 38.2.3 the main purposes for which the information is used by ARCBS; and
 - 38.2.4 the steps that the person should take if the person wishes to obtain access to the information.

- 38.3 ARCBS agrees to maintain at all times a register of Personal Information setting out generally the details referred to in **clause 38.2**, and to provide a copy of the register to the NBA when so required in writing or otherwise at the conclusion of the Term.
- 38.4 ARCBS' obligations in this **clause 38** are in addition to, and do not limit, any obligations it may have under:
- 38.4.1 the Privacy Act ; and
- 38.4.2 any:
- (a) privacy codes; or
- (b) privacy principles contained in, authorised by or registered under any Law,
- including any such privacy codes or principles that would apply to ARCBS but for the application of the other provisions of this **clause 38**.
- 38.5 The NBA agrees to comply with the provisions of the Privacy Act in respect of Personal Information provided to it by ARCBS under this Deed.
- 38.6 This **clause 38** will survive the expiration or termination of this Deed.
- 38.7 The NBA acknowledges that it is subject to the Privacy Act as an 'agency' under that Act.

39. ARCBS Personnel

Employer obligations

- 39.1 The Parties agree that any Personnel of ARCBS involved in providing Products and Services on behalf of ARCBS under this Deed is and remains at all times an Employee, agent or subcontractor of ARCBS.
- 39.2 ARCBS agrees at all times and at its own expense:
- 39.2.1 to 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 persons referred to in **clause 39.1**. If requested by the NBA, ARCBS agrees to provide proof to the NBA of compliance with any such legislation or industrial instrument; and
- 39.2.2 subject to **Part K** of this Deed and **Schedule 3 (Products and ARCBS Functions)**, to meet, within the Payments determined in accordance with **Schedule 6 (Payments)**, costs associated with ARCBS Personnel.

Warranty as to qualifications of ARCBS Personnel

- 39.3 ARCBS warrants to the NBA that ARCBS and its Personnel have the necessary mandatory qualifications, skills, competence, and ability to provide Products and perform Services required under the Deed.

Part I: Ownership issues

40. Intellectual Property

ARCBS to own Intellectual Property rights

- 40.1 Subject to this **clause 40**, as between ARCBS and the NBA, all Intellectual Property rights in the Contract Material will vest in ARCBS from the date of acquisition or creation of that Contract Material.
- 40.2 Subject to **clause 40.3**, where use of Contract Material in which Intellectual Property is owned by ARCBS or a third party is required by the NBA for any purpose within the NBA's functions, ARCBS:
- 40.2.1 grants the NBA a permanent, world-wide, irrevocable, royalty and licence-fee free, non-exclusive licence to use, reproduce, modify and publish (including a right to sub-licence for the performance of specific tasks to be carried out by the sublicensee for or on behalf of, or with the permission of, the NBA for any purpose within the NBA's functions, and in a manner which is consistent with **clauses 9.3 and 43**) Contract Material in which Intellectual Property is owned by the ARCBS for that purpose; and
- 40.2.2 agrees to use reasonable endeavours (at its own cost) to procure for and grant to the NBA a permanent, world-wide, irrevocable, royalty and licence-fee free, non-exclusive licence to use, reproduce, modify and publish (including a right to sub-licence for the performance of specific tasks to be carried out by the sublicensee for or on behalf of, or with the permission of, the NBA for any purpose within the NBA's functions, and in a manner which is consistent with **clauses 9.3 and 43**) Contract Material in which Intellectual Property is owned by a third party for that purpose.
- 40.3 The NBA must not, and must not allow any sublicensee to, use any Contract Material for any commercial purpose without the prior written approval of ARCBS (which approval must not be unreasonably withheld).
- 40.4 Despite Part VII of the *Copyright Act 1968* (Cth), publication of the Contract Material in accordance with the licence under **clause 40.2** will not affect ownership of Intellectual Property in such Material.
- 40.5 Despite **clause 40.2**, where ARCBS is unable, using reasonable endeavours, to procure a licence from a third party, it agrees to:
- 40.5.1 inform the NBA in writing, detailing the reasons for the outcome, and disclosing the timeframe in which the NBA should respond; and
- 40.5.2 using reasonable endeavours, assist the NBA to negotiate a licence (including the right to sublicense) from the third party to allow the Commonwealth including the NBA to obtain a licence in terms reasonably satisfactory to the NBA.

- 40.6 ARCBS agrees to report to the NBA regarding returns on exploitation of Intellectual Property rights in the Contract Material as set out in **Schedule 5 (Communications and Reporting)**, and acknowledges that such returns may be taken into account in establishing Product Unit Payments under **Schedule 6 (Payments)**.
- 40.7 Despite any other provision of this Deed, but subject to **clause 53**, neither Party is permitted to use or permit the use of the symbol, names or trade mark of the other Party unless:
- 40.7.1 with prior consent in writing and subject to any reasonable conditions imposed on that consent; and
- 40.7.2 (in the case of the symbol, names or trade mark of the ARCS or ARCBS) such use is in accordance with the *Geneva Conventions Act 1957* (Cth).
- 40.8 For the avoidance of doubt and subject to the *Geneva Conventions Act 1957* (Cth), **clause 40.7**:
- 40.8.1 applies at all times and not only following the expiration or termination of this Deed;
- 40.8.2 does not require the NBA to remove the symbol, names or trade mark of the ARCS or ARCBS when using or dealing with Contract Material or Products and Services as permitted by this Deed; and
- 40.8.3 does not prevent the NBA from continuing to use the symbol, name or trade mark of the ARCS or ARCBS, for the purpose of the exercise of step-in rights under **clause 53**, in the same way as they are used by ARCBS for the Products and Services;
- provided that **clause 40.7** does not permit the NBA to use or permit the use of the symbol, names or trade mark of the ARCS or ARCBS for more than 12 months, or such other period as is agreed by the Parties in writing, following expiration or termination of this Deed.
- 40.9 NBA agrees, in relation to any use of ARCBS' trade mark, by it or its nominees, to 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 no nominee uses the trade mark in a misleading or deceptive way.
- For the avoidance of doubt, the symbol and names of the ARCS and ARCBS are not Intellectual Property for the purpose of this Deed.
- ARCBS to maintain registers***
- 40.10 ARCBS agrees to create and maintain a register (IP Register) which contains details of:
- 40.10.1 patents registered by ARCBS;
- 40.10.2 trademarks registered by ARCBS;
- 40.10.3 Intellectual Property owned by ARCBS where ARCBS has granted a licence to a third party;

- 40.10.4 copyright owned by ARCBS in software developed for use in its operations;
and
- 40.10.5 software that ARCBS licenses from a third party where the annual licence fee to that third party is \$1,000,000 or more.
- 40.11 ARCBS agrees to create and maintain one or more registers (Procedures Registers) which contains details of policies, guidelines, rules or operating procedures formally adopted by ARCBS for the purpose of carrying out the ARCBS Functions or otherwise complying with its specific obligations under this Deed.
- 40.12 ARCBS agrees, in accordance with **Schedule 5 (Communications and Reporting)**, to provide to the NBA an annual copy of the IP Register and that part of the Procedures Register which is maintained by ARCBS in relation to provision of the Products and Services in accordance with the TG Act.
- 40.13 ARCBS agrees to consider any reasonable suggestion made by the NBA for the development or revision of any ARCBS Procedures.

IP warranty

- 40.14 ARCBS warrants that 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 this **clause 40**.
- 40.15 The operation of this **clause 40** does not limit the operation of **clause 43**.

41. Commonwealth Material

- 41.1 ARCBS acknowledges the NBA's ownership or control by licence of the Commonwealth Material and all Intellectual Property rights in the Commonwealth Material.
- 41.2 Subject to this **clause 41**, the NBA grants a non-exclusive, non-transferable, royalty-free licence to ARCBS for the Term to use the Commonwealth Material solely for the purpose of providing the Products and Services.
- 41.3 The NBA agrees to inform ARCBS of any Commonwealth Material provided to ARCBS under this Deed in which third parties hold the Intellectual Property rights, and of any conditions attaching to the use of that Commonwealth Material because of such Intellectual Property rights.
- 41.4 ARCBS agrees to:
- 41.4.1 ensure that Commonwealth Material is used, copied, supplied or reproduced only for the purposes of this Deed;
- 41.4.2 ensure the safe keeping and maintenance of Commonwealth Material; and

41.4.3 use Commonwealth Material strictly in accordance with any conditions or restrictions set out in this Deed, or as notified by the NBA to ARCBS from time to time.

41.5 On expiration or termination of this Deed, ARCBS agrees to immediately deliver the Commonwealth Material, and any copies of the Commonwealth Material, to the NBA.

42. ARCBS assets

Asset management policies

42.1 ARCBS agrees to develop, implement and maintain for the Term, documented better practice management policies and procedures for ARCBS property, plant, equipment and inventories, in accordance with relevant Australian Accounting Standards, and including the matters set out in **clause 42.2** and **clause 14**.

Protection of Handover Assets

42.2 ARCBS agrees to:

42.2.1 not encumber, dispose of, deal with, or use any Handover Asset, other than in accordance with this **clause 42** including policies and procedures under **clause 42.1**, without the prior written approval of the NBA;

42.2.2 hold all Handover Assets securely and safeguard them against theft, loss, damage or unauthorised use;

42.2.3 maintain all Handover Assets in good working order;

42.2.4 maintain all appropriate insurances in respect of any Handover Assets; and

42.2.5 be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Handover Asset.

Asset registers

42.3 ARCBS agrees to:

42.3.1 maintain an accurate and complete register of Registrable Assets in accordance with policies of ARCBS referred to under **clause 42.1**; and

42.3.2 if reasonably requested by the NBA, provide a copy of the register to the NBA within 10 Business Days.

Disposal of assets

42.4 ARCBS agrees that it will only dispose of SCIP Assets during the Term in a manner that is consistent with the Strategic Capital Investment Plan or Annual Capital Plan.

42.5 ARCBS must apply any funds realised through the disposal of SCIP Assets towards the performance of its obligations under this Deed, in accordance with **clause 29.15** and **Schedule 6 (Payments)**. ARCBS agrees to report to the NBA in relation to all funds

received from SCIP Asset disposal, and how those funds have been applied, in financial statements (or notes thereto) under **clause 34**.

ARCS Assets

- 42.6 Despite any provision of this Deed except **clause 42.7**:
- 42.6.1 no prior approval is required from the NBA or Governments for any dealing by ARCS with an ARCS Asset;
 - 42.6.2 this Deed does not, in itself, oblige ARCS to undertake any dealing with an ARCS Asset without the specific agreement of ARCS; and
 - 42.6.3 ARCS is under no obligation under this Deed in relation to the use of the proceeds of disposal of an ARCS Asset.
- 42.7 In relation to the proposed disposal of any ARCS Asset, or any other proposed dealing with any ARCS Asset which may deny, or materially change the basis for, the availability of the ARCS Asset for use by ARCBS for the purposes of providing the Products and Services under this Deed, ARCS agrees to:
- 42.7.1 give notice to NBA about the proposed disposal or dealing as soon as practicable after the proposed disposal or dealing is contemplated by ARCS;
 - 42.7.2 consult with the NBA about:
 - (a) the proposed disposal or dealing;
 - (b) the basis upon which an appropriate financial return may be made to ARCBS for the purposes of the provision of the Products and Services, from the proceeds, if any, of a proposed disposal; and
 - (c) if applicable, the detailed calculation of the amount of the appropriate financial return.

Part J: Protection of information

43. Confidentiality

- 43.1 Each Party agrees not to disclose to any person, other than the other Party or its Personnel, any Confidential Information, including relating to this Deed or Products or Services, without prior written consent.
- 43.2 In giving consent under **clause 43.1**, the Party giving consent may impose any conditions or restrictions it considers appropriate, and the other Party agrees to comply with such conditions or restrictions.
- 43.3 The NBA may, at any time, require ARCBS to give, and to arrange for:
- 43.3.1 its Personnel engaged in the provision of Products or Services; or
 - 43.3.2 any other third party, other than a Commonwealth Employee, to whom the information is disclosed pursuant to **clause 43.1**;
- to give a deed of undertaking in the form reasonably required by the NBA relating to the non-disclosure of Confidential Information.
- 43.4 If ARCBS receives a request under **clause 43.3** it agrees to arrange promptly for the requested undertaking to be given.
- 43.5 The obligations on a Party under this **clause 43** will not have been breached where the information referred to is legally required to be disclosed.
- 43.6 Either Party may disclose Confidential Information of the other Party if the Confidential Information is, where relevant:
- 43.6.1 disclosed to its advisers or Employees solely in order to comply with obligations, or to exercise rights, under this Deed;
 - 43.6.2 disclosed to internal management personnel, solely to enable effective management or auditing of contract-related activities, including those relating to this Deed;
 - 43.6.3 disclosed by the NBA to the responsible Minister;
 - 43.6.4 disclosed by the NBA in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - 43.6.5 disclosed by the NBA within the NBA, or with another agency, where this serves the Commonwealth's legitimate interests;
 - 43.6.6 provided by the NBA to the States and Territories but only:
 - (a) if the NBA discloses the Confidential Information in a manner which reflects its particular sensitivity and confidentiality;

- (b) if the receiving State or Territory first agrees to keep the Confidential Information confidential on terms similar to the confidentiality provisions of this Deed;
 - (c) to the extent that disclosure under this clause is reasonably required having regard to the nature and sensitivity of the Confidential Information and the particular reason for the proposed disclosure; and
 - (d) after consulting with ARCBS with a view to agreeing the manner and extent of the proposed disclosure;
- 43.6.7 authorised or required by Law, including under this Deed, under a licence or otherwise, to be disclosed; or
- 43.6.8 in the public domain otherwise than due to a breach of this **clause 43**.
- 43.7 Nothing in this **clause 43** derogates from any obligation which either Party may have either under the Privacy Act as amended from time to time, or under this Deed, in relation to the protection of Personal Information.
- 43.8 This **clause 43** survives the expiration or termination of this Deed.

44. Data security

- 44.1 In this **clause 44** 'Official Information' means any 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.
- 44.2 Without limiting its obligations under the Deed, ARCBS must comply with the security requirements for the protection of Official Information provided by the NBA to ARCBS detailed in the Commonwealth's Protective Security Manual, as amended from time to time and as notified to the ARCBS by the NBA.
- 44.3 ARCBS must participate in security reviews of the procedures implemented in performance of the Deed if reasonably requested by the NBA.
- 44.4 ARCBS must not permit any of its Personnel to have any access to security classified information provided by the NBA to ARCBS unless:
- 44.4.1 that person has been cleared, to a security level considered appropriate by the NBA and in accordance with applicable processes for clearance advised by the NBA;
 - 44.4.2 the NBA has given approval in writing for that person to have access to the specific items of security classified information; and
 - 44.4.3 that person has undergone the training required by the NBA relating to the access to and use of security classified information.

- 44.5 ARCBS must notify the NBA promptly upon becoming aware that any unauthorised person has had access to security classified information.
- 44.6 If an incident set out in **clause 44.5** occurs, ARCBS must comply with any reasonable directions of the NBA in order to rectify the security problem.
- 44.7 In granting approval under **clause 44.4.2** the NBA may impose any conditions it considers necessary.
- 44.8 The rights and obligations of the Parties arising in connection with this **clause 44** will survive the expiry or earlier termination of the Deed.

Part K: Treatment of risks

45. Conflict of Interest

- 45.1 ARCBS undertakes that, at the Commencement Date, to the best of its knowledge after making reasonable enquiry no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Deed, for it or its Personnel.
- 45.2 ARCBS agrees to take all reasonable steps (including making all appropriate enquiries) to ensure that none of its Personnel, during the Term, engages in any activity or obtains any interests that may reasonably be considered to conflict with, or restrict ARCBS in, performing its obligations under this Deed fairly and independently.
- 45.3 ARCBS agrees that it will not during the Term, 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 ARCBS has complied with **clause 45.4** and the NBA has given its prior written approval for ARCBS to engage in that activity.
- 45.4 Where a Conflict of Interest arises in the performance of ARCBS' obligations under this Deed, ARCBS agrees to notify the NBA immediately of the situation, provide any information reasonably requested by the NBA, and follow all reasonable directions by the NBA concerning the process for handling the Conflict of Interest.
- 45.5 For the purposes of this **clause 45**, a reference to ARCBS Personnel does not include field volunteers who have no management responsibilities.

46. Principles in relation to the allocation of risk

- 46.1 The Parties agree that the provision of the Products and Services gives rise to a range of risks and agree that, as basic principles and subject to this Deed:
- 46.1.1 risks should be borne in the first instance by the Party best placed to manage those risks;
- 46.1.2 each Party is liable for the performance of its obligations under this Deed, including obligations in relation to Orders placed under this Deed, to the extent that any performance or non-performance causes or contributes to any Loss;
- 46.1.3 ARCBS is in the first instance responsible for performing its obligations and meeting its liabilities under the Deed as and when they arise, through prudential management and use of Payments and other funds which may be available to ARCBS for this purpose and through planning and operational decisions within the reasonable control of ARCBS in accordance with the Deed; and
- 46.1.4 if ARCBS is unable to meet its obligations or liabilities in accordance with **clause 46.1.3** without materially impacting on its ability to provide Products

and Services in accordance with this Deed, it may, in accordance with the provisions of the Deed where applicable:

- (a) propose a variation to the Deed, or a change to any document referred to in the Deed;
- (b) seek additional Payments; or
- (c) request the Commonwealth (NBA) to meet or waive a liability of ARCBS under this Deed;

provided that the making of any such proposal by ARCBS does not, of itself, diminish any obligations or excuse any liabilities of ARCBS under this Deed.

47. Risk Management Plan

- 47.1 ARCBS agrees to complete a Risk Management Plan that complies with the requirements of this **clause 47**, and maintain, update and implement the plan during the Term.
- 47.2 The Risk Management Plan must, in addition to any other requirements as directed by NBA, meet Australian Standard 4360 as amended or replaced from time to time.
- 47.3 ARCBS agrees at all times to comply with the Risk Management Plan, and whether or not a risk is identified in that Plan, to perform its obligations under this Deed in a manner that facilitates identification, control, management and mitigation of risks in connection with this Deed.
- 47.4 ARCBS agrees to:
 - 47.4.1 provide the NBA with information and documents describing the Risk Management Plan promptly on request by the NBA; and
 - 47.4.2 report to the NBA on the status of the Risk Management Plan, and any significant new or changed risks, at the Quarterly CEO Meeting.
- 47.5 The Parties agree to conduct annual (or as otherwise agreed between the Parties) Third Party Reviews of the risk management arrangements of ARCBS, including the Risk Management Plan, in accordance with **clause 16**.
- 47.6 The Third Party Review must:
 - 47.6.1 review the Risk Management Plan and ARCBS risk management arrangements;
 - 47.6.2 determine whether the Risk Management Plan and ARCBS risk management arrangements are adequate (having regard to the risks arising from and in connection with this Deed);
 - 47.6.3 confirm, where possible, the implementation of the Risk Management Plan by ARCBS; and

47.6.4 include, where applicable, recommendations for variations to the Risk Management Plan.

47.7 The Parties acknowledge the need for cooperation between ARCBS and the NBA, and with other relevant authorities and agencies, in relation to preparation, simulation and implementation of national disaster planning.

48. Warranties

Products

48.1 ARCBS warrants that:

48.1.1 all Products provided under this Deed:

- (a) comply with all written representations which are published and issued by ARCBS in relation to those Products; and
- (b) comply with all applicable Laws, including the TG Act, to the extent of any obligations of ARCBS under those laws in relation to those Products;

48.1.2 it has all rights and title necessary to enable it to supply Products under this Deed;

48.1.3 on delivery, the Products will be 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;

48.1.4 the manufacture and supply of Products does not infringe the rights of any other person, including rights in relation to patents, trade marks, designs and copyright;

48.1.5 it has the capacity and power to enter into and perform this Deed;

48.1.6 it is entitled, or will be entitled, or will ensure that it is entitled at the relevant time, to deal with the Intellectual Property in any Contract Material and other Material in the manner provided for in **clause 40, 53 and 58**; and

48.1.7 it will use best endeavours to secure (at its own cost) for the benefit of the NBA or its nominees any Intellectual Property rights reasonably necessary or desirable for the NBA to obtain the benefit of this Deed including, without limitation, to exercise any rights arising out of or in connection with this Deed.

Services

48.2 ARCBS warrants that all Services performed under this Deed:

48.2.1 comply with all written representations which are published and issued by ARCBS in relation to those Services;

48.2.2 will be rendered with due care and skill; and

48.2.3 comply with all applicable Laws, including the TG Act, to the extent of any obligations of ARCBS under those Laws in relation to those Services.

48.3 The warranties in this **clause 48** survive the expiration or termination of this Deed.

49. Indemnity

[not disclosed]

50. Deed of security

50.1 ARCBS agrees, at its expense, and within 30 days of the Commencement Date, to provide to the NBA the security over the Products as specified in, and in accordance with the requirements of **Schedule 10 (Deed of Security)**.

51. Insurance

51.1 ARCBS agrees to comply with **Schedule 9 (Insurance)**.

51.2 ARCBS agrees, on request by the NBA, to promptly provide the NBA with a copy of any policy, subject to underwriter agreement, or evidence of the currency of any policy, of insurance required to be held under this Deed.

51.3 The ARCBS agrees to provide the NBA with reports and analysis in relation to claims made under the insurance policies held by the ARCBS, in accordance with **Schedule 5 (Communications and Reporting)**.

51.4 ARCBS agrees to obtain appropriate professional advice in respect of the insurances held by ARCBS for the purpose of this Deed, prior to the commencement of each Financial Year, including:

51.4.1 a review of the types and level of insurances held by ARCBS;

51.4.2 advice as to whether the insurances held by ARCBS are adequate (having regard to the obligations to be performed under this Deed); and

51.4.3 where applicable, advice, recommendations and costings for changes to the insurances required to be held under this Deed.

51.5 ARCBS agrees to promptly provide documentation of any professional advice received under **clause 51.4** to the NBA.

51.6 The operation of this **clause 51** does not limit the operation of **clause 43**.

52. Force Majeure

- 52.1 A Party will not be entitled to exercise any rights and remedies under this Deed (other than a right of termination) upon the default of the other Party (whether at common law or under **clause 56**) if that default:
- 52.1.1 is caused by an act or event that is beyond the reasonable control of that other Party (not including its Personnel);
 - 52.1.2 continues for less than 30 days (or such other period as is agreed between the Parties); and
 - 52.1.3 was not reasonably foreseeable by the other Party.
- 52.2 ARCBS agrees to ensure that the Risk Management Plan sets out appropriate strategies to overcome the occurrence of an event referred to in **clause 52.1** (and that those strategies provide for ARCBS to manage and mitigate the risk of such an event occurring).
- 52.3 ARCBS agrees to implement those strategies in the Risk Management Plan if any event referred to in **clause 52.1** occurs.
- 52.4 If ARCBS is prevented from carrying out its obligations under the Deed as a result of a Force Majeure Event for a period of three months or more, the NBA may:
- 52.4.1 exercise step-in rights under **clause 53**; or
 - 52.4.2 terminate the Deed in accordance with **clause 56**.
- 52.5 If the default continues for a time period exceeding the time period specified in **clause 52.1.2**, then the Party in default (first Party) agrees to:
- 52.5.1 notify the other Party immediately of:
 - (a) the nature and cause of the problem;
 - (b) the steps being taken to minimise the problem; and
 - (c) the expected delay in the performance of the first Party's obligations under this Deed;
 - 52.5.2 request an extension of time for the performance of its obligations under this Deed, which the other Party may grant in its absolute discretion; and
 - 52.5.3 if the other Party declines to grant an extension of time under **clause 52.5.2**, it may terminate this Deed under **clause 56**, and the provisions of **clause 58** apply.

53. Step in rights

53.1 The Parties acknowledge, without limitation to any rights or obligations under the Deed, that the purpose of providing for step in rights for the NBA under this Deed is to provide a temporary administrative arrangement for the purpose of seeking to ensure the supply of Products in circumstances where supply otherwise may not be assured.

Issue of Step in Notice

53.2 Without prejudice to any other right or remedy which the NBA may have under this Deed, at common law or under any statute, if a Trigger Event occurs, the NBA may, at its option, give a notice (Step In Notice) to ARCBS.

53.3 For the purposes of this **clause 53**, a '**Trigger Event**' occurs if:

- 53.3.1 there has been total or substantial non-performance by ARCBS, or gross mismanagement by ARCBS, of its obligations under this Deed, 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;
- 53.3.2 an emergency occurs which, in the reasonable opinion of the NBA, requires the NBA to exercise its rights under this **clause 53** to ensure continuity of the whole or part of the national blood supply;
- 53.3.3 ARCBS seeks to terminate the Deed other than in accordance with its legal rights under the Deed or at law, or otherwise repudiates or abandons the Deed;
- 53.3.4 an Insolvency Event occurs in respect of ARCBS which was not notified by the ARCBS to the NBA, or addressed, under **clause 56.2**; or
- 53.3.5 ARCBS requests the NBA to exercise step-in rights under this **clause 53** for a reasonable cause stated by ARCBS.

Upon issue of Step in Notice

53.4 Upon the issue of a Step In Notice to ARCBS:

- 53.4.1 the NBA or its nominee may take absolute control of that part of the provision of the Products and/or Services in respect of which the Trigger Event has occurred and 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/or Services.
- 53.4.2 ARCBS agrees to provide all reasonable assistance to the NBA (or its nominee) wherever and however possible to ensure that the NBA is able to take the steps permitted under this **clause 53**, including by:
 - (a) the grant of royalty-free licences to:
 - (i) access all or the relevant part of the Handover Assets;
and

- (ii) use any Contract Material or ARCBS Procedures, including Intellectual Property in that Material, or other Intellectual Property, needed for the exercise of the NBA's rights under this clause, except that use of the ARCS and ARCBS' symbol, names or trade mark may only be licensed for a period of 12 months;
- (b) providing the NBA with access to and the use of relevant Personnel of ARCBS for no additional charge;
- (c) providing the NBA with any information reasonably necessary or desirable for the exercise of its rights under **clause 53**; and
- (d) ensuring that the NBA is able to assist ARCBS to continue to meet ARCBS' ongoing contractual or other obligations (other than obligations arising under this Deed) that relate to ARCBS' 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 under this Deed to be performed.

53.5 The steps which the NBA, acting on its own behalf or through a nominee, will be entitled to take in assuming control of part of the provision of the Products and/or Services, pursuant to this **clause 53** include:

- 53.5.1 temporarily assuming total or partial possession, management and/or operation of ARCBS' facilities, and the provision of Products and/or Services;
- 53.5.2 such other steps as are, in the reasonable opinion of the NBA, necessary to safeguard the provision of the Products and/or Services as required by this Deed; or
- 53.5.3 electing to cease exercising any of its rights referred to above, 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;

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 under this Deed to be performed.

53.6 Upon the NBA exercising any of its rights under this **clause 53**, ARCBS' obligations under this Deed to provide the Products and/or Services being provided by the NBA, or in respect of which the NBA is exercising its rights under this clause, are suspended to the extent and for such period as is necessary to permit the NBA to exercise those rights.

53.7 When exercising its rights under this **clause 53**, the NBA agrees to use all reasonable endeavours to operate ARCBS' facilities and to use any Handover Assets, Contract Material, ARCBS Procedures and Personnel pursuant to **clause 53.4.2** in a manner which is consistent with:

- 53.7.1 the provision of the Products and Services as required by this Deed 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
- 53.7.2 any legal obligations of ARCBS relevant to the provision of the Products and Services, which arise:
- (a) under this Deed;
 - (b) under contracts or legally binding industrial instruments of which the NBA is, or ought reasonably be, aware; or
 - (c) otherwise by statute or at law.

Costs of exercising step in rights

- 53.8 If the NBA exercises its rights under this **clause 53**, the NBA will be entitled to retain from Payments a reasonable amount determined by the NBA, after consultation with ARCBS and taking into account:
- 53.8.1 reasonable operating and capital cost incurred by the NBA or nominee in exercising those rights;
 - 53.8.2 costs no longer incurred by ARCBS in respect of activities undertaken by the NBA or nominee in exercising rights under this **clause 53**; and
 - 53.8.3 the requirements of ARCBS for continued funds to meet costs continuing or additional costs of ARCBS.
- 53.9 The Payments payable by the NBA during the period in which the NBA exercises its rights under this **clause 53** will be the amount payable under this Deed, after taking into account any rights the NBA may have to retain an amount from the Payments pursuant to **clause 53.8**.
- 53.10 The NBA must act reasonably in appointing any nominee to provide Products and Services.

Cessation of step in rights

- 53.11 The NBA may cease to exercise its rights under this **clause 53** if, in its reasonable opinion:
- 53.11.1 the circumstances giving rise to the Trigger Event in **clause 53.2** have ceased or are able to be appropriately managed by ARCBS; and
 - 53.11.2 ARCBS will otherwise reasonably be able to provide the Products and Services and otherwise comply with its obligations under the Deed;
- following the cessation of the exercise of those rights.
- 53.12 The NBA must give ARCBS no less than 40 Business Days notice, or such shorter time as is agreed by the Parties, of the time when it will cease to exercise its rights under

this **clause 53**. Immediately after the time specified in that notice, ARCBS must retake control of the provision of Products and Services, and thereafter comply with this Deed and all of its other obligations.

Consultation during step in

53.13 The NBA agrees to ensure that during any period of step in under this **clause 53**, so far as is reasonably practicable:

53.13.1 the NBA or nominee will consult with ARCBS in relation to the exercise of the rights and powers of the NBA or nominee under this clause;

53.13.2 the exercise of the rights and powers of the NBA or nominee under this clause will be exercised on the basis of documented management plans notified to ARCBS; and

53.13.3 the NBA or nominee will keep ARCBS informed of progress in exercise of the rights and powers of the NBA or nominee under this clause.

Termination by ARCBS

53.14 The ARCBS may, after reasonable consultation with the NBA, terminate this Deed under **clause 56** if:

53.14.1 the NBA or nominee has exercised step in rights under this **clause 53** for a period greater than one year and the step-in is continuing; or

53.14.2 the NBA or nominee has exercised step in rights under this **clause 53**, and in the course of exercising rights has made significant changes to the manner of providing the Products or Services which, following the cessation of the step-in, in the reasonable opinion of ARCBS are:

(a) contrary to the ARCS Fundamental Principles; and

(b) not reasonably able to be reversed by ARCBS.

Termination by the NBA

53.15 The NBA may, following the cessation of its step-in rights, terminate this Deed in whole or in part in accordance with **clause 56**.

53.16 If this Deed is terminated under **clause 53.15**, subject to **clauses 57** and **58**, ARCBS is not entitled to any compensation or payment whatsoever, including any payment in relation to the remaining period of this Deed.

Part L: Other Commonwealth requirements

54. Other Commonwealth requirements

Offences under Crimes Act and Criminal Code 1995

54.1 ARCBS acknowledges that:

- 54.1.1 any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of data held in any computer (or, in some cases, any storage device) in the course of performing a contract for the NBA may be an offence under Part 10.7 of the *Criminal Code Act 1995* (Cth) for which there are a range of penalties, including a maximum of ten years' imprisonment;
- 54.1.2 the giving of false and misleading information to the NBA or its Personnel is a serious offence under Division 137 of the *Criminal Code Act 1995* (Cth); and
- 54.1.3 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 the performance of this Deed (other than to a person to whom ARCBS 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 years' imprisonment.

54.2 Nothing in **clause 54.1** is to be taken as an admission or acknowledgement on the part of ARCBS that it or any of its Personnel are Commonwealth officers for the purposes of the *Crimes Act 1914* (Cth). For the avoidance of doubt, the Commonwealth does not, by virtue of this clause, make any representation about the interpretation or application of the legislation referred to in **clause 54.1**.

Occupational health and safety

54.3 A Party must, when using or accessing the other Party's premises or facilities, comply with all reasonable directions and procedures of the other Party relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by the other Party or as might reasonably be inferred from the use to which the premises or facilities are being put. If a Party exercises a right or enforces a clause under this Deed as a result of which another person uses or accesses premises or facilities of the other Party, the first Party must ensure that the other person complies with this clause.

Equal employment opportunity

54.4 ARCBS agrees to comply with its obligations, if any, under the *Equal Employment Opportunity for Women in the Workplace Act 1999* (Cth) (the Act).

54.5 ARCBS agrees not to knowingly enter into a Subcontract in respect of this Deed with a Subcontractor named by the Director of Equal Opportunity for Women in the Workplace as an employer not complying with the Act.

54.6 ARCBS agrees to use reasonable endeavours to include in any Subcontract a provision which requires the Subcontractor to notify the Equal Opportunity for Women in the Workplace Agency of any failure to comply with the Act.

Part M: Termination and disputes

55. Termination for change in Government policy

- 55.1 Subject to **clauses 55.2**, the NBA may, by 12 months prior notice in writing, terminate this Deed. Termination under this clause will take effect on and from the time specified in the notice.
- 55.2 The NBA agrees that it will only exercise its rights under this **clause 55** if a development or change in Government policy is substantially inconsistent with the continued existence of this Deed. For the purposes of this clause, a 'development or change in Government policy' means a change in policy in respect of the operation of the blood supply sector which has been approved by the Ministerial Council, as that term is defined in the National Blood Agreement. The burden of establishing such approval rests with the NBA.

56. Other circumstances of termination or expiry

- 56.1 The Parties agree that this Deed:
- 56.1.1 may be terminated by the NBA if ARCBS commits a serious default which is not capable of remedy;
 - 56.1.2 where **clause 56.1.1** does not apply, may be terminated by the NBA if ARCBS commits a serious default and fails to:
 - (a) commence action to remedy of the serious default within 5 Business Days (or such longer period as consented to by the NBA) after being given that notice; or
 - (b) remedy the serious default within 20 Business Days (or such longer period as consented to by the NBA) after being given that notice;
 - 56.1.3 may be terminated by the NBA under **clause 18.4.3(c), 52 or 53 or 55**;
 - 56.1.4 may be terminated by ARCBS under **clause 18.4.3(c), 52 or 53**;
 - 56.1.5 will expire at the end of the Term (unless this Deed has been terminated prior to that date pursuant to other provisions of this Deed);
 - 56.1.6 if the NBA does not reach agreement with ARCBS as permitted and in the manner provided by **clause 56.2**, will terminate automatically 20 Business Days, or such other period as is agreed in writing, from the date of ARCBS' notice under **clause 56.2**; or
 - 56.1.7 may be terminated by the NBA by notice to ARCBS if an Insolvency Event occurs in respect of ARCBS which was not notified by the ARCBS to the NBA, or addressed, under **clause 56.2**.

- 56.2 ARCBS agrees to provide to the NBA at least 90 Business Days written notice, or such other period as is agreed in writing by the Parties, prior to an Insolvency Event that is reasonably expected to occur, with a view to consulting on possible approaches to avoid the Insolvency Event.
- 56.3 If the Parties agree on a solution under **clause 56.2**, the Deed variation procedure in **clause 17** will be followed to amend this Deed. ARCBS agrees to take all reasonable actions to avoid an Insolvency Event.
- 56.4 For the purposes of **clause 56.1**, a serious default is a breach by ARCBS that:
- 56.4.1 results in a total or substantial failure to provide the Products and Services in accordance with this Deed; or
 - 56.4.2 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 ARCBS.

57. Other consequences of termination or expiry

- 57.1 Upon the effective date of termination for any reason or expiry of the Term (as applicable), and subject to this Deed:
- 57.1.1 the Parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
 - 57.1.2 the Parties' rights (if any) to recover damages are not affected;
 - 57.1.3 the Parties must comply with all obligations in this Deed relating to Commonwealth Material, Contract Material and Confidential Information, and with the requirements of **clause 58** and the Handover Plan;
 - 57.1.4 ARCBS must take all reasonable steps to minimise or avoid any loss or damage resulting from the termination and to protect Commonwealth Material and Contract Material;
 - 57.1.5 the NBA must make Payments due in accordance with this Deed for Products or Services provided before the effective date of termination.
- 57.2 In addition to the NBA's rights under **clause 57.1**, where, before the effective date of termination for any reason or expiry of the Term, the NBA has made any Payment in advance to ARCBS and all or part of that Payment does not relate to Products or Services which have been provided by ARCBS in accordance with this Deed, the portion of that Payment that does not relate to the Products or Services provided must be repaid by ARCBS to the NBA on termination or expiry, and whether the NBA issues a Repayment Notice under **clause 32** or not, that amount, if not repaid, is recoverable by the NBA from ARCBS as a debt.

[Clauses 57.3 to 57.15 not disclosed]

57.3 The operation of this **clause 57** survives the termination or expiry of this Deed.

58. Handover obligations

General

58.1 ARCBS agrees to develop in consultation with the NBA, and to submit to the NBA for approval, a Handover Plan in accordance with this **clause 58**.

58.2 The NBA may require changes to the Handover Plan before providing its approval. ARCBS agrees to make reasonable changes as soon as practicable, and resubmit the Handover Plan for approval by the NBA.

58.3 The ARCBS agrees to update the Handover Plan as reasonably necessary, in consultation with and with the approval of the NBA.

Scope

58.4 The Handover Plan will set out:

58.4.1 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 provision of the Products and Services from ARCBS to the NBA or any third party nominated by the NBA (NBA Nominee);

58.4.2 as Stage 1 of any handover – arrangements for continued provision of the Products and Services by ARCBS for a period of up to 12 months by ARCBS following the termination or expiry of the Deed;

58.4.3 as Stage 2 of any handover - arrangements for transfer to or use by the NBA or an NBA Nominee, or retention by ARCBS, of:

- (a) inventories of Products held by ARCBS, including starting materials or unfinished Products;
- (b) Handover Assets;
- (c) Subcontracts, ARCBS Procurement Contracts and contracts with National Blood Suppliers;
- (d) ARCBS Personnel;
- (e) Intellectual Property of ARCBS and ARCBS Procedures;
- (f) future liabilities of ARCBS associated with (a) to (d);

including arrangements for any information, documents or training to be provided by ARCBS in respect of (a) to (f) or otherwise to enable the provision of the Products and Services by the NBA or an NBA Nominee, including the period and nature of the training;

- 58.4.4 as Stage 3 of any handover - arrangements for valuation of the final position of ARCBS following Stage 2, including for **clause 57.10**;
- 58.4.5 as Stage 4 of any handover – arrangements for:
- (a) repayment to the NBA of any net positive value of ARCBS identified in Stage 3; or
 - (b) discussions in good faith between the NBA and ARCBS in respect of any further arrangements (outside the terms of this Deed) which may be appropriate to meet any net negative value of ARCBS identified in Stage 3;
- 58.4.6 any process agreed between the Parties for managing or monitoring compliance with the handover process; and
- 58.4.7 other matters consistent with this Deed which the Parties consider should be set out in the Handover Plan.
- 58.5 In relation to Stage 2, the Parties agree that, subject to **clause 42.6**, the Handover Plan will be developed on the basis that:
- 58.5.1 subject to **clause 58.5.2**, all Handover Assets will be transferred to or made available for use by the NBA or an NBA Nominee;
 - 58.5.2 ARCBS may nominate Handover Assets which ARCBS may wish to retain on the basis of being required for pre-existing activities of ARCBS which will continue after the termination or expiry, provided that arrangements reasonably satisfactory to the NBA or an NBA Nominee are agreed if there is any need for continued use by the NBA or an NBA Nominee of Handover Assets retained by ARCBS;
 - 58.5.3 all liabilities of ARCBS incurred prior to the effective date of termination or expiry of this Deed will remain liabilities of ARCBS;
 - 58.5.4 Handover Assets will be available to meet liabilities of ARCBS incurred prior to the effective date of termination or expiry only to the extent provided for in the Handover Plan; and
 - 58.5.5 to the extent possible within the constraint of maintaining the efficient and effective provision of Products and Services, ARCBS Personnel will be transferred to the NBA or an NBA Nominee or retained by ARCBS in a manner which minimises additional costs arising from the need to make redundancy or other payments to ARCBS Personnel in respect of the termination of employment.
- 58.6 In relation to Stage 3:
- 58.6.1 the value of ARCS Assets will be taken into account only to the extent agreed by ARCS; and

58.6.2 valuation of the future value of Handover Assets, contracts, Intellectual Property and liabilities will be undertaken on a going concern basis and on a net present value basis as at the effective date of termination or expiry, and will take into account the operation of all provisions of this Deed affecting the obligations, rights, assets or liabilities of the Parties.

58.7 In relation to Stage 4, ARCBS acknowledges and agrees that the NBA is under no obligation under this **clause 58** to make any payment, accommodation, provision or other arrangement in respect of any loss, damage, liability, cost or expense of ARCBS beyond the express provisions of this Deed, and incurs no liability based on this Deed for failing to do so.

Implementation

58.8 In the event of termination or expiry of this Deed for any reason, the Parties agree to 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.

58.9 The NBA may review the Handover Plan in any review under **clause 19** and not less than 12 months before the expiration of the Term (as extended under this Deed, if applicable) to ensure that the Handover Plan remains appropriate to the circumstances of the NBA.

58.10 The NBA agrees to make Payments to ARCBS for any Products and/or Services that ARCBS provides in accordance with this Deed in complying with its obligations under this **clause 58**.

58.11 The Parties agree that the terms and conditions of this Deed including in relation to Payments apply to the provision of any Products and/or Services by ARCBS during the handover period under this **clause 58**.

58.12 The Parties agree that Payments will be made by the NBA to ARCBS in accordance with the Handover Plan in relation to Products delivered to or at the direction of the NBA under **clause 58.4.5**, which have not already been paid for, such Payment being 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), subject to a reasonable reduction in relation to Services normally associated with the provision of the relevant Products that are not provided by ARCBS in delivering the Products in accordance with the Handover Plan.

58.13 The operation of this **clause 58**, and all other provisions of this Deed necessary to give effect to this **clause 58** and the Handover Plan, survive the termination or expiry of this Deed for any reason.

59. Dispute resolution

59.1 In recognition of the importance of maintaining their relationship, the Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Deed.

- 59.2 A Party may give the other Party a notice of dispute (dispute notice) in connection with this Deed.
- 59.3 Following the giving of a dispute notice under **clause 59.2**, the dispute will initially be referred to the contact officers in **Schedule 1 (Deed Details)**, who will use reasonable efforts to resolve the dispute within 10 Business Days of the giving of the dispute notice.
- 59.4 If the Parties have not been able to resolve the dispute in accordance with **clause 59.3**, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation or by an appropriately qualified independent expert.
- 59.5 In the event that the dispute, controversy or claim has not been resolved within 30 Business Days (or such other period as agreed between the Parties in writing) after the Parties have commenced action to resolve the dispute under **clause 59.2**, then either Party may, if it wishes, commence legal proceedings.
- 59.6 Nothing in this **clause 59** prevents either Party from seeking urgent injunctive relief.

Part N: Miscellaneous

60. Notices

Contacts

60.1 The relevant contact persons within each Party for specified categories of communications under or in relation to the Deed are specified in **Schedule 1 (Deed Details)**.

Giving notices

60.2 Unless provided otherwise, where this Deed provides for a notice, consent, information, application, request, proposal, approval or agreement to be given or made between the Parties, that notice, consent, information, application, request, proposal, approval or agreement is only given or made under this Deed if it is in writing and:

60.2.1 delivered or posted to the relevant contact for that Party at the address specified in **Schedule 1 (Deed Details)**;

60.2.2 faxed to the relevant contact for that Party at the fax number specified in **Schedule 1 (Deed Details)**; or

60.2.3 sent by electronic mail to the relevant contact for that Party at the e-mail address specified in **Schedule 1 (Deed Details)**, except in relation to categories of communications under this Deed which are specified in **Schedule 1 (Deed Details)** or which the Parties otherwise agree should not be made by electronic mail.

60.3 If a Party gives the other Party no less than 5 Business Days written notice of a change to the details specified in **Schedule 1 (Deed Details)** for that Party, a notice, consent, information, application, request, proposal, approval or agreement is only given or made by that other Party if it is given or made in accordance with those changed details.

Time notice is given

60.4 A notice, consent, information, application, request, proposal, approval or agreement is taken to be received if it is:

60.4.1 delivered by hand, when it is delivered to a representative of the other Party specified in **Schedule 1 (Deed Details)** at the relevant address;

60.4.2 sent by post, when it is actually received by the other Party;

60.4.3 sent by fax, and an 'OK' transmission report is received by the sender, on the day of transmission if that is before 5.00pm on a Business Day, otherwise on the next Business Day; or

60.4.4 sent by electronic mail, and a satisfactory delivery confirmation or return receipt message is received by the sender.

60.5 A Party must not rely on a notice, consent, information, application, request, proposal, approval or agreement having been received under **clause 60.4.2** unless that Party has received confirmation of receipt using registered mail or directly from the recipient Party.

61. Assignment

61.1 Neither Party may assign any of its rights 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).

62. Costs

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

63. Entire agreement

63.1 This Deed contains everything the Parties have agreed to in relation to the matters it deals with.

63.2 No Party can rely on an earlier document, or anything said or done by the other Party, or by any Personnel of that Party, before this Deed was executed, save as permitted by Law.

64. Execution of separate documents

64.1 This Deed is properly executed if each Party executes either this document or an identical document and in the latter case, this Deed takes effect when the separately executed documents are exchanged between the Parties.

65. Further acts

65.1 The Parties agree to promptly do and perform all acts and things and execute all documents as may from time to time be required, and to at all times act in good faith, for the purposes of or to give effect to this Deed.

66. Governing law and jurisdiction

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

66.2 The Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

67. Severability

- 67.1 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 will be read in the latter way.
- 67.2 If any clause, or part of a clause is illegal, unenforceable or invalid, that clause or part will be treated as removed from this Deed, but the rest of this Deed is not affected, 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.

68. Waiver

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

69. Time of the essence

- 69.1 Time is of the essence in relation to any timing obligations in this Deed associated with the provision of Products.

70. No liability for loans or encumbrances.

- 70.1 Subject to **clause 58**, the Parties agree that neither the NBA or the Commonwealth agrees to bear or accept liability for any encumbrance, debt or loan incurred or entered into by ARCBS at any time before or after the Commencement Date.
- 70.2 ARCBS 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.

Schedule 1 - Deed details

1. Commencement Date

- 1.1 The date of execution of this Deed by both Parties (and if the Parties execute this Deed on different days, the later of those days).

2. Expiry Date

- 2.1 30 June 2009

3. Contacts

- 3.1 NBA:

Position: General Manager, National Blood Authority, or delegate notified as set out below
Street Address: Level 1, 19-23 Moore Street, Turner, ACT
Postal Address: Locked Bag 8430, Canberra, ACT, 2601
Fax Number: (02) 6211 8330
E-mail Address: [not disclosed]

- 3.2 ARCBS:

Position: Government & International Relations Manager, Australian Red Cross Blood Service, or delegate notified as set out below
Street Address: Level 6, 464 St Kilda Road, Melbourne, Victoria 3004
Postal Address: GPO Box 5103, Melbourne, Victoria 3001
Fax Number: (03) 9863 1650
E-mail Address: [not disclosed]

- 3.3 The contacts specified for the delivery of formal notices for each of the NBA and ARCBS may, from time to time, notify the other Party of their authorised delegates for the purpose of delivery of specified categories of notices under the Deed.

4. Notices for which electronic mail may not be used

- 4.1 At the Commencement Date the notices for which electronic mail may not be used are notices issued in connection with the following clauses:

Reference	Notice
Clause 1.1 'ARCS Asset'	Agreed list of ARCS Assets
Clause 5.3	Agreement to extend the Term

Clause 17.1.1	Written agreement to change the Deed
Clause 18.2.4(a)	Notice that a potential liability is subject to indemnity
Clause 20.17.1(a)	Notice that a Proposed Contract is subject to indemnity
Clause 50.1	Deed of security
Clause 52, 53, 55, 56, 57, 58, 59 or 68	Any notice, document or other communication under or referred to in clauses 52, 53, 55, 56, 57, 58, 59 or 68
Schedule 3	Annual Supply Estimates or Reviewed Requirements given by the NBA
Schedule 5	Financial statements under clause S5-7
Schedule 6	Matters agreed under clause S6-2.4 ; Product Unit Payments agreed under clause S6-3.5 ; agreed schedule for Capital Payments under clause S6-4.3 ; agreed adjustments to Payments under clauses S6-5.3 or S6-6.6 ; funded initiatives and Change Program Funding Pool Payments agreed under clauses S6-7.3 and S6-7.4 ; schedule of Other Payments determined under clause S6-8.2 ; ARCS Oversight Cost Reimbursement Payments determined under clause S6-9 .

4.2 The Parties may from time to time agree in writing to changes to the above table (which agreement may not unreasonably be withheld) without requiring a DCP under **clause 17**.

Schedule 2 - Interpretation

In this Deed, unless otherwise expressly provided, the following rules of interpretation apply:

- 1.1 A reference to a clause of a Schedule is identified by the prefix 'S[number]-', where [number] refers to the number of the relevant Schedule. For example, clause 1.2.3 of Schedule 15 may be referred to as '**clause S15-1.2.3**'.
- 1.2 A reference to a matter or information being **taken into account** by a Party means that the Party must give due consideration to that matter, but does not require the Party to follow, give effect to, implement or otherwise act on the matter or information.
- 1.3 In respect of a period of time:
 - 1.3.1 a **Month** means a calendar month;
 - 1.3.2 a **Quarter** means the period of three months from July to September, October to December, January to March, and April to June
 - 1.3.3 a **Half-Year** means the period of six months from January to June, and July to December; and
 - 1.3.4 a **Financial Year** means the period of twelve months from July to June, or any part of such a period occurring at the beginning or end of the Term.
- 1.4 A reference to a matter being **material** means that the matter is not trivial.
- 1.5 A reference to something being done **promptly** is a reference to it being done as soon as is reasonably practicable, using all reasonable endeavours.
- 1.6 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.7 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- 1.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed unless otherwise stated.
- 1.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency.
- 1.10 Subject to **clause 69**, if the day on which any act, matter or thing is to be done under this Deed is not a Business Day, that act, matter or thing may be done on the next Business Day.
- 1.11 A covenant or agreement on the part of two or more persons binds them jointly and severally.

- 1.12 Where the context permits, words suggesting the singular number should be read as including the plural and vice versa.
- 1.13 Headings are included merely to assist the reader and should not be used to assist with the interpretation of any other part of this Deed.
- 1.14 The Schedules and any attachments or annexures form part of this Deed.
- 1.15 In the event of any inconsistency:
- 1.15.1 the clauses of this Deed prevail over the Schedules or any documents attached to, incorporated by reference into or referred to in this Deed; and
 - 1.15.2 the Schedules prevail over any documents attached to, incorporated by reference into or referred to in this Deed.
- 1.16 Unless otherwise required by the context, the word 'includes' is to be read as 'includes, but not limited to' and 'including' is to be read as 'including, but not limited to'.

Schedule 3 - Products and ARCBS Functions

Part A - Objective

- 1.1 **Schedule 3** states the objective agreed between the Parties for continuing to develop and implement best practice nationally consistent processes within ARCBS in relation to products and services under this Deed within the policy and funding frameworks established by governments to ensure that:
- 1.1.1 ARCBS' processes are transparent and accountable;
 - 1.1.2 the Australian blood system moves towards better integration between planning and demand;
 - 1.1.3 products required for the national supply plan are collected, processed, tested, Ordered, distributed and otherwise managed in the most efficient and effective manner; and
 - 1.1.4 opportunities for wastage and expiry across the sector are minimized through a comprehensive inventory management framework.
- 1.2 In recognition of the reliance of ARCBS on the cooperation and good practices of Approved Health Providers in meeting some of the objectives, the Parties have agreed to the development of an agreement to supply that would apply to all Approved Health Providers.

Part B – Products

2. Product groups

- 2.1 The Product groups which may be provided under this Deed are:

Group 1: Fresh blood products produced from Australian donations of blood or blood components, including whole blood, red cell, platelet, clinical fresh frozen plasma, cryoprecipitate, cryo-depleted plasma, and other such products, and also including rare fresh blood products sourced from overseas blood donations and made available through the international exchange program for rare blood types to which Australia is a party.

Group 2: Plasma for fractionation, including fresh frozen plasma, recovered plasma, and plasma suitable for production of particular plasma derived products.

Group 3: Fractionated products from Australian plasma.

Group 4: Other products not in Groups 1-3.

- 2.2 Products in Groups 1 and 2 may be provided with value-added features as follows:

- 2.2.1 CMV negative;
- 2.2.2 HLA matched;
- 2.2.3 phenotyped;
- 2.2.4 IgA deficient;
- 2.2.5 low titre anti-T plasma;
- 2.2.6 secretor plasma;
- 2.2.7 irradiated; and
- 2.2.8 frozen/thawed (rare blood groups/phenotypes).

2.3 In accordance with **Part L** of this **Schedule 3 (Products and ARCBS Functions)**, **Schedule 4 (Planning and Review Cycle)**, and **Schedule 6 (Payments)**, the Parties may agree charges and/or thresholds for the provision of value-added features as part of the consultation on Annual Supply Estimates or the setting of Payments. Unless so agreed between the Parties, value-added features for Group 1 and 2 Products will be provided to Approved Health Providers on request at no additional cost.

3. Identification of specific Products to be provided from time to time

3.1 Subject to **clause 23**, and **Part L** of this **Schedule 3 (Products and ARCBS Functions)**, and **Schedule 4 (Planning and Review Cycle)**, the specific Products to be provided under this Deed will be as specified in the Annual Supply Estimates from time to time.

4. Naming, numbering and ordering conventions

4.1 The Parties agree to jointly develop, implement and review from time to time, agreed conventions for naming, numbering and ordering of Products for the purposes of planning, invoicing and reporting under or in relation to this Deed. The conventions may be developed taking into account internationally applicable standards and practices, and may be based on translation systems or tables between ARCBS, NBA and TGA processes.

5. Provision of Products to Class 4 AHPs

5.1 Provision by ARCBS of blood component material to Class 4 AHPs does not comprise the provision of a Product under this Deed where the blood component material would otherwise not be a TG Act compliant Product for any reason. However, if the blood component material would otherwise be a TG Act compliant Product and is identified as non-compliant for ARCBS production system purposes only because it is to be provided to a Class 4 AHP, the Blood Component Material is deemed to be a TG Act compliant Product for the purposes of this Deed.

Part C – ARCBS Functions

- 6.1 The ARCBS Functions are:
- 6.1.1 donor management and recruitment (see **Part D** of this Schedule);
 - 6.1.2 collections (see **Part E** of this Schedule);
 - 6.1.3 testing (see **Part F** of this Schedule);
 - 6.1.4 processing (see **Part G** of this Schedule);
 - 6.1.5 inventory management and distribution (see **Part H** of this Schedule);
 - 6.1.6 operations support (see **Part I** of this Schedule);
 - 6.1.7 transfusion medicine (see **Part J** of this Schedule);
 - 6.1.8 research and development (see **Part K** of this Schedule); and
 - 6.1.9 corporate support and planning (see **Part L** of this Schedule).
- 6.2 Where this **Schedule 3** specifies the scope of an ARCBS Function, the Parties agree that the specified scope constitutes the scope of the relevant ARCBS Function, and that the Product Unit Payments will be determined under **Schedule 6 (Payments)** on that basis.

Part D – Donor Management and Recruitment

7. Scope of Donor Management and Recruitment function

- 7.1.1 Donor recruitment and retention, marketing including advertising and other promotional work;
- 7.1.2 Donor recognition;
- 7.1.3 Community education about donor health;
- 7.1.4 Community education about the Australian Red Cross Blood Service;
- 7.1.5 Donor contact, liaison and appointments;
- 7.1.6 Donor counselling and safety; and
- 7.1.7 Preparation of donor information materials, including evidence reviews.

Part E – Collections

8. Scope of Collections function

- 8.1.1 Donor registration, selection and education;
- 8.1.2 Donor assessment and screening;
- 8.1.3 Blood collection;
- 8.1.4 Donor hospitality;
- 8.1.5 Collection recall;
- 8.1.6 Donor recall;
- 8.1.7 Emergency Donor Panel support activities; and
- 8.1.8 Freighting of collections to processing centres.

Part F – Testing

9. Scope of Testing function

- 9.1.1 Testing of collections and donor/potential donor or transfusion patient/potential transfusion patient specimens; and
- 9.1.2 Quality control of Products.

Part G – Processing

10. Scope of Processing function

- 10.1.1 Planning for Product sufficiency;
- 10.1.2 Processing of collections into components;
- 10.1.3 Product quarantine storage until verified from screening and testing processes;
- 10.1.4 Discarding unsuitable Products; and
- 10.1.5 Monitoring and optimisation of collection conversion to Products, and Products available for supply.

11. Production planning

- 11.1 ARCBS agrees to apply a documented planning approach for Product sufficiency, at least on an annual 3 year rolling basis, to ensure the performance of its obligations under the Deed. This planning is to be integrated with the business planning cycle.
- 11.2 ARCBS agrees to update production plans referred to in **clause S3-11.1** after receipt by ARCBS of Annual Supply Estimates or Reviewed Requirements (including revisions) under **Part L** of this **Schedule 3 (Products and ARCBS Functions)**.

12. Production requirements Group 1 and Group 2 Products

General

- 12.1 ARCBS' obligations to produce and provide Group 1 and Group 2 Products under this Deed are subject to:

- 12.1.1 circumstances affecting the availability of sufficient numbers of eligible voluntary donors; and
- 12.1.2 circumstances in relation to safety concerns, latent defects, contaminants or donor issues which prevent or limit the effective use of donations;

where these circumstances are beyond the reasonable control of ARCBS, and not able to be reasonably mitigated by ARCBS.

- 12.2 ARCBS agrees to produce the Group 1 and Group 2 Products from the collections, and in doing so agrees to ensure that it is able to produce all such Products in a quantity which will, together with any inventory held under this Deed, be sufficient to ensure that ARCBS is able to provide each Product at least up to the amount of the Product specified for supply in the relevant Reviewed Requirements for Group 1 and 2 Products.

Plasma for fractionation

- 12.3 For any delivery of Group 2 Products for fractionation, ARCBS agrees to:
- 12.3.1 prepare any delivery docket or other process for confirmation of receipt of the Products by the fractionator approved by the NBA;
- 12.3.2 weigh the Products for fractionation;
- 12.3.3 participate in a reconciliation process for the supply and receipt of Products provided to the fractionator;
- 12.3.4 maintain records relating to the volume, weight, testing results (including for titre against a standard, where applicable), reconciliation, and delivery of the Products for fractionation; and
- 12.3.5 provide reports;

as required by the Deed, or as reasonably required by the fractionator or the NBA.

Part H - Inventory Management and Distribution

13. Scope of Inventory Management and Distribution function

- 13.1.1 inventory management;
- 13.1.2 monitored storage;
- 13.1.3 Ordering and receipt of Products from other National Blood Suppliers;
- 13.1.4 Product tracking;
- 13.1.5 monitoring of inventory levels;
- 13.1.6 Product recalls;
- 13.1.7 maintenance of Approved Health Provider lists;
- 13.1.8 receipt of Orders from Approved Health Providers;
- 13.1.9 issue of Products for delivery;
- 13.1.10 packing;
- 13.1.11 delivery of Products to Approved Health Providers; and
- 13.1.12 logistics management.

14. Holding of inventory

Inventory groups

- 14.1 The inventory groups are:
 - 14.1.1 Group 1: Fresh Products;
 - 14.1.2 Group 2: Plasma for fractionation;
 - 14.1.3 Group 3: Fractionated Products from Australian plasma; and
 - 14.1.4 Group 4: Other Products not in Groups 1, 2 or 3

Inventory management arrangements with AHPs

- 14.2 In consultation with the NBA the ARCBS agrees to develop a system for establishing and reviewing appropriate target ranges for Products held by:
 - 14.2.1 ARCBS; and
 - 14.2.2 Approved Health Providers.
- 14.3 In recognition of:

- 14.3.1 the role of Approved Health Providers in implementing best practice management and use of Products, including in managing expiry and wastage of Products in their control; and
- 14.3.2 the impact of Approved Health Provider practices on the overall demand for and supply of Products;

the Parties acknowledge that the development of an effective system referred to in **clause S3-14.2** may require the development of means (possibly including an agreement to supply with ARCBS) by which Approved Health Providers agree to or are otherwise responsible for:

- 14.3.3 agreeing appropriate inventory target ranges and the Ordering process for maintaining appropriate inventory levels;
- 14.3.4 acknowledging delivery of Products;
- 14.3.5 providing agreed reports, or information as requested, to ARCBS, NBA or another entity, in relation to Product inventory, expiry or usage levels; and
- 14.3.6 other measures to increase efficiency in Product Ordering and delivery levels, procedures and schedules.

15. Inventory management requirements

ARCBS management of agreed inventory target ranges

- 15.1 Where the Annual Supply Estimates or Reviewed Requirements include a target range for inventory of a Product, ARCBS will endeavour to maintain that target range of inventory, subject to:
 - 15.1.1 availability of adequate and suitable donors;
 - 15.1.2 competing targets for different Products within Group 1 Products;
 - 15.1.3 availability of Group 3 or 4 Products from the relevant manufacturer;
 - 15.1.4 availability of adequate storage;
 - 15.1.5 requirements for supply of the Product in accordance with Orders under the Deed;
 - 15.1.6 constraints and requirements of ARCBS production of Products;
 - 15.1.7 variations between Reviewed Requirements for Products and Orders met in accordance with the Deed; and
 - 15.1.8 variations between planned and actual production (which the Parties acknowledge may arise as a result of production modelling assumptions used in the production planning).

ARCBS inventory holdings

- 15.2 ARCBS agrees to maintain an adequate network of ARCBS inventory holding facilities across Australia for the holding of inventories to enable timely delivery to Approved Health Providers in accordance with this Deed.
- 15.3 ARCBS agrees to manage the transportation of Products between inventory holding facilities, in a manner which meets licensing requirements under the TG Act.
- 15.4 ARCBS agrees to:
- 15.4.1 maintain a control system which will allow tracking of the specific location of Products up to the point of supply to the Approved Health Provider, and checking and reconciliation of Products delivered and held in ARCBS inventory;
 - 15.4.2 undertake counts of Product inventories for Group 1 and 2 for system verification purposes in accordance with ARCBS Standard Operating Procedures;
 - 15.4.3 undertake counts of Product inventories on a monthly basis for Groups 3 and 4 Products unless otherwise agreed between the Parties, and in accordance with ARCBS Standard Operating Procedures;
 - 15.4.4 undertake any specific checking or counting of inventories as reasonably required by the NBA; and
 - 15.4.5 provide inventory reports to the NBA in accordance with **Schedule 5 (Communications and Reporting)**.
- 15.5 Subject to any relevant Intensive Product Management arrangements, ARCBS agrees to endeavour to minimise levels of Product expiry within any target inventory ranges.
- 15.6 ARCBS will endeavour to locate inventories of Product between different inventory holdings on a basis that will optimise the efficiency and effectiveness of delivery in accordance with expected Orders under the Deed and will minimise the risks of loss or damage to Products, and potential Product expiry.
- 15.7 Without limitation to any other provision of the Deed, ARCBS agrees to give all reasonable cooperation and assistance to the NBA or any other person nominated by the NBA in undertaking any inspection or count of inventories held under this Deed.

16. Ordering and receipt of Group 3 and Group 4 Products

Ordering of Group 3 and Group 4 Products by ARCBS from National Blood Suppliers

- 16.1 ARCBS agrees to only place Orders for Groups 3 and 4 Products, in accordance with this Deed and any instructions as to volume and timing, issued in writing by the NBA from time to time.
- 16.2 In placing an Order for Group 3 or 4 Products ARCBS agrees to provide:

- 16.2.1 the name and size of the Product to be delivered to ARCBS or the Product number (as determined in accordance with **clause S3-4.1**) of the Product to be supplied to ARCBS;
 - 16.2.2 the quantity of Product to be delivered to ARCBS;
 - 16.2.3 the delivery address details; and
 - 16.2.4 other information reasonably required by the supplier of the Groups 3 and 4 Products.
- 16.3 ARCBS agrees to make a written record, including as many of the details set out in **clause S3-16.2** as possible, of Orders placed for Groups 3 and 4 Products.

Minimum Order quantities for Group 3 Products

- 16.4 A supplier of Group 3 Products may require Orders for Products to be made in minimum Order quantities, or multiples of the minimum Order quantities advised to the ARCBS by the NBA from time to time.

Receipt of Group 3 and Group 4 Products

- 16.5 Following receipt of Group 3 and Group 4 Products, ARCBS agrees to:
- 16.5.1 check the condition of the Product packaging and containers;
 - 16.5.2 complete and hold copies (where provided) of any delivery docket or other process for confirmation of receipt of the Products;
 - 16.5.3 participate in any reconciliation process for the supply and receipt of Group 3 and Group 4 Products against records of delivery held by the NBA or another person;
 - 16.5.4 maintain records and give reports of matters relating to the volume, reconciliation, and delivery of Group 3 and Group 4 Products; and
 - 16.5.5 return defective or broken products and inform the NBA;
- as required by the Deed or reasonably required by the NBA.

17. National Ordering system

- 17.1 As a manager of access to Products the ARCBS agrees to maintain controls and procedures over the receipt and filling of Orders, and dispatch of Products in accordance with Orders.
- 17.2 ARCBS agrees to develop, implement and maintain the currency of nationally consistent standard operating procedures for a systematic and documented approach for the approval of Approved Health Providers, and the Ordering and distribution of Products, that includes:
- 17.2.1 subject to **clause S3-17.2.2**, a general procedure for determining priority of access to Products in short supply;

- 17.2.2 implementation of Intensive Product Management or policies or guidelines approved by Governments as notified by the NBA from time to time, including under **clause 23**, and directions of the NBA under **clause 24**;
- 17.2.3 compliance with the TG Act;
- 17.2.4 implementation of clinical guidelines and protocols for the use of Products which are agreed by the Parties to be applicable for the purpose of this Deed;
- 17.2.5 criteria for varying, approving, or declining unusual, irregular or exceptional Orders;
- 17.2.6 persons authorised to approve Product release when required;
- 17.2.7 record keeping requirements for all Products subject to Intensive Product Management and/or are distributed on a named patient basis;
- 17.2.8 maintenance of ARCBS inventory target ranges; and
- 17.2.9 meeting standing Orders as agreed with Approved Health Providers that maintain any relevant inventory target ranges.

18. Approved Health Providers

- 18.1 ARCBS agrees to comply with instructions issued in writing by the NBA from time to time about:
 - 18.1.1 the persons (specified individually or by classes) who are Approved Health Providers for the purposes of this Deed;
 - 18.1.2 the Products (specified individually or by Product Group) in respect of which Approved Health Providers (specified individually, or by Class or other grouping) are approved, as an exception to **clause S3-18.2** and to give effect to implementation of Intensive Product Management or policies or guidelines approved by Governments as notified by the NBA from time to time;
 - 18.1.3 required processes for the addition and deletion of Approved Health Providers by the ARCBS who will be identified by a customer number issued by ARCBS; and
 - 18.1.4 the circumstances in which Products may be supplied to persons who are Approved Health Providers but who have not been issued with a customer number by the ARCBS.
- 18.2 For the purposes of this Deed, a person in a class specified in the first column is, subject to **clauses S3-18.1.1** and **S3-18.1.2**, an Approved Health Provider in respect of the Products specified in the second column, of the following table.

Approved Health Provider class	Products for which AHP is approved
Class 1	Products in Groups 1, 3 and 4.

<p>The following persons or institutions appropriately qualified and/or licensed (as notified by the NBA) under all applicable laws in Australia or its covered Territories (as this term is used in the <i>National Blood Authority Act 2003</i>):</p> <ul style="list-style-type: none"> (a) hospitals; (b) medical centres; (c) pathology laboratories; (d) pharmacies; (e) periodontists (f) midwives; and (g) medical practitioners (where (a) to (f) do not apply). <p>Provision of Products to individual patients under the clinical care of a hospital, medical centre or medical practitioner, with the specific authorisation of a medical practitioner, is deemed to be provision to the hospital, medical centre or medical practitioner.</p>	
<p>Class 2 Government Agencies (of Commonwealth, State or Territory governments in Australia) including the Australian Defence Force, unless Class 1 applies.</p>	<p>Products in Groups 1, 3 and 4.</p>
<p>Class 3 Persons not otherwise covered, as approved in writing by the NBA from time to time to receive Products.</p>	<p>Products specified by the NBA.</p>
<p>Class 4 Research or other institutions undertaking education, research, quality assurance or forensic activities.</p>	<p>All Products.</p> <p>(Note – provision by ARCBS of blood component material to Class 4 AHPs does not comprise the provision of Products under this Deed where the blood component material would otherwise not be TG Act compliant Products. However, if the blood component material would otherwise be a TG Act compliant Product and is only identified as non-compliant for ARCBS production system purposes because it is to be supplied to a Class 4 AHP, the Blood Component Material is deemed to be a TG Act compliant Product for the purposes of this Deed.)</p>
<p>Class 5 Recipients of Products used as starting materials for manufacturing plasma derived products under contract to the NBA, as notified by the NBA to ARCBS from time to time.</p>	<p>Products in Group 2.</p>

<p>Class 6 Recipients of Products used as starting materials for manufacturing products (other than Plasma derived products) under contract to the NBA, where supply of Products by ARCBS is paid for by the NBA under this Deed, as notified by the NBA to ARCBS from time to time.</p>	<p>Products specified by the NBA.</p>
<p>Class 7 Recipients of Products used as starting materials for manufacturing products (other than Plasma derived products) under contract to the NBA, where supply of Products by ARCBS is paid for by Approved Health Provider on a cost recovery basis, as notified by the NBA to ARCBS from time to time.</p>	<p>Products specified by the NBA.</p>

- 18.3 ARCBS agrees to maintain a list of all Approved Health Providers including:
- 18.3.1 the identity (specified by name or position), contact details and delivery address of a person responsible for responding to any queries on Orders and deliveries; and
 - 18.3.2 supporting documentation for Class 3 Approved Health Providers.
- 18.4 Subject to the provisions of this Deed, ARCBS agrees to provide a copy of the current ARCBS list of Approved Health Providers to the NBA in response to a written request, within one month of the request.

19. Approved Health Providers Ordering Products

Requirements for receiving Orders

- 19.1 ARCBS agrees to only accept an Order:
- 19.1.1 from an Approved Health Provider, where the Approved Health Provider has been issued with an identifying customer number by the ARCBS;
 - 19.1.2 from an Approved Health Provider, in accordance with instructions issued in writing by the NBA from time to time about supply of Product to Approved Health Providers who do not have an identifying customer number in certain circumstances; and
 - 19.1.3 in situations in which the lack of prompt dispatch of a Product would be likely to contribute to an adverse health event for the intended patient(s). In view of the urgency of these situations, one or more of ARCBS' procedures may not be carried out by ARCBS, including seeking the one-off approval of Class 3 Approved Recipient from the NBA. However, ARCBS will as soon as practicable ensure that appropriate records are kept to ensure a satisfactory audit trail.

- 19.2 ARCBS agrees to maintain capability which will allow Orders to be made by Approved Health Providers 24 hours of any day of the year.
- 19.3 ARCBS agrees to not accept an Order from an Approved Health Provider unless the form of the Order allows ARCBS to make a record of:
- 19.3.1 date of Order;
 - 19.3.2 the name or identifying number of the Product to be delivered by ARCBS;
 - 19.3.3 the quantity of Product to be delivered by ARCBS;
 - 19.3.4 the name and customer number of the Approved Health Provider; and
 - 19.3.5 the delivery address details.

Obligation to meet Approved Health Provider Orders

- 19.4 Subject to:
- 19.4.1 the Standard Operating Procedure developed in accordance with **clause S3-17.2**;
 - 19.4.2 compliance with the TG Act, and clinical guidelines and protocols for the use of Products agreed by the Parties under **clause S3-17.2.4**;
 - 19.4.3 any relevant Intensive Product Management arrangements; and
 - 19.4.4 performance of Approved Health Providers against any applicable agreement to supply;

ARCBS agrees to meet Orders for Products in accordance with the Deed.

- 19.5 If sufficient uncommitted inventory is not available, ARCBS will contact the Approved Health Provider to determine if the quantity and/or delivery time can be revised in order to satisfactorily meet or partially meet the Order. If so, the Order is revised accordingly.
- 19.6 If following **clause S3-19.5**, the Order remains unfilled, ARCBS' Medical Officer, will determine the fulfilment of the Order based on:
- 19.6.1 urgency and clinical need in consultation with the Approved Health Provider; and
 - 19.6.2 ARCBS inventory in other locations.
- 19.7 ARCBS may decline to supply an Order if, in its reasonable opinion, ARCBS considers the Order is unusual, irregular or exceptional having regard to the nature or volume of Product Ordered. ARCBS agrees to ensure that there is sufficient documentary evidence detailing its reasons for not filling such Orders.
- 19.8 Subject to **clauses S3-19.5 to S3-19.7** ARCBS agrees to promptly notify the NBA if, for any reason ARCBS is unable to supply Products in accordance with this Deed

including, without limitation, where this arises due to an insufficiency of adequate donations or an excess of Orders.

Exception Orders

19.9 Despite anything in this **Part H**, ARCBS agrees to accept an Order as an exception Order where:

19.9.1 the Order does not, at the time the Order is placed, allow ARCBS to make a record of all of the matters in **clause S3-19.3**; and

19.9.2 the Order requires urgent delivery within a specified time for clinical reasons.

19.10 In relation to exception Orders, ARCBS agrees to:

19.10.1 meet the Order in accordance with the Deed;

19.10.2 as soon as practicable, use all reasonable endeavours to obtain all of the matters in **clause S3-19.3**, and make a record of the Order as required under **clause S3-19.3**; and

19.10.3 use all reasonable endeavours to meet the Order in the delivery time specified in the Order.

20. Delivery / Supply

ARCBS inventory facilities and arrangements

20.1 ARCBS agrees to establish and maintain all facilities, resources and arrangements which are necessary and appropriate to ensure the supply of Products in accordance with the Deed, and which will meet applicable requirements under the TG Act, in accordance with the asset planning and funding arrangements provided for in the Deed.

Delivery / supply requirements

20.2 Products will be supplied to the delivery address approved for the AHP, except where the Approved Health Provider has made arrangements to collect the Order from an ARCBS supply facility.

20.3 ARCBS will use its best endeavours to deliver Products:

20.3.1 to meet the delivery time specified in an Order where the Order requires urgent delivery for clinical reasons;

20.3.2 to ensure that agreed inventory ranges for Approved Health Providers are maintained, where an Approved Health Provider has entered into a written arrangement with the ARCBS in relation to inventory ranges;

20.3.3 in accordance with an ARCBS Procedure in relation to delivery times, developed after reasonable consultation with the NBA, which may take into account categories and/or locations of Products and/or Approved Health Providers; or

- 20.3.4 in accordance with default standards for delivery times (which may take into account categories and/or locations of Products and/or Approved Health Providers, or other relevant factors), if any, determined on a reasonable basis by the NBA in accordance with the requirements of Governments and after reasonable consultation with ARCBS.

Acknowledgment and verification of delivery

20.4 Subject to **clause S3-20.5**, ARCBS agrees to:

- 20.4.1 establish and maintain procedures with the aim of ensuring that acknowledgment of receipt of delivery is obtained from Approved Health Providers in respect of Products provided under the Deed;
- 20.4.2 establish and maintain internal process controls and checks to ensure that the requirements of **clause S3-20.4.1** are met; and
- 20.4.3 give the NBA all reports and assistance required under the Deed or by the NBA from time to time in relation to the verification of Product supplied in accordance with Orders and the requirements of the Deed.

20.5 ARCBS agrees to use reasonable endeavours to comply with any reasonable instructions issued in writing by the NBA from time to time about the matters specified in **clause S3-20.4**.

Supply of Products intended for supply or use outside Australia

20.6 In relation to Orders for Products under this Deed where ARCBS is aware that the Products are intended for supply or use outside Australia, ARCBS agrees:

- 20.6.1 to implement any relevant policy of Governments in relation to such Orders in accordance with **clause 23**; and
- 20.6.2 to provide reports to the NBA in relation to such supplies in accordance with **Schedule 5 (Communications and Reporting)**.

Third Party Review

20.7 The Parties may agree to conduct a Third Party Review in accordance with **clause 16**, of the implementation by ARCBS of the requirements of this Deed in relation to the Ordering, distribution, receipt, verification of receipt, and invoicing of Products.

Part I – Operations Support

21. Scope of Operations Support function

- 21.1.1 Operations management;
- 21.1.2 Operations change management;
- 21.1.3 Facilities and services management; and

21.1.4 Operations modelling and analysis.

22. Collections strategy

22.1 ARCBS acknowledges that, in the first instance and subject to this Deed, it is responsible and accountable for maintaining a system of collection facilities to enable the provision of Products in accordance with this Deed.

22.2 ARCBS agrees to:

22.2.1 conduct its collections function in accordance with a nationally planned and coordinated collection facility strategy, and document the collection facility strategy;

22.2.2 consult with the NBA on any requirements or policies of Governments which should be reflected in the collection facility strategy;

22.2.3 undertake prior consultation with relevant government agencies in relevant States or Territories, and with relevant communities, in relation to changes in collection facilities, as far as this is practicable;

22.2.4 in consultation with the NBA and Governments in accordance with the Deed, manage the financial implications of changes in relation to collection facilities through the SCIP and under **Schedule 6 (Payments)**; and

22.2.5 provide the documents comprising the collection facility strategy to the NBA on request.

Part J – Transfusion Medicine

23. Scope of Transfusion Medicine function

23.1.1 Leadership and engagement in relevant professional fora and advisory committees, including jurisdictional Blood Product User Groups;

23.1.2 Monitoring of trends in international clinical practice;

23.1.3 Analysis of clinical basis for supply trends;

23.1.4 Oversight of agreements to supply, if any, with Approved Health Providers;

23.1.5 Development and delivery of information and education materials to Approved Health Providers;

23.1.6 Promotion of and participation in hospital transfusion committee and other transfusion quality improvement activities;

- 23.1.7 Liaison with Approved Health Providers on appropriate inventory levels and inventory management practices including storage and handling of blood and blood products;
- 23.1.8 Collaboration with other bodies on the development and implementation of clinical practice guidelines;
- 23.1.9 Management of Products in short supply including approvals for issue of Products, and monitoring and analysis of usage and expiry;
- 23.1.10 Transfusion medicine consultancy advice to individual clinicians, including but not limited to, advice on appropriate Product use and ongoing support regarding treatment of specific patients;
- 23.1.11 Authorisation of products on a named patient basis;
- 23.1.12 Advice to clinicians in relation to adverse transfusion reactions and events;
- 23.1.13 Delivery of undergraduate and postgraduate transfusion medicine training; and
- 23.1.14 Haemovigilance and blood safety systems development and monitoring activities.

Part K – Research and Development

24. Scope of Research and Development function

- 24.1.1 Research into emerging or existing diseases;
- 24.1.2 Research into the efficacy of products;
- 24.1.3 Research into technologies such as testing, inventory, transport, and specific products;
- 24.1.4 Donor research;
- 24.1.5 Clinical transfusion medicine research; and
- 24.1.6 Other applied research relevant to any of the activities of ARCBS under this Deed.

Part L – Corporate Support and Planning

25. Scope of Corporate Support and Planning function

- 25.1.1 Strategic and business planning;
- 25.1.2 Governance and compliance;

- 25.1.3 Human resource management;
- 25.1.4 Information management;
- 25.1.5 Financial management;
- 25.1.6 Legal affairs;
- 25.1.7 Procurement;
- 25.1.8 Risk management;
- 25.1.9 Counselling – lookback public health program;
- 25.1.10 Quality assurance;
- 25.1.11 Donor and product safety policy and practice;
- 25.1.12 Regulatory compliance
- 25.1.13 Product recall management;
- 25.1.14 Stakeholder management;
- 25.1.15 International benchmarking;
- 25.1.16 Horizon scanning – national and international;
- 25.1.17 Industry scanning and identification of emerging trends and new therapies;
- 25.1.18 Monitor emerging diseases, epidemics and pandemics, and disaster preparedness;
- 25.1.19 New product scanning, assessment, integration, evaluation and development;
- 25.1.20 Management of Intellectual Property;
- 25.1.21 Knowledge management;
- 25.1.22 Volunteer coordination;
- 25.1.23 Forecasting and modelling to develop operational plans as to how the ARCBS will fulfil the supply of Products; and
- 25.1.24 Liaison with the jurisdictions, fractionator and other Suppliers and the NBA.

26. Timetable for supply planning and monitoring

- 26.1 The Parties agree to undertake supply planning and monitoring under this **Part L** in accordance with the planning cycle in **Schedule 4 (Planning and Review Cycle)**.

27. Supply trend analysis

27.1 The Parties agree to establish joint arrangements for supply review and long term supply trend analysis over 3 years, against data available to the Parties, and in light of information and forecasts of emerging developments which may affect supply.

28. Annual Supply Estimates

Scope and status of Annual Supply Estimates

28.1 Annual Supply Estimates prepared by the NBA must include:

28.1.1 the specific Products to be provided under this Deed in a particular Financial Year, for **clause S3-3.1**; and

28.1.2 an estimate by the NBA of the amount of each Product required to be supplied by ARCBS under this Deed in a particular Financial Year.

28.2 ARCBS acknowledges and agrees that Annual Supply Estimates are prepared and given by the NBA for planning purposes only, and are subject to change due to a range of factors, including in particular:

28.2.1 Reviewed Requirements under **clause S3-29**;

28.2.2 finalisation of governments' health budgets;

28.2.3 government policy changes;

28.2.4 safety or regulatory changes;

28.2.5 inventory levels; and

28.2.6 significant changes in clinical practice.

28.3 Where significant changes are made to the ASE's under **clause S3-28.2**, the Parties acknowledge that corresponding changes may also be necessary or appropriate in other processes under this Deed, including in relation to operational and capital Payments under **Schedule 6 (Payments)**.

Preparation of Annual Supply Estimates

28.4 The Parties must consult during September and October on the preparation of draft Annual Supply Estimates for all product groups for the subsequent Financial Year.

28.5 In the course of consultation on draft Annual Supply Estimates, ARCBS agrees to, without limitation to any other obligation of ARCBS under this Deed:

28.5.1 give the NBA such information and cooperation as the NBA may reasonably request or ARCBS may consider appropriate to offer, to assist the NBA in the preparation of draft Annual Supply Estimates, including on:

- (a) the appropriate Products, and any changes to the specification of Products, included in the Annual Supply Estimates;
 - (b) resourcing, costing, assets and timing options for different supply scenarios; and
 - (c) the optimal list and volume of Products to be included in the Annual Supply Estimates to efficiently and effectively meet required levels of supply and clinical needs; and
- 28.5.2 notify the NBA of any matter of which ARCBS is aware that will or may arise in the relevant Financial Year, that would materially impede ARCBS' ability to supply Products in the relevant Financial Year.
- 28.6 The NBA must prepare the draft Annual Supply Estimates taking into account any matters raised by ARCBS in relation to the draft Annual Supply Estimates, and may take into account any other matters the NBA considers relevant, including without limitation:
- 28.6.1 past collection, collection conversion and supply data from ARCBS and other relevant sources;
 - 28.6.2 planned and forecast collection and supply levels; and
 - 28.6.3 the matters referred to in **clause S3-28.5.2**.

Giving and receipt of Annual Supply Estimates

- 28.7 Subject to ARCBS complying with **clauses S3-28.4** and **S3-28.5**, the NBA must give ARCBS the Annual Supply Estimates for a particular Financial Year by no later than the preceding 30 November, and may give ARCBS revised Annual Supply Estimates at any time in accordance with **clause S3-28.2**.
- 28.8 ARCBS agrees to, by no later than 10 Business Days after receipt of Annual Supply Estimates from the NBA, notify the NBA either:
- 28.8.1 that the Annual Supply Estimates are within the capacity of ARCBS to achieve for the relevant Financial Year; or
 - 28.8.2 of any known or likely unavoidable constraints which will prevent ARCBS from achieving the Annual Supply Estimates for the relevant Financial Year.

29. Review of estimated Product requirements

Scope and status of Reviewed Requirements

- 29.1 The NBA must prepare Reviewed Requirements in accordance with **clause S3-29** in the following categories and on the following basis:

Category	Products	Period covered	Consultation period	Timing
Quarterly Reviewed Requirements	Group 3 and 4 Products	Quarter	During September, December, March and June	To be given on the first day of each Quarter, in respect of the Quarter commencing six months from that date
Half-yearly Reviewed Requirements	Group 1 and 2 Products	Half-Year	During December and June	To be given on the first day of each Half-Year, in respect of the Half-Year commencing on that date

29.2 Reviewed Requirements prepared by the NBA must state the NBA's reviewed estimates of the amount of relevant Products required to meet Orders for the relevant period, and may include forecasts and target ranges for inventory to be held by ARCBS during the relevant period.

29.3 ARCBS acknowledges that the Reviewed Requirements prepared by the NBA for any relevant period may be materially different from any Annual Supply Estimate or Reviewed Requirement previously given by the NBA so far as it applied in respect of that period and may result in an adjustment to the Payments as provided for in **Schedule 6 (Payments)**.

29.4 For the purposes of this Deed, in the event of an inconsistency or conflict between Reviewed Requirements and Annual Supply Estimates, the Reviewed Requirements prevail.

Preparation of Reviewed Requirements

29.5 The NBA must consult with ARCBS during the relevant consultation period on the preparation of the Reviewed Requirements.

29.6 ARCBS agrees to, without limitation to any other obligation of ARCBS under this Deed:

29.6.1 give the NBA such information and cooperation as the NBA may reasonably request to assist the NBA in the preparation of Reviewed Requirements; and

29.6.2 in the course of consultation on Reviewed Requirements, notify the NBA of any matter of which ARCBS is aware that will or may arise in the relevant period, that would materially impede ARCBS' ability to supply relevant Products in accordance with the Reviewed Requirements in that period.

29.7 The NBA must prepare the Reviewed Requirements taking into account any matters raised by ARCBS, and may take into account any other matters the NBA considers relevant, including without limitation:

29.7.1 past collection and supply data from ARCBS and other relevant sources; and

29.7.2 planned and forecast collection and supply levels.

Agreement of Reviewed Requirements

29.8 The NBA must give ARCBS the NBA's proposed Reviewed Requirements in accordance with the timing specified in **clause S3-29.1**.

- 29.9 ARCBS agrees to, by no later than 10 Business Days after receipt of proposed Reviewed Requirements, notify the NBA either:
- 29.9.1 that the proposed Reviewed Requirements are agreed by ARCBS – in which case they become the Reviewed Requirements for the relevant Products applying for the relevant period; or
 - 29.9.2 that the proposed Reviewed Requirements are not agreed by ARCBS due to known or likely unavoidable constraints which will prevent ARCBS from achieving the Reviewed Requirements for the relevant Products for the relevant period – in which case ARCBS must notify the NBA of the specific reasons why the proposed Reviewed Requirements are not agreed, and substantiate those reasons in accordance with any reasonable request by the NBA.
- 29.10 Where ARCBS does not agree to the NBA's proposed Reviewed Requirements under **clause S3-29.9.2**:
- 29.10.1 if requested by the NBA, ARCBS will, within 5 Business Days of ARCBS' notice under **clause S3-29.9**, cooperate in good faith with the NBA to develop and agree on alternative options for the Reviewed Requirements which, as far as possible given the known or likely unavoidable constraints of ARCBS, will meet the NBA's requirements; and
 - 29.10.2 the NBA may give ARCBS further proposed Reviewed Requirements for the relevant Products in the relevant period under **clause S3-29.8**.

30. Revision of Reviewed Requirements

- 30.1 The NBA acting reasonably may at any time give ARCBS revised Reviewed Requirements to take into account:
- 30.1.1 any response from ARCBS under **clauses S3-29.9.2 or S3-30.2.2**;
 - 30.1.2 a material change in government policy or budgets, a material safety or regulatory change, or a material change in clinical practice or requirements; or
 - 30.1.3 a variation, Force Majeure Event, partial termination or dispute under the Deed.
- 30.2 ARCBS agrees to, by no later than 10 Business Days after receipt of revised Reviewed Requirements from the NBA, notify the NBA either:
- 30.2.1 that the revised Reviewed Requirements are agreed by ARCBS – in which case they become the Reviewed Requirements for the relevant Products applying for, or for the remainder of, the relevant period; or
 - 30.2.2 that the revised Reviewed Requirements are not agreed by ARCBS due to known or likely unavoidable constraints which will prevent ARCBS from achieving the proposed Reviewed Requirements for the relevant Products for

the relevant period – in which case ARCBS must notify the NBA of the specific reasons why the revised Reviewed Requirements are not agreed, and substantiate those reasons in accordance with any reasonable request by the NBA.

30.3 Where ARCBS does not agree to the NBA's proposed revised Reviewed Requirements under **clause S3-30.2.2**, if requested by the NBA, ARCBS must cooperate in good faith with the NBA to develop alternative options for the revised Reviewed Requirements which, as far as possible given the known or likely unavoidable constraints of ARCBS, will meet the NBA's requirements, and either:

30.3.1 the NBA may give ARCBS further revised Reviewed Requirements under **clause S3-30.1**; or

30.3.2 the NBA may withdraw the proposed revised Reviewed Requirements.

31. Supply Planning and Monitoring Meetings

Description and scope

31.1 The Parties agree to establish and participate in the following supply planning and monitoring meetings on the following basis:

Title	Period	Convenor	Scope
Quarterly Supply Plan Review Meeting	Quarterly	NBA	<p>ARCBS agrees to participate in the meeting convened by the NBA. Meetings to be held by teleconference or, where a teleconference is impracticable, at the NBA's premises or another venue reasonably nominated by the NBA. Timing of the meeting each quarter to be proposed by the NBA but must be notified to ARCBS with at least 10 Business Days prior notice. One quarterly meeting may be held in conjunction with the Annual Supply Plan Review Meeting. ARCBS to make relevant Personnel available to participate in the meeting, as reasonably requested by the NBA.</p> <p>The matters to be addressed at the Quarterly Supply Plan Review Meeting include:</p> <ul style="list-style-type: none"> - review, analysis and identification of any required actions to address variations in demand estimates, inventory target ranges and supply issues; - high level overview of the annual supply planning process; - monitoring the accuracy of the Annual Supply Estimates and Reviewed Requirements; - recommendations on alterations to the Reviewed Requirements (taking into account demand, inventory levels and supply), provided that any revision of Reviewed Requirements is dealt with in accordance with clause S3-30;

Title	Period	Convenor	Scope
			<ul style="list-style-type: none"> - intensive management of supply (when required); or - high level overview of the ARCBS Production Plan.
Annual Review Meeting	July to mid-August	NBA	<p>Meeting will be convened by NBA as part of its operational management. The meeting may be held in conjunction with a Quarterly Supply Plan Meeting. The timing of the meeting must be notified by the NBA to the ARCBS with at least 10 Business Days prior notice.</p> <p>The matters to be addressed at the Annual Review Meeting include:</p> <ul style="list-style-type: none"> - review against Annual Supply Estimates; - review and resolution of demand and supply issues; - review and resolution of any inventory management issues; - intensive management of supply (when required); - high level overview of the ARCBS production plan.
Ad-Hoc Supply Variance Meeting	Ad-Hoc	Either party	Ad-Hoc meeting on Product issues vs. supply plan where variances are outside expected. Either party may instigate.

Administration

- 31.2 Subject to **clause S3-31.1**, and unless otherwise agreed between the Parties, the convenor of a meeting referred to in **clause S3-31.1** must:
- 31.2.1 arrange the time, place and format (face-to-face or teleconference) of a meeting on a basis acceptable to both Parties;
 - 31.2.2 use reasonable endeavours to ensure that all papers or reports required for a meeting are prepared and distributed by the relevant person in sufficient time for the meeting;
 - 31.2.3 chair the meeting;
 - 31.2.4 prepare and/or distribute relevant agendas, papers, meeting outcomes and records, and out of session items; and
 - 31.2.5 otherwise support the operation of the relevant meetings.
- 31.3 Each Party will bear its own costs of (where applicable) convening and participating in a meeting referred to in **clause S3-31.1**.
- 31.4 The Parties may agree that other persons, including, without limitation, any supplier of Products or distributor of Products, may attend or participate in a meeting referred to in **clause S3-31.1**.

31.5 Except as expressly provided in this Deed, a meeting referred to in **clause S3-31.1** does not have any authority to make any decision or determination, or give any notice or other document, under the Deed.

32. Supply reports

32.1 ARCBS agrees to give the NBA by no later than the 15th Business Day of each Month, in conjunction with the relevant invoice under **clauses S6-11.1 to S6-11.5**, a report of all Products supplied in accordance with this Deed during the previous Month, in the manner specified in **clause S3-32.2**.

32.2 A supply report under **clause S3-32.1** must be in the form of a digital data file (using a software program as agreed between the Parties) titled “BILEP020” and contain the following data:

Column Head (in order)	Description of contents of row	Format of contents
FDATE	Date of relevant invoice	YYYYMMDD formatted as Text
FCUST	First four digits of ARCBS' Identifier for NBA	Number
FAUTH	Unique identifier for Approved Health Provider	Text
FPROD	ARCBS' unique identifier for Product	Text
FQTY	Quantity of Product supplied	Text
FPRICE	GST Exclusive Product Unit Payment	Text
FTOTAL	FQTY multiplied by FPRICE	Text

32.3 The Parties will agree any changes to the timing, format, specific content, or means of provision of, the supply reports.

Schedule 4 - Planning and review cycle

1. **Table A – Planning and review cycle model**

- 1.1 **Table A** to this Schedule sets out a model planning and review cycle in relation to a model year. The purpose of **Table A** is to show the planning and review cycle which the Parties aim in due course to implement in relation to the Product and Services, and to act as a general guide for the Parties in administering this Deed and determining subsequent arrangements.
- 1.2 The Parties acknowledge and agree that **Table A** does not, and is not intended to, have any operation in establishing or determining the legal rights or obligations or the Parties under or arising from this Deed or in the interpretation of any other provision of this Deed.

2. **Table B – Planning and review cycle for the Term**

- 2.1 The Parties agree that the planning and review cycle for the Term set out in **Table B** to this Schedule operates to specify the legal rights and obligations of the Parties under this Deed during the Term, in accordance with the other provisions of this Deed which refer to this **Schedule 4 (Planning and Review Cycle)**.

Schedule 4 Table A - Planning and review cycle model

Schedule 4 Table A - Planning & Review Cycle: Model Year																											
Deed Component / Activity	Timing for Activity/ Deliverable	MODEL YEAR -2			MODEL YEAR -1			MODEL YEAR			MODEL YEAR +1																
		J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J		
Key: Event/deliverable due \longleftrightarrow Period to be covered by event/deliverable																											
Quarterly CEO Meetings																											
Quarterly CEO Meeting # 1 Review Model Year Qtr 1 (July-September)	By 7 December MY																										
Quarterly CEO Meeting # 2 Review Model Year Qtr 2 (October-December)	By 14 February/MY																										
Quarterly CEO Meeting # 3 Review Model Year Qtr 3 (January-March)	By 14 May/MY																										
Quarterly CEO Meeting # 4 Review Model Year Qtr 4 (April-June)	By 14 August/MY+1																										
ARCBS Performance																											
Review and update Key Performance Indicators; establish baseline levels or agree targets (at CEO Meeting #3 MY-1)	By 14 May/MY - 1																										
Overview of KPI status and issues for Model Year Qtr 1 (at CEO Meeting # 1 MY)	By 7 December MY																										
Overview of KPI status and issues for Model Year Qtr 2 (at CEO Meeting # 2 MY)	By 14 February/MY																										
Overview of KPI status and issues for Model Year Qtr 3 (at CEO Meeting # 3 MY)	By 14 May/MY																										
Overview of KPI status and issues for Model Year Qtr 4 (at CEO Meeting # 4 MY)	By 14 August/MY+1																										
Report on achievement against KPIs for MY (at CEO Meeting # 1 MY+1)	By 7 December MY+1																										
Agree timing of Third Party Reviews, determine terms of reference (at relevant CEO Meetings)	various																										
ARCBS Research & Development																											
ARCBS Annual Research & Development Workshop	By 30 Sept MY - 1																										

Schedule 4 Table A - Planning & Review Cycle: Model Year

Deed Component / Activity	Timing for Activity / Deliverable	MODEL YEAR -1												MODEL YEAR												MODEL YEAR +1											
		J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J

Key: Event/deliverable due Period to be covered by event/deliverable

ARCBS Strategic Planning

(NB: Not a rolling plan - the following description assumes a case where the Strategic Plan covers MY-1 to MY + 1)

Initial stakeholder consultation with the NBA (at CEO Meeting #1)	By 7 December MY - 2																																				
Discuss proposed priorities with the NBA (at CEO Meeting #2)	By 14 February MY - 2																																				
Provide Strategic Plan to NBA	By 31 July MY - 1																																				
Review current Strategic Plan and begin preparation of following Strategic Plan	By 31 July MY + 1																																				

ARCBS Annual Business Planning

Consultation between ARCBS and NBA on proposed Strategic New Initiatives	July MY - 2																																				
Summary proposals for Strategic New Initiatives to NBA	By 31 August MY - 2																																				
NBA advises ARCBS of outcomes of JBC endorsement of summary proposals for Strategic New Initiatives	By 31 December MY - 2																																				
Consultation, development and submission of detailed proposals for Strategic New Initiatives to NBA	By 30 June MY - 2																																				
Consideration (by NBA/ JBC) and outcomes of detailed proposals for Strategic New Initiatives	July - October MY - 1																																				
Consultation with NBA on business planning scenarios (including operational planning, changes in business practices and relevant policy and regulatory changes) taking into account proposed PUPs and supply levels	Sept-October MY - 1																																				
ARCBS Annual Business Plan to NBA	August-Sept MY - 1																																				
Achievement against Model Year Annual Business Plan (at CEO Meeting # 1 for MY+1)	By 7 December MY + 1																																				

Schedule 4 Table A - Planning & Review Cycle: Model Year

Deed Component / Activity	Timing for Activity / Deliverable	MODEL YEAR -1												MODEL YEAR												MODEL YEAR +1											
		J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J
<p>Key: Event/deliverable due \longleftrightarrow Period to be covered by event/deliverable</p>																																					

ARCBS SCIP and Annual Capital Plan development

(NB: Plan is prepared on an annual rolling basis and accordingly is updated each year; however, for brevity, the description below describes the case where the SCIP covers MY to MY + 4)

Consultation on capital expenditure scenarios and SCIP development (including Annual Capital Plan)	July-October MY - 1																																				
Discuss Proposed Capital Investment and Expenditure priorities with the NBA (at CEO Meeting #4 MY-2)	By 14 August MY - 1																																				
Submit SCIP and Annual Capital Plan to NBA for approval	By 30 November MY - 1																																				
NBA approval of SCIP and Annual Capital Plan	By 28 February MY - 1																																				

Supply Planning

Supply Trend Analysis	July MY																																				
Consultation on ASEs for following FY (All Product Groups) and consultation with NBA on Supply Plan scenarios taking into account proposed PUPs and business planning scenarios	July-October MY - 1																																				
NBA provides final ASEs for following FY	By 30 November MY - 1																																				
Consultation on Reviewed Quarterly Requirements for FY Qtr commencing 6 months from this date (ie MY Qtr 1) (Groups 3 & 4 Products)	By 12 December MY - 1																																				
NBA provides Reviewed Quarterly Requirements for FY Qtr commencing 6 months from this date (ie MY Qtr 1) (Groups 3 & 4 Products)	By 31 December MY - 1																																				
Consultation on Reviewed Quarterly Requirements for FY Qtr commencing 6 months from this date (ie MY Qtr 2) (Groups 3 & 4 Products)	By 12 March MY - 1																																				

Schedule 4 Table B - planning and review cycle for the Term

Item	Process	Activity	Activity Date	Financial Year that Activity Relates to									
				2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	
<p><i>Process key:</i> A – ARCBS Strategic Planning B – ARCBS Annual Business Planning C – Supply Planning</p>				<p><i>D – ARCBS Financial Planning & Review</i> <i>E – ARCBS SCIP and Annual Capital Plan Development</i> <i>F – ARCBS Performance</i> <i>G – Research & Development</i></p>									
1	C	Consultation on ASEs for FY 2007-08 (All Product Groups) and consultation with NBA on supply plan scenarios taking into account proposed PUPs and business planning scenarios	1 Jul 06 to 31 Oct 06				✓						
2	D	Consultation with NBA on proposed PUP scenarios for FY 2007-08 taking into account supply levels and business planning scenarios	1 Jul 06 to 31 Oct 06				✓						
3	E	Consultation on capital expenditure scenarios and SCIP FY 2007-12 development (including Annual Capital Plan FY 2007-08)	1 Jul 06 to 31 Oct 06				✓	✓	✓	✓	✓		
4	B	Consultation between ARCBS and NBA on proposed Strategic New Initiatives for 2008-09	by 31 Jul 06					✓					
5	D	End of year reconciliation of planned v. actual supply and conversion rates, and adjustment if necessary for FY 2005-06	1 Aug 06 to 30 Sep 06		✓								
6	B	Consideration (by NBA / JBC) and outcomes of detailed proposals for Strategic New Initiatives for 2007-08	1 Aug 06 to 31 Nov 06				✓						
7	E	Submit SCIP FY 2006-11 and Annual Capital Plan FY 2006-07 to NBA for approval	by 14 Aug 06			✓	✓	✓	✓	✓			
8	E	Discuss Proposed Capital Investment and Expenditure priorities for FY 2007-12 with the NBA (at CEO Meeting #4 FY 2005-06)	by 14 Aug 06				✓	✓	✓	✓	✓		
9	B	Summary proposals for Strategic New Initiatives for 2008-09 to NBA	by 31 Aug 06					✓					
10	D	Stage 1: Base Costing for FY 2007-08	by 31 Aug 06				✓						
11	B	Consultation with NBA on business planning scenarios for 2007-08 (including operational planning, changes in business practices and relevant policy and regulatory changes) taking into account proposed PUPs and supply levels	1 Sep 06 to 31 Oct 06				✓						

Item	Process	Activity	Activity Date	Financial Year that Activity Relates to										
				2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13		
Process key:				D – ARCBS Financial Planning & Review										
A – ARCBS Strategic Planning				E – ARCBS SCIP and Annual Capital Plan Development										
B – ARCBS Annual Business Planning				F – ARCBS Performance										
C – Supply Planning				G – Research & Development										
12	C	Consultation on Reviewed Quarterly Requirements for Qtr 4 FY 2006-07 (Groups 3 & 4 Products)	by 12 Sep 06			✓								
13	B	Consultation, development and submission of detailed proposals for Strategic New Initiatives for 2007-08	by 30 Sept 06				✓							
14	B	ARCBS 2006-07 Annual Business Plan to NBA	by 30 Sep 06			✓								
15	C	NBA provides Reviewed Quarterly Requirements for Qtr 4 FY 2006-07 (Groups 3 & 4 Products)	by 30 Sep 06			✓								
16	G	ARCBS Annual Research & Development Workshop for FY 2007-08	by 30 Sep 06				✓							
17	D	Agreement on the basis for indexation & other parameters for FY 2007-08	by 30 Sep 06				✓							
18	E	NBA approval of FY SCIP 2006-11 and Annual Capital Plan FY 2006-07	by 16 Oct 06			✓	✓	✓	✓	✓				
19	D	Stage 2: Indexation & Efficiency Factor for FY 2007-08	by 31 Oct 06				✓							
20	D	Stage 3: Offsetting income of ARCBS for FY 2007-08	by 31 Oct 06				✓							
21	D	Stage 4: Other Specific Adjustments for FY 2007-08	by 31 Oct 06				✓							
22	D	Quarterly CFO Meeting # 1 FY 2006-07	by 7 Nov 06			✓								
23	C	NBA provides ASEs for FY 2007-08	by 30 Nov 06				✓							
24	D	Agree final PUPs for FY 2007-08	by 30 Nov 06				✓							
25	E	Submit SCIP FY 2007-12 and Annual Capital Plan FY 2007-08 to NBA for approval	by 30 Nov 06				✓	✓	✓	✓	✓			
26	-	Quarterly CEO Meeting # 1 FY 2006-07 and CEO Year in Review FY 2005-06	by 7 Dec 06		✓	✓								

Item	Process	Activity	Activity Date	Financial Year that Activity Relates to										
				2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13		
Process key:				D – ARCBS Financial Planning & Review										
A – ARCBS Strategic Planning				E – ARCBS SCIP and Annual Capital Plan Development										
B – ARCBS Annual Business Planning				F – ARCBS Performance										
C – Supply Planning				G – Research & Development										
27	C	Consultation on Reviewed Six Monthly Requirements for Half Year 2 FY 2006-07 (Group 1 & 2 Products)	by 12 Dec 06			✓								
28	C	Consultation on Reviewed Quarterly Requirements for Qtr 1 FY 2007-08 (Groups 3 & 4 Products)	by 12 Dec 06				✓							
29	B	NBA advises ARCBS of outcomes of JBC endorsement of summary proposals for Strategic New Initiatives for 2008-09	by 31 Dec 06					✓						
30	C	NBA provides Six Monthly Requirements for Half Year 2 FY 2006-07 (Group 1 & 2 Products)	by 31 Dec 06			✓								
31	C	NBA provides Reviewed Quarterly Requirements for Qtr 1 FY 2007-08 (Groups 3 & 4 Products)	by 31 Dec 06				✓							
32	D	Quarterly CFO Meeting # 2 FY 2006-07	by 7 Feb 07			✓								
33	-	Quarterly CEO Meeting # 2 FY 2006-07	by 14 Feb 07			✓								
34	D	Six monthly reconciliation of planned versus actual supply and conversion rates, and adjustment if necessary for FY 2006-07	by 28 Feb 07			✓								
35	E	NBA approval of SCIP FY 2007-12 and Annual Capital Plan 2007-08	by 28 Feb 07				✓	✓	✓	✓	✓			
36	C	Consultation on Reviewed Quarterly Requirements for Qtr 2 FY 2007-08 (Groups 3 & 4 Products)	by 12 Mar 07				✓							
37	C	NBA provides Reviewed Quarterly Requirements for Qtr 2 FY 2007-08 (Groups 3 & 4 Products)	by 31 Mar 07				✓							
38	D	Quarterly CFO Meeting # 3 FY 2006-07	by 7 May 07			✓								
39	-	Quarterly CEO Meeting # 3 FY 2006-07	by 14 May 07			✓								

Item	Process	Activity	Activity Date	Financial Year that Activity Relates to										
				2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13		
Process key:				D – ARCBS Financial Planning & Review										
A – ARCBS Strategic Planning				E – ARCBS SCIP and Annual Capital Plan Development										
B – ARCBS Annual Business Planning				F – ARCBS Performance										
C – Supply Planning				G – Research & Development										
40	F	Review and update Key Performance Indicators; establish baseline levels or agree targets for FY 2007-08 (at CEO Meeting #3 FY 2006-07)	by 14 May 07				✓							
41	C	Consultation on Reviewed Six Monthly Requirements for Half Year 1 FY 2007-08 (Group 1 & 2 Products)	by 12 Jun 07				✓							
42	C	Consultation on Reviewed Quarterly Requirements for Qtr 3 FY 2007-08 (Groups 3 & 4 Products)	by 12 Jun 07				✓							
43	B	Consultation, development and submission of detailed proposals for Strategic New Initiatives for 2008-09	by 30 Jun 07					✓						
44	C	NBA provides Six Monthly Requirements for Half Year 1 FY 2007-08 (Group 1 & 2 Products)	by 30 Jun 07				✓							
45	C	NBA provides Reviewed Quarterly Requirements for Qtr 3 FY 2007-08 (Groups 3 & 4 Products)	by 30 Jun 07				✓							
46	B	Consideration (by NBA / JBC) and outcomes of detailed proposals for Strategic New Initiatives for 2008-09	1 Jul 07 to 31 Oct 07					✓						
47	C	Consultation on ASEs for FY 2008-09 (All Product Groups) and consultation with NBA on supply plan scenarios taking into account proposed PUPs and business planning scenarios	1 Jul 07 to 31 Oct 07					✓						
48	D	Consultation with NBA on proposed PUP scenarios for FY 2008-09 taking into account supply levels and business planning scenarios	1 Jul 07 to 31 Oct 07					✓						
49	E	Consultation on capital expenditure scenarios and SCIP FY 2008-13 development (including Annual Capital Plan FY 2008-09)	1 Jul 07 to 31 Oct 07					✓	✓	✓	✓	✓		
50	C	Supply pan Review for FY 2006-07	by 15 Jul 07			✓								
51	C	Supply Trend Analysis FY 2004-05 to FY 2009-	by 31 Jul 07	✓	✓	✓	✓	✓						

Item	Process	Activity	Activity Date	Financial Year that Activity Relates to									
				2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	
Process key:				D – ARCBS Financial Planning & Review									
A – ARCBS Strategic Planning				E – ARCBS SCIP and Annual Capital Plan Development									
B – ARCBS Annual Business Planning				F – ARCBS Performance									
C – Supply Planning				G – Research & Development									
		10											
52	D	End of year reconciliation of planned v. actual supply and conversion rates, and adjustment if necessary for FY 2006-07	1 Aug 07 to 30 Sep 07			✓							
53	D	Quarterly CFO Meeting # 4 FY 2006-07	by 7 Aug 07			✓							
54	-	Quarterly CEO Meeting # 4 FY 2006-07	by 14 Aug 07			✓							
55	E	Discuss Proposed Capital Investment and Expenditure priorities for FY 2008-13 with the NBA (at CEO Meeting #4 FY 2006-07)	by 14 Aug 07					✓	✓	✓	✓	✓	
56	D	Stage 1: Base Costing for FY 2008-09	by 31 Aug 07					✓					
57	B	Consultation with NBA on business planning scenarios for 2008-09 (including operational planning, changes in business practices and relevant policy and regulatory changes) taking into account proposed PUPs and supply levels	1 Sep 07 to 31 Oct 07					✓					
58	C	Consultation on Reviewed Quarterly Requirements for Qtr 4 FY 2007-08 (Groups 3 & 4 Products)	by 12 Sep 07				✓						
59	B	ARCBS 2007-08 Annual Business Plan to NBA	by 30 Sep 07				✓						
60	C	NBA provides Reviewed Quarterly Requirements for Qtr 4 FY 2007-08 (Groups 3 & 4 Products)	by 30 Sep 07				✓						
61	G	ARCBS Annual Research & Development Workshop for FY 2008-09	by 30 Sep 07					✓					
62	D	Agreement on the basis for indexation & other parameters for FY 2008-09	by 30 Sep 07					✓					
63	D	Stage 2: Indexation & Efficiency Factor for FY 2008-09	by 31 Oct 07					✓					
64	D	Stage 3: Offsetting income of ARCBS for FY 2008-09	by 31 Oct 07					✓					

Item	Process	Activity	Activity Date	Financial Year that Activity Relates to									
				2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	
Process key:				D – ARCBS Financial Planning & Review									
A – ARCBS Strategic Planning				E – ARCBS SCIP and Annual Capital Plan Development									
B – ARCBS Annual Business Planning				F – ARCBS Performance									
C – Supply Planning				G – Research & Development									
65	D	Stage 4: Other Specific Adjustments for FY 2008-09	by 31 Oct 07					✓					
66	D	Determination of R&D component of PUPs for FY 2008-09	by 31 Oct 07					✓					
67	D	Quarterly CFO Meeting # 1 FY 2007-08	by 7 Nov 07				✓						
68	C	NBA provides ASEs for FY 2008-09	by 30 Nov 07					✓					
69	D	Agree final PUPs for FY 2008-09	by 30 Nov 07					✓					
70	E	Submit SCIP FY 2008-13 and Annual Capital Plan FY 2008-09 to NBA for approval	by 30 Nov 07					✓	✓	✓	✓	✓	
71	-	Quarterly CEO Meeting # 1 FY 2007-08 and CEO Year in Review FY 2006-07	by 7 Dec 07			✓	✓						
72	C	Consultation on Reviewed Six Monthly Requirements for Half Year 2 FY 2007-08 (Group 1 & 2 Products)	by 12 Dec 07				✓						
73	C	Consultation on Reviewed Quarterly Requirements for Qtr 1 FY 2008-09 (Groups 3 & 4 Products)	by 12 Dec 07					✓					
74	C	NBA provides Six Monthly Requirements for Half Year 2 FY 2007-08 (Group 1 & 2 Products)	by 31 Dec 07				✓						
75	C	NBA provides Reviewed Quarterly Requirements for Qtr 1 FY 2008-09 (Groups 3 & 4 Products)	by 31 Dec 07					✓					
76	D	Quarterly CFO Meeting # 2 FY 2007-08	by 7 Feb 08				✓						
77	-	Quarterly CEO Meeting # 2 FY 2007-08	by 14 Feb 08				✓						
78	D	Six monthly reconciliation of planned versus actual supply and conversion rates, and adjustment if necessary for FY 2007-08	by 28 Feb 08				✓						
79	E	NBA approval of SCIP FY 2008-13 and Annual Capital Plan FY 2008-09	by 28 Feb 08					✓	✓	✓	✓	✓	

Item	Process	Activity	Activity Date	Financial Year that Activity Relates to										
				2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13		
Process key:				D – ARCBS Financial Planning & Review										
A – ARCBS Strategic Planning				E – ARCBS SCIP and Annual Capital Plan Development										
B – ARCBS Annual Business Planning				F – ARCBS Performance										
C – Supply Planning				G – Research & Development										
80	C	Consultation on Reviewed Quarterly Requirements for Qtr 2 FY 2008-09 (Groups 3 & 4 Products)	by 12 Mar 08					✓						
81	C	NBA provides Reviewed Quarterly Requirements for Qtr 2 FY 2008-09 (Groups 3 & 4 Products)	by 31 Mar 08					✓						
82	D	Quarterly CFO Meeting # 3 FY 2007-08	by 7 May 08				✓							
83	-	Quarterly CEO Meeting # 3 FY 2007-08	by 14 May 08				✓							
84	F	Review and update Key Performance Indicators; establish baseline levels or agree targets for FY 2008-09 (at CEO Meeting #3 FY 2007-08)	by 14 May 08						✓					
85	C	Consultation on Reviewed Six Monthly Requirements for Half Year 1 FY 2008-09 (Group 1 & 2 Products)	by 12 Jun 08					✓						
86	C	Consultation on Reviewed Quarterly Requirements for Qtr 3 FY 2008-09 (Groups 3 & 4 Products)	by 12 Jun 08					✓						
87	C	NBA provides Six Monthly Requirements for Half Year 1 FY 2008-09 (Group 1 & 2 Products)	by 30 Jun 08					✓						
88	C	NBA provides Reviewed Quarterly Requirements for Qtr 3 FY 2008-09 (Groups 3 & 4 Products)	by 30 Jun 08				✓							
89	C	Supply plan Review for FY 2007-08	by 15 Jul 08				✓							
90	A	Review ARCBS Strategic Plan 2006-09 and begin preparation of Strategic Plan 2009-12	by 31 Jul 08			✓	✓	✓	✓	✓	✓			
91	C	Supply Trend Analysis FY 2004-05 to FY 2009-10	by 31 Jul 08	✓	✓	✓	✓	✓	✓					
92	D	End of year reconciliation of planned v. actual supply and conversion rates, and adjustment if necessary for FY 2007-08	1 Aug 08 to 30 Sep 09				✓							

Item	Process	Activity	Activity Date	Financial Year that Activity Relates to										
				2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13		
Process key:				D – ARCBS Financial Planning & Review										
A – ARCBS Strategic Planning				E – ARCBS SCIP and Annual Capital Plan Development										
B – ARCBS Annual Business Planning				F – ARCBS Performance										
C – Supply Planning				G – Research & Development										
93	D	Quarterly CFO Meeting # 4 FY 2007-08	by 7 Aug 08				✓							
94	-	Quarterly CEO Meeting # 4 FY 2007-08	by 14 Aug 08				✓							
95	C	Consultation on Reviewed Quarterly Requirements for Qtr 4 FY 2008-09 (Groups 3 & 4 Products)	by 12 Sep 08					✓						
96	B	ARCBS 2008-09 Annual Business Plan to NBA	by 30 Sep 08					✓						
97	C	NBA provides Reviewed Quarterly Requirements for Qtr 4 FY 2008-09 (Groups 3 & 4 Products)	by 30 Sep 08					✓						
98	G	ARCBS Annual Research & Development Workshop for FY 2009-10	by 30 Sep 08						✓					
99	D	Quarterly CFO Meeting # 1 FY 2008-09	by 7 Nov 08					✓						
100	-	Quarterly CEO Meeting # 1 FY 2008-09 and CEO Year in Review FY 2007-08	by 7 Dec 08				✓	✓						
101	C	Consultation on Reviewed Six Monthly Requirements for Half Year 2 FY 2008-09 (Group 1 & 2 Products)	by 12 Dec 08					✓						
102	C	NBA provides Six Monthly Requirements for Half Year 2 FY 2008-09 (Group 1 & 2 Products)	by 31 Dec 08					✓						
103	D	Quarterly CFO Meeting # 2 FY 2008-09	by 7 Feb 09					✓						
104	-	Quarterly CEO Meeting # 2 FY 2008-09	by 14 Feb 09					✓						
105	A	Discuss proposed strategic priorities 2009-12 with the NBA (at CEO Meeting #2 FY 2008-09)	by 14 Feb 09						✓	✓	✓			
106	D	Six monthly reconciliation of planned versus actual supply and conversion rates, and adjustment if necessary for FY 2008-09	by 28 Feb 09					✓						
107	D	Quarterly CFO Meeting # 3 FY 2008-09	by 7 May 09					✓						
108	-	Quarterly CEO Meeting # 3 FY 2008-09	by 14 May 09					✓						

Schedule 5 - Communications and reporting

Part A - Communication

1. Communication objectives

- 1.1 Both Parties agree to ensure as far as is practicable that the other Party is aware of all issues relevant to the Deed and to work to ensure effective communication channels are maintained at all times.

2. Notifiable events

- 2.1 The ARCBS agrees to notify the NBA as soon as reasonably practicable of any material matter arising in connection with this Deed that may materially:
- 2.1.1 impact on the security or adequacy of supply;
 - 2.1.2 generate political interest;
 - 2.1.3 constitute a failure to comply with a Law;
 - 2.1.4 lead to community or sector concern; or
 - 2.1.5 impact on safety of donors or recipients.
- 2.2 For urgent matters, any notice will in the first instance be provided via telephone to the NBA contact specified in **Schedule 1 (Deed details)**. In all cases written notice will be provided as soon as practicable but in any case within 48 hours of the notifiable event occurring.
- 2.3 The NBA agrees to advise ARCBS, as soon as authorised to do so, of:
- 2.3.1 policy decisions by Governments under or related to the National Blood Arrangements of which it is aware that are relevant to ARCBS; or
 - 2.3.2 matters under consideration by Governments where the ARCBS may be able to provide input or has an interest.

3. Management of Public Affairs

- 3.1 The Parties agree to jointly develop, and update from time to time as necessary, a protocol for the management of Public Affairs issues, and agree to use reasonable endeavours to comply with any such protocol.

- 3.2 In relation to public announcements specified in the protocol, the Parties agree to use reasonable endeavours to:
- 3.2.1 where practicable, consult on the public announcements prior to the public announcement being made; or
 - 3.2.2 if **clause S5-3.2.1** is not practicable, notify the other Party of the public announcement having been made as soon as practicable thereafter.
- 3.3 The Parties agree that the public announcements to be specified in the protocol will include the publication (other than to any Government or any authority or agency of a Government) of any research or analysis carried out or developed by or on behalf of a Party which:
- 3.3.1 where the publishing Party is the NBA - materially includes Contract Material provided to the NBA under this Deed; or
 - 3.3.2 where the publishing Party is the ARCBS - materially includes Commonwealth Material provided to ARCBS under this Deed;
- and in relation to such a publication, the protocol will require the publishing Party to use reasonable endeavours to ensure that:
- 3.3.3 the Contract Material or Commonwealth Material is attributed to ARCBS or the NBA;
 - 3.3.4 where relevant, ARCBS or the NBA is identified as the owner of Intellectual Property in the Contract Material or Commonwealth Material; and
 - 3.3.5 the Contract Material or Commonwealth Material is not misrepresented;
- as applicable in each case.

4. Quarterly CEO meetings

- 4.1 Meetings will be held quarterly in accordance with **Schedule 4 (Planning and Review Cycle)** between the ARCBS Chief Executive Officer and the NBA General Manager, who may invite other representatives of their respective organisations. Where it is impracticable for the ARCBS Chief Executive Officer or the NBA General Manager to attend a meeting, they may, with the agreement of the other, appoint a delegate to attend the meeting.
- 4.2 The Parties will agree a standing agenda for the meetings based on the issues specified as being required to be covered at the meetings under this Deed, and may from time to time agree other specific items for the agenda of a meeting. The ARCBS agrees to provide a written summary report against each standing agenda item prior to the meeting.
- 4.3 The first Quarterly CEO meeting in each Financial Year will include a year in review report and presentation by the ARCBS CEO in relation to the previous Financial Year.

- 4.4 The Parties agree to share the responsibility of keeping written minutes of the Quarterly CEO meetings, to be agreed between the Parties. The NBA reserves the right to request further information in the form of a written report from ARCBS on any issue covered in the meeting.

Part B - Reporting

5. General

- 5.1 The ARCBS will comply with any reasonable instructions issued in writing by the NBA from time to time (after consultation with the ARCBS) in relation to the format, requirements, or means of provision of, any reports or notifications required to be given by ARCBS under the Deed.
- 5.2 The ARCBS will provide reports and notifications to the NBA in accordance with **Table A** to this **Schedule 5 (Communications and Reporting)** and where relevant with **Schedule 4 (Planning and Review Cycle)**. **Table A** is a compilation of all reporting and notification requirements of ARCBS under this Deed.

6. Annual Report

- 6.1 The Annual Report will be the published annual report of ARCBS. ARCBS agrees to include in the Annual Report those matters that are required under **clause 8.5**.

7. Monthly financial reports

- 7.1 ARCBS agrees to provide to the NBA Monthly financial reports, within 25 Business Days (or such other reasonable period approved by the NBA, which approval may not be unreasonably withheld) after the end of each Month, including:
- 7.1.1 balance sheet;
 - 7.1.2 income and expenditure statement; and
 - 7.1.3 cashflow statement.
- 7.2 The Monthly financial reports must:
- 7.2.1 be stated for the whole of ARCBS finances, in a manner that differentiates financial matters under or in accordance with this Deed from other finances of ARCBS;
 - 7.2.2 include budgets and reporting by expense and revenue types, on a Monthly, year to date, and likely outcome for full Financial Year basis;
 - 7.2.3 include budgets and reporting by ARCBS Portfolio; and
 - 7.2.4 be approved by the ARCBS Board.

Part C – Confidential Information

- 8.1 Subject to **clause S5-8.2**, Confidential Information of ARCBS is any of the following information (whether oral, visual or in writing, or recorded or embodied in any other medium) relating to the affairs or activities of the Society or ARCBS:
- 8.1.1 the terms of ARCBS agreements or arrangements with suppliers, contractors, consultants, researchers, educational or medical organisations or other institutions;
 - 8.1.2 details of ARCBS regulatory licences, registrations or other permits or ARCBS correspondence or other dealings with regulatory authorities;
 - 8.1.3 details of donors or transfusion recipients;
 - 8.1.4 details of indemnities provided by the NBA to ARCBS under this Deed; or
 - 8.1.5 internal information of ARCBS concerning:
 - (a) trade secrets, patents, designs or other Intellectual Property concerning the manufacture or composition of Products;
 - (b) ARCBS risk management, insurance, security measures, financial and business affairs, or legal affairs; or
 - (c) proceedings of the Society's Board, ARCBS' Board and Committees of the Society or ARCBS;
- provided that in each case, in relation to any specific item of information, the information is specifically marked, or otherwise clearly identified by ARCBS, as being confidential prior to disclosure to or access by the NBA under the Deed.
- 8.2 A specific item of information is not confidential information under **clause S5-8.1** if, when requested to do so by the NBA, ARCBS cannot substantiate to the NBA's reasonable satisfaction that:
- 8.2.1 the specific item of information is in fact treated as confidential by ARCBS; and
 - 8.2.2 disclosure or misuse of the specific item of information would cause, or would give rise to a real risk, of:
 - (a) a detrimental impact on the availability of blood donors or the supply of Products or Services under the Deed;
 - (b) a detrimental impact on the ability of ARCBS to enter into agreements for the development or commercialisation of research and development;
 - (c) a breach of specific obligations of confidentiality owed by ARCBS to a third party, where such obligations cannot be mitigated or avoided by ARCBS;

- (d) a waiver of ARCBS legal professional privilege;
- (e) prejudice to handling by ARCBS of legal claims, or circumstances which may give rise to legal claims, to the extent that such handling is consistent with the Model Litigant Principles issued under the *Judiciary Act 1903* from time to time (as if those Principles applied to ARCBS and its legal advisers); or
- (f) prejudice to the ability of ARCBS to obtain or claim insurance.

Schedule 5 Table A – Reporting and notification obligations of ARCBS

Topic	Document or Report	Item	Details/Content	Frequency	Period Covered	Due Date	Relevant Deed clause(s) or schedule(s)
General	Annual Report	1	As published	Annual	Previous Financial Year	By 7 December	Clause 1.1 Clause S5-6
	Quarterly CEO Meetings - summary report	2	<ul style="list-style-type: none"> ● General review of relevant Quarter ● Progress against Annual Business Plan, including advice on the actions to be taken by ARCBS to correct any material under-performance against the Annual Business Plan, and any significant reprioritisation of activities under the Annual Business Plan ● Progress on implementation of the agreed capital and expenditure priorities against the approved Strategic Capital Investment Plan (SCIP) ● Progress on any current Third Party Reviews ● Response to any Third Party Review reports, including ARCBS justification for any rejection of findings or recommendations, and ARCBS' proposed action plan and timetable for implementing recommendations and addressing deficiencies or non-conformities identified in the report ● Status of the Risk Management Plan and any significant new or changed risks ● High level overview of status and issues in relation to Key Performance Indicators detailed in Schedule 7 	Quarterly	Previous Quarter	5 Business Days prior to each Quarterly CEO Meeting	Clause 11.5.4 Clause 14.8 Clause 16.2.1 Clause 16.3 Clause 28.1.3 Clause 47.4.2 Schedule 4 Table B Clause S5-4 Clause S7-2.3
	CEO Year in Review report	3	<ul style="list-style-type: none"> ● Executive Summary ● General review of relevant Financial Year ● Annual review of matters on normal Quarterly CEO Meeting standing agenda ● Overview report to the NBA on the provision of products or services or use of resources assets or facilities referred to in clause 25.1 ● Report on achievement against Key Performance Indicators detailed in Schedule 7 	Annual	Previous Financial Year	5 Business Days prior to Quarterly CEO Meeting #1 in following Financial Year	Clause 25.4 Clause 33.2 Clause S5-4.3 Clause S7-2.3

Topic	Document or Report	Item	Details/Content	Frequency	Period Covered	Due Date	Relevant Deed clause(s) or schedule(s)
			<ul style="list-style-type: none"> Notification to the NBA of the amount of any funding received by the ARCBS from the ARCS and the purposes for which such funding was given 				
	Minutes of Quarterly CEO meeting	4	Written minutes, to be agreed between the Parties	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Schedule 5 clause A4
ARCBS Governance and Relationship Management	ARCBS Governance	5	Include statement relating to compliance with the Governance Standards in the ARCBS Annual Report	Annual	Previous Financial Year	As required under relevant clause/schedule	Clause 8.5 Schedule 8
	ARCBS acknowledgement of Governments' funding	6	Acknowledgement of funding provided by Governments in publications, promotional material and activities relating to this Deed	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 9.4
ARCBS Business Planning	ARCBS Strategic Plan	7	<ul style="list-style-type: none"> ARCBS organisational vision and mission ARCBS organisational strategic initiatives, specified on a 3 to 5 year basis objectives within each strategic initiative 	Triennial	Following three (3) Financial Years	July of Year 1 of Strategic Plan	Clause 11.2 Clause 11.3 Schedule 4 Table B
	ARCBS Strategic New Initiatives	8	Summary proposals	As required under relevant clause/schedule	As required under relevant clause/schedule	31 August in the second Financial Year prior to Financial Year(s) for which the SNIs apply	Clause 11.2 Schedule 4 Table B
		9	Detailed proposals, where required	As required under relevant clause/schedule	As required under relevant clause/schedule	30 June in the second Financial Year prior to Financial Year(s) for which the SNIs apply	Clause 11.2 Schedule 4 Table B
	ARCBS Annual Business Plan	10	<ul style="list-style-type: none"> ARCBS planned activities and expected outcomes for each objective within each strategic initiative, including any performance indicators and planned expenditure identification of Strategic New Initiatives (ARCBS initiatives), subject to prior approval by the NBA or JBC, where required 	Annual	Following Financial Year	August to September of the relevant Financial Year	Clause 11.2 Clause 11.4 Schedule 4 Table B
Horizon Scanning	Emerging Trends & Developments	11	<ul style="list-style-type: none"> Inform the NBA on new and emerging trends and developments relevant to this Deed 	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 12.1

Topic	Document or Report	Item	Details/Content	Frequency	Period Covered	Due Date	Relevant Deed clause(s) or schedule(s)
	New Technology & Services	12	<ul style="list-style-type: none"> High level written analyses of new technology or services relevant to this Deed 	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 12.3.1
Research and Development	ARCBS Research & Development Annual Report	13	<ul style="list-style-type: none"> ARCBS published report on research and development activities, or supplementary report, showing outcomes and application of R&D, and resulting system implications and improvements 	Annual	Previous Financial Year	By 7 December	Clause 13.1
Capital	Proposed Five Year Strategic Capital Investment Plan (SCIP) and Annual Capital Plan, for NBA approval	14	<ul style="list-style-type: none"> Detailed planning and methodology for the prioritisation of expenditure in respect of SCIP Assets over a rolling 5 year period risk analysis to support prioritisation costing and purchase options for the treatment of major facility requirements replacement policies for major and minor infrastructure requirements the accounting classification of the expenditure which will result from the implementation of the SCIP any expected savings or costs in operational or capital expenditure which will result from the implementation of the SCIP 	Annual	Following five Financial Years, or first year of SCIP, respectively	As required under relevant clause/schedule	Clause 14.1 Clause 14.3 Clause 14.4 Clause 14.8 Schedule 4 Table B
	Substantial amendments to the SCIP or Annual Capital Plan, for NBA approval	15	Revised SCIP	As required under relevant clause/schedule	Period or SCIP or Annual Capital Plan, as relevant	As required under relevant clause/schedule	Clause 14.6
Supply Planning and Review	Provision of Annual Supply Estimates	16	<p>Notify the NBA either:</p> <ul style="list-style-type: none"> that the Annual Supply Estimates are within the capacity of ARCBS to achieve for the relevant Financial Year; or of any known or likely unavoidable constraints which will prevent ARCBS from achieving the Annual Supply Estimates for the relevant Financial Year 	Annual	Following Financial Year	No later than 10 Business Days after ARCBS receipt of Annual Supply Estimates	Clause S3-28.2 Schedule 4 Table B
	Agreement of Reviewed Requirements (including revised Reviewed Requirements)	17	<p>Notify the NBA either that the proposed Reviewed Requirements:</p> <ul style="list-style-type: none"> are agreed by ARCBS; or are not agreed by ARCBS due to known or likely unavoidable constraints which will prevent ARCBS from achieving the Reviewed Requirements for the relevant Products for the relevant period, along with specific reasons and substantiation of those reasons in accordance with any reasonable request by the NBA 	Half yearly or Quarterly, or ad hoc	Group 1 and 2 Products - Financial half-year commencing the following month after which the Reviewed Requirements were provided by the NBA	No later than 10 Business Days after receipt of Reviewed Requirements	Clauses S3-29.9 and S3-30.2 Schedule 4 Table B

Topic	Document or Report	Item	Details/Content	Frequency	Period Covered	Due Date	Relevant Deed clause(s) or schedule(s)
					Group 3 and 4 Products - Quarter commencing six months from the beginning of the following month after which the Reviewed Requirements were provided by the NBA		
	Supply planning meetings	18	Where the ARCBS is the Convenor, ensure that all papers or reports for a meeting are prepared and distributed by the relevant person, including relevant agenda papers, meeting outcomes, records and out-of-session items	As required under relevant clause/schedule	As required under relevant clause/schedule	In sufficient time prior to and following the meeting	Clause S3-31.2 Schedule 4 Table B
Management of this Deed	Deed Variations	19	Deed Change Proposal	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 17.3 Clause 17.4
	Proposal requiring business case analysis	20	Business Case analysis	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clauses 17.12 to 17.17
	[not disclosed]	21	[not disclosed]	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 18.1
	Notifiable Events	22	Notification of the occurrence of specified events	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 26.3 Clause S5-2
	Information and ad hoc reports	23	Information or ad hoc reports requested by the NBA	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clauses 26.4 to 26.6
	Deed Review	24	Provision of information, access to records and advice in relation to the Review as reasonably requested by the NBA	Annually or as otherwise required	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 19
	Notification of ARCBS Portfolios	25	Notification by ARCBS of the organisational structures and management arrangements by which ARCBS conducts the ARCBS Functions and otherwise fulfils its obligations under the Deed	Following any material change to the ARCBS Portfolios	As applicable from time to time	As applicable from time to time	Clause 1.1
ARCBS Procurement and Sub-contracting	Procurement Standards	26	Copy of ARCBS Procurement Standards or significant revisions thereto, if reasonably requested by the NBA	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 20.4
		27	Notification of any ARCBS inability to negotiate a proposed Significant ARCBS Procurement Contract which meets the Procurement Standards prior to entering into a proposed Significant ARCBS Procurement Contract	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 20.5
	Subcontracting	28	Provide complete and legible copies of proposed subcontracts for NBA approval	As required under relevant	As required under relevant	As required under relevant	Clause 20.9

Topic	Document or Report	Item	Details/Content	Frequency	Period Covered	Due Date	Relevant Deed clause(s) or schedule(s)
				clause/schedule	clause/schedule	clause/schedule	
		29	Notify the NBA of ARCBS finding and conclusion and any appropriate remedial action in relation to concerns raised by the NBA regarding the performance of a Subcontractor	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 20.10.2
	[not disclosed]	30	[not disclosed]	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 20.14
	National Blood Suppliers	31	Provide to NBA a complete and legible copy of a proposed contract, arrangement or understanding with a National Blood Supplier, for NBA approval	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 21.3
Products & Services	Implementation of Government policies	32	Reporting requirements under relevant Government policies	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 23.3.5
		33	Written explanation of the basis for ARCBS refusal to implement a policy	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 23.6
	Supply Reports	34	Monthly report of Products supplied in previous Month	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause S3-32
	Intensive Product management	35	Reporting requirements operating as part of intensive Product management	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 24.6
	Obligations under Therapeutic Goods Act	36	To the extent that ARCBS is the sponsor of any of the Products, provide notification in writing to the NBA immediately upon ARCBS becoming aware that the TG Registration and TG Listing has ceased, or that the ARCBS has reasonable grounds to consider that the TG Registration or TG Listing may cease	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 27.2.1(b)
		37	To the extent that ARCBS is the licensed manufacturer of any of the Products, provide notification in writing to the NBA immediately upon ARCBS becoming aware that a licence has ceased or been suspended, or that the ARCBS has reasonable grounds to consider that the licence may cease or be suspended, in relation to a primary site specified in a licence	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 27.2.2(b)
	Product compliance and return	38	Notification to the NBA and the TGA of results of any investigation where non-compliance with the applicable requirements of the TG Act involves a potential risk of harm to persons	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 27.5.4
	Receipt of Group 3 and Group 4 Products	39	Provide report on Group 3 and 4 Products received by the ARCBS during the period	Monthly	Previous month	Within 20 business days of end of the previous month	Clause S3-16.5
	Inventory Management and	40	Monthly Inventory Report for Group 3 and 4 Products, including Product, volume, batch number and expiry date	Monthly	Previous month	Within 20 days of the end of the previous month	Clause S3-15.4.5

Topic	Document or Report	Item	Details/Content	Frequency	Period Covered	Due Date	Relevant Deed clause(s) or schedule(s)
	Distribution	41	In addition, the Parties may agree from time to time on inventory reports to be provided by ARCBS to the NBA in respect of Group 1 and 2 Products	As agreed between the Parties	As agreed between the Parties	As agreed between the Parties	Clause S3-15.4.5
	Approved Health Provider List	42	Provide a copy of the Approved Health Provider list to the NBA	As required under relevant clause/schedule	Current	As required under relevant clause/schedule	Clause S3-18.4
		43	Provide the NBA with a report of all Products supplied under this Deed intended for supply or use outside Australia	Six monthly	Previous six month period	Within the month following the six month reporting period	Clause S3-20.6.2
	Inability to supply Products	44	Notification to the NBA, if, for any reason ARCBS is unable to supply Products in accordance with this Deed including, without limitation, where this arises due to insufficiency of adequate donations or an excess of Orders	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause S3-19.8
	Acknowledgement and verification of delivery	45	Provide the NBA with all reports and assistance required under the Deed or by the NBA from time to time in relation to the verification of Product supplies in accordance with Orders and the requirements of this Deed	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause S3-20.4.3
	Plasma for fractionation	46	Monthly reports of delivery of Group 2 Products for fractionation	Monthly	Previous month	Within 20 days of the end of the previous month	Clause S3-12.3.5
	Collections strategy	47	Provide documents comprising the collection facility strategy to the NBA on request	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause S3-22.2.5
Financial Arrangements	Financial Management Obligations of the ARCBS	48	Provide financial statements to the NBA in accordance with this Schedule 5 (Part B.3)	As required under relevant clause/schedule	As required under relevant clause/schedule Financial Year	As required under relevant clause/schedule	Clause 34.1.4 Clause S5-7
	ARCS Oversight Cost Reimbursement Payments	49	Provide report of annual audit	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause S6-9.2.4
		50	Provide information to the NBA concerning, and substantiate to the NBA, ARCBS performance of obligations under clause 34.1.2	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 34.1.3
	Disposal of SCIP Assets	51	Report to the NBA in relation to all funds received from SCIP Asset disposal and how those funds have been applied in the financial statements or notes thereto under clause 34	As required under relevant clause/schedule	Previous Financial Year quarter	Within 25 Business Days of the end of each quarter (unless otherwise approved by the NBA)	Clause 42.5
	Returns on exploitation of Intellectual Property rights	52	Report to NBA regarding returns on exploitation of Intellectual Property rights in the Contract Material and how those funds have been applied in the financial statements or notes thereto under clause 34	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 40.6 Clause 34

Topic	Document or Report	Item	Details/Content	Frequency	Period Covered	Due Date	Relevant Deed clause(s) or schedule(s)
	Product Unit Payments	53	Provide an explanation or substantiation of the costing of any component in the proposed Product Unit Payments, or provide information to any independent review requested by the NBA of those figures	As required under relevant clause/schedule	Relevant Financial Year	As required under relevant clause/schedule	Clause S6-3.3
	Invoicing	54	Submit Tax Invoices and supporting documents in arrears (in pdf format) based on Product Unit Payments (including Value Added Features) supplied in accordance with Orders during the relevant month and for any Capital Payments, Change Program Funding Pool Payments Other Payments or ARCS Oversight Cost Reimbursement Payments which may be invoiced in that period in accordance with Schedule 6	Monthly	Previous month	As required under relevant clause/schedule	Clauses S6-11.1 to S6-11.4
		55	Provide supporting documentation for invoices as reasonably requested by the NBA from time to time	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause S6-11.5
	Payment and adjustment of invoices	56	Where at any time: (a) a Product is returned from one AHP and reissued by ARCBS to another AHP; or (b) the NBA reasonably considers that an invoice issued by ARCBS is incorrect (whether or not any amount has been paid by the NBA in respect of the invoice): provide the NBA with: (c) a credit note and replacement invoice; (d) an adjustment note; or (e) an adjustment in subsequent invoices as required to correct the invoice and in compliance with any requirements of the GST legislation as defined in clause 30	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause S6-12.2
Audit	Audit response	57	Proposal containing recommendations for corrective action to rectify any error, non-compliance, or inaccuracy properly identified in any audit in accordance with clause 37.5	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 37.5
Privacy	Register of Personal Information	58	Provide a copy of the register of Personal Information to the NBA that details referred to in clause 38.2	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 38.3
Intellectual Property	Third party licences	59	Inform the NBA in writing where ARCBS is unable using reasonable endeavours to procure a licence from a third party, detailing the reasons for the outcome, and disclosing the timeframe in which the NBA should respond	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 40.5.1
Registers	Significant Procurement Contracts and Subcontracts	60	Provide register of all Significant ARCBS Procurement Contracts and Subcontracts to NBA	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 20.11

Topic	Document or Report	Item	Details/Content	Frequency	Period Covered	Due Date	Relevant Deed clause(s) or schedule(s)
	Intellectual Property	61	Provide copy of Intellectual Property Register	Annual	Current	By end August	Clause 40.13
	Procedures Registers	62	Provide copy of that part of the Procedures Register maintained by the ARCBS in relation to provision of the Products and Services in accordance with the TG Act	Annual	Current	By end August	Clause 40.13
	Asset Register	63	Provide copy of register of Registrable Assets as per clause 42.3.1	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 42.3.2
Protection of Information	Confidentiality	64	Give, or arrange for, ARCBS Personnel engaged in the provision of Products and Services, or any other third party other than a Commonwealth Employee, to whom the information is disclosed pursuant to clause 43.1 , to give, a deed of undertaking in the form reasonably required by the NBA, relating to the non-disclosure of Confidential Information	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 43.3
	Conflict of Interest	65	Notify the NBA immediately of any situation where a Conflict of Interest arises in the performance of ARCBS' obligations under this Deed, and provide any information reasonably requested by the NBA	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 45.4
Treatment of Risks	Risk Management Plan	66	Provide the NBA with information and documents describing the Risk Management Plan promptly on request by the NBA	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 47.4.1
	Deed of Security	67	Provide the NBA with security over the Products as specified in, and in accordance with, the requirements of Schedule 10	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 50.1
	Insurance	68	Provide the NBA with a report of all insurance levels	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 51.1 Schedule 9
		69	Provide the NBA with a copy of any policy, subject to underwriter agreement, or evidence of the currency of any policy, of insurance required to be held under this Deed	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 51.2
		70	Provide the NBA with reports and analysis as reasonably requested by the NBA from time to time in relation to claims made under the insurance policies held by the ARCBS	As reasonably requested by the NBA from time to time	As reasonably requested by the NBA from time to time	As reasonably requested by the NBA from time to time	Clause 51.3
		71	Provide NBA with documentation of any professional advice received under clause 51.4	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 51.5
	Force Majeure (Default)	72	If default continues for period exceeding that under clause 52.1.2 notify NBA of : (a) the nature and cause of the problem; (b) the steps being taken to minimise the problem; and (c) the expected delay in the performance of the relevant Party's obligations under this Deed	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 52.5.1

Topic	Document or Report	Item	Details/Content	Frequency	Period Covered	Due Date	Relevant Deed clause(s) or schedule(s)
	Step in Rights	73	Upon the issue of a Step In Notice to the ARCBS, provide the NBA with any information reasonably necessary or desirable for the exercise of its rights under clause 53	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 53.4.2(c)
Termination and Disputes	Notification of insolvency event	74	Notify the NBA at least 90 Business Days (or such other period as agreed in writing by the Parties) prior to an Insolvency Event that is reasonably expected to occur, with a view to consulting on possible approaches to avoid the Insolvency Event	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 56.2
	[not disclosed]	75	[not disclosed]	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 57.8.2
		76	[not disclosed]	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 57.8.3
		77	[not disclosed]	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 57.8.4
		78	[not disclosed]	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 57.8.5
		79	[not disclosed]	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 57.10
		80	[not disclosed]	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 57.12
	Dispute resolution	81	Notice of dispute	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clause 59.2
	Handover Plan	82	Provide the NBA with a Handover Plan in accordance with the requirements detailed in clause 58	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clauses 58.1
		83	Provide the NBA with updates to the Handover Plan as required by the NBA	As required under relevant clause/schedule	As required under relevant clause/schedule	As required under relevant clause/schedule	Clauses 58.2

Schedule 6 - Payments

Part A - Basis for Payments

1. General

- 1.1 Payments will be comprised of Product Unit Payments, Capital Payments, Change Program Funding Pool Payments, Other Payments and ARCS Oversight Cost Reimbursement Payments.
- 1.2 ARCBS acknowledges that the NBA's ability to approve Payments or other matters under this **Schedule 6 (Payments)** may be subject to prior approvals from Governments under the National Blood Arrangements.

2. Basis for Product Unit Payments

- 2.1 Product Unit Payments will be based on an activity based analysis, for agreed ARCBS Functions, of the cost of ARCBS carrying out its operational activities under this Deed. Activities will be costed against functional areas of ARCBS and specific projects as required, as agreed between the Parties from time to time.
- 2.2 Costs for each activity will be classified as fixed or variable operating costs, with capital costs treated separately. Base cost figures used in the activity based costing analysis will be determined from ARCBS financial accounts which have been subjected to ARCBS annual financial audit.
- 2.3 All business management and accounting policies, and all models, assumptions and rules as applied in and relevant to the activity based costing analysis must be documented by ARCBS, and made available to the NBA on request. Personnel and resources will be allocated to activities for the agreed functions on a proportional time or usage basis. Costs will include relevant accruals for the Financial Year, except for:
 - 2.3.1 employee entitlements, which will be included on the basis of the estimated actual costs for the relevant Financial Year;
 - 2.3.2 depreciation; and
 - 2.3.3 revaluation of assets.
- 2.4 In the process of agreeing the Product Unit Payments, prior to each Financial Year the Parties will agree on:
 - 2.4.1 a collection to supply conversion rate (calculated on a basis agreed between the Parties) which is assumed for the purposes of the Product Unit Payments in that Financial Year, based on analysis of the conversion rates in the two previous Financial Years, and any other relevant known factors which would affect the conversion rate;

- 2.4.2 thresholds in relation to the collection to supply conversion rate for the purposes of **clause S6-5.1.2**; and
- 2.4.3 thresholds in relation to levels of supply for the purposes of **clause S6-5.1.1**; and
- 2.4.4 a level of additional costs, if any, assumed to be incurred by ARCBS in complying with obligations under the Deed for the relevant Financial Year;

and may also consider associated non-binding estimates of step-up or step-down costs or savings for possible supply scenarios within the Financial Year outside the Product and supply levels specified in the relevant Annual Supply Estimates.

3. Annual determination of Product Unit Payments

- 3.1 Subject to **Schedule 11 (Transition)**, determination of PUPs for each Financial Year will be in four stages:

Stage 1 – base cost

- 3.1.1 The base cost figures will be the actual cost figures reconciled to ARCBS audited financial accounts for the second previous Financial Year (that is, if FY₃ is the new FY, FY₁ is the base year). The base cost figures will be adjusted to remove the costs of specific projects or initiatives that do not apply in FY₃.

Stage 2 – indexation and efficiency

- 3.1.2 The base cost figures will be adjusted on a compounding basis from FY₁ to FY₃ for:
 - (a) indexation on a basis agreed between the Parties, having regard to CPI, ABS Healthcare Index, indicators of health sector wage costs, other relevant indices or factors agreed between the Parties; and
 - (b) a reduction based on an efficiency factor of 1% per annum.

Stage 3 – offsetting income of ARCBS

- 3.1.3 The adjusted figures from stage 2 will be adjusted to the extent to which cost can be met by income expected to be obtained by ARCBS in the form of:
 - (a) interest or other returns earned by investment or use of the Payments;
 - (b) revenue received as required under **clause 25.2.3**;
 - (c) funding from the ARCS referred to in **clause 33.1**.

Stage 4 – other specific adjustments

- 3.1.4 The parties will negotiate the extent to which adjusted figures from stage 2 should be subject to other specific adjustments (upwards or downwards) to

take account of any of the following factors, including the extent to which any net increase in costs cannot be met within the indexation provided in stage 2. The basis for consideration of such adjustments will be the extent to which the level of costs, or allocation of fixed and variable costs, in the adjusted base figures remains valid. The relevant factors are:

- (a) specific adjustments made in FY₂ which should or should not be continued;
- (b) the impact of significant changes in the Annual Supply Estimates, (including Products and value added features), for FY₃ as against FY₁ and FY₂, determined in accordance with reasonable thresholds agreed between the Parties;
- (c) variations in the Products or Services provided under the Deed;
- (d) operational and resource changes approved (before commitment of funds or resources) based on ARCBS business planning for the new Financial Year;
- (e) additional funding approved in FY₁ and FY₂ as part of the Product Unit Payments under **clause S6-6**;
- (f) the application of potential future savings or ARCBS system efficiencies, and demonstrated actual savings or ARCBS system efficiencies within the base costing figures (on the assumption of all other things being equal), as identified by agreement between the parties. This may mean that savings achieved by the ARCBS, rather than contributing to the 1% efficiency factor, are recognised as having been reinvested in approved (before commitment of funds or resources) system improvements or approved new initiatives;
- (g) the availability, level and application of other income of ARCBS;
- (h) reasonable changes to the business management and accounting policies, other assumptions and rules as applied in the activity based costing analysis, which are agreed between the Parties;
- (i) relative performance against relevant benchmarks, KPIs or other indicators (taking into account any matters raised by any Party in relation to relevance, choice or basis of comparison for particular benchmarks);
- (j) costs incurred by the ARCBS in complying with or administering its obligations under the Deed which significantly exceed costs which the ARCBS would otherwise have to incur in carrying out the ARCBS Functions;
- (k) policy objectives to be achieved through the PUP setting process; and
- (l) other relevant factors agreed between ARCBS and the NBA.

- 3.2 The timetable for determining the Product Unit Payments will be as set out in **Schedule 4 (Planning and Review Cycle)**. The Parties may consult on the likely level of Product Unit Payments against various supply and business planning scenarios. ARCBS will by November propose Product Unit Payments for the coming Financial Year in a format agreed between the Parties, in conjunction with supply planning and business planning processes between the NBA and ARCBS. In the proposal each Product Unit Payment functional component will be broken down into fixed costs and variable costs by Product.
- 3.3 The NBA may, acting reasonably, request the ARCBS to provide an explanation or substantiation of the costing of any component in the proposed Product Unit Payments, or request any reasonable independent review (at NBA cost) of those figures, and ARCBS will comply with that request. The NBA may request ARCBS to make any reasonable correction to the proposed Product Unit Payments.
- 3.4 The NBA will consider and agree the proposed PUPs, or make any counter-proposals, on any reasonable basis it considers appropriate, consistent with the basis for the Product Unit Payments set out above.
- 3.5 The final Product Unit Payments will be agreed between the Parties.

4. Capital Payments

- 4.1 Capital Payments will be an amount no greater than 10 per cent of the total Product Unit Payments expected to be paid in that Financial Year, determined on the basis of the Annual Supply Estimates approved by AHMC for that year and the initial Product Unit Payments for that year.
- 4.2 Subject to **clause S6-4.1**, Capital Payments for each Financial Year will be as specified in the Annual Capital Plan for that Financial Year, based on the expenditure required in that Financial Year to implement the approved SCIP, other than items specified in the Annual Capital Plan to be funded through Product Unit Payments or other available funds.
- 4.3 Capital Payments will, subject to **clause 29.8** and **29.9**, be payable and may be invoiced by ARCBS in accordance with a schedule agreed by the Parties, based on the planned requirements for the Capital Payments in the Annual Capital Plan and the timing of availability of funds to the NBA.

5. Proposals for adjustment to Product Unit Payments based on supply levels or conversion rates

- 5.1 A Party may propose changes to the Product Unit Payments applying within a Financial Year based on:
- 5.1.1 fluctuations in levels of supply in that Financial Year. Such changes may only be proposed if total national supply for any Product or value added feature is or is considered likely to be outside annual thresholds agreed under **clause S6-2.4.3** prior to the relevant Financial Year based on the Annual Supply

Estimates for that Financial Year, as identified by the Parties through supply reviews in accordance with **Schedule 3 (Products and ARCBS Functions)**, and it is reasonably likely that supply will be outside annual thresholds if the relevant Financial Year is considered as a whole; or

- 5.1.2 changes from the assumed conversion rates outside thresholds agreed under **clause S6-2.4.2**, where these are beyond the reasonable control of ARCBS.
- 5.2 The basis for consideration of any proposed change under **clause S6-5.1** will be whether the allocation of fixed and variable costs in the Product Unit Payments remains valid or requires adjustment.
- 5.3 The Parties agree to consider and resolve any proposal for changes to the Product Unit Payments based on supply levels in a manner which is consistent with the basis for setting the Product Unit Payments in **clauses S6-2** and **S6-3**.

6. Other proposals for adjustments to the Payments

- 6.1 Proposals for additional or reduced Payments will, ordinarily, be made as part of the annual planning cycle and be included in the annual Payments setting process.

Within year process

- 6.2 ARCBS may make a proposal for additional Payments in respect of additional costs, changed Products or Services, or other circumstances, at any time. Such proposals will only be made outside of the annual Product Unit Payments setting process due to extraordinary events which:
 - 6.2.1 could not have been considered in the annual process; and
 - 6.2.2 affect, or present a risk to, the security of supply or public health;

and as a result cannot wait to be dealt with in the next annual Product Unit Payments setting process.

The proposal will identify additional costs against Products, classified as variable, fixed and capital costs, and as ongoing and non-ongoing costs. The proposal must also include a time schedule for the incurring of additional costs by ARCBS and ARCBS's need for additional Payments to meet those costs.

- 6.3 For proposals in respect of non-ongoing fixed costs, the NBA will decide after consultation with ARCBS whether the additional funding, if agreed, will be paid as an additional component of the Product Unit Payments for a period of time, or as an Other Payment under **clause S6-8**.
- 6.4 The NBA may, acting reasonably, make a proposal for a reduction in the Product Unit Payments in respect of reduced costs, changed Products or Services, or other changed circumstances, at any time, where the NBA considers on reasonable grounds that continuation of payments on the basis of the prevailing Product Unit Payments is no longer warranted.

End of year process

- 6.5 Within 40 Business Days after the end of the Financial Year period, the Parties will undertake and agree the outcomes of a final reconciliation in respect of that Financial Year, based on:
- 6.5.1 a reconciliation of actual volumes supplied against forecast volumes (as used to calculate the base payment amount for the Month) for the tenth, eleventh and twelfth Months of the Financial Year, and calculation of a net adjustment amount for these three Months, in accordance with **clause S6-11.2.4**; and
- 6.5.2 a reconciliation of the actual costs incurred by ARCBS in the relevant Financial Year against the total amount of Product Unit Payments and any other relevant Payments made in respect of the Financial Year (taking into account any net adjustment calculated in respect of the reconciliation under **clause S6-6.5.1**), having regard to the ARCBS expenditure budget for the Financial Year, the assumed fixed and variable cost proportions, volume thresholds and collection to supply conversion for the relevant period agreed by the Parties under **clause S6-2.4** and the relevant actual amounts as substantiated to the reasonable satisfaction of both Parties, and any other factors which the Parties agree are relevant and which can be substantiated to the reasonable satisfaction of both Parties.

Basis for agreeing adjustments

- 6.6 The Parties agree to consider and resolve proposals for adjustments to the Payments, including any reasonable Payment adjustment and the period and basis for implementation of adjustments against future Payments, in a manner which is consistent with the basis for setting the Payments in **clauses S6-2 to S6-4**.

7. Change Program Funding Pool Payments

- 7.1 The NBA has established a Change Program Funding Pool of \$7,000,000 (GST exclusive) over the period 2006-07 to 2008-09 to fund:
- 7.1.1 specific initiatives as part of the ARCBS national change program;
- 7.1.2 specific transitional initiatives to be implemented under this Deed; or
- 7.1.3 if the Parties agree at any time (which agreement may not be unreasonably withheld) that the purposes of **clauses S6-7.1.1** and **S6-7.1.2** have been substantially fulfilled by initiatives which have been funded, or have been agreed to be funded, up to that time - other specific initiatives that will deliver cost savings or otherwise increase the efficiency of the production of goods or services under the Deed.
- 7.2 Payments from the Change Program Funding Pool are subject to agreement between the Parties on specific initiatives to be funded. Such initiatives may be proposed by either ARCBS or NBA. NBA may advise ARCBS of priorities or initiatives which Governments consider important to be funded from Change Program Funding Pool Payments.

- 7.3 In agreeing a specific initiative to be funded by Change Program Funding Pool Payments, the Parties must agree:
- 7.3.1 a full description, plan and timetable for the initiative;
 - 7.3.2 specific milestones or performance indicators for the initiative, and an associated timetable of payments;
 - 7.3.3 progress and outcome reports to be provided by ARCBS;
 - 7.3.4 other specific conditions to be complied with by ARCBS in relation to the initiative.
- 7.4 Subject to **clause 29.12**, Change Program Funding Pool Payments will be payable and may be invoiced by ARCBS in accordance with the timetable of Payments agreed by the Parties in relation to a specific initiative.
- 7.5 ARCBS acknowledges and agrees that it should have no assumption of ongoing funding for any initiatives after 2008-09 unless the necessary funding is sought and agreed in the PUP process or otherwise under the Deed.

8. Other Payments

- 8.1 The NBA may, after consultation with ARCBS, notify ARCBS of Payments which may be made under this Deed, other than through the Product Unit Payments or Capital Payments, and of conditions applying to such Payments.
- 8.2 Subject to **clause 29.12**, Other Payments will be payable and may be invoiced by ARCBS in accordance with a schedule determined by the NBA after consultation with ARCBS.

9. ARCS Oversight Cost Reimbursement Payments

- 9.1 The Parties agree that the principle for the determination and payment of ARCS Oversight Cost Reimbursement Payments under this Deed is to reimburse ARCS for the reasonable and substantiable direct cost of the ARCS Board and senior ARCS management, and their necessary support staff, in overseeing the operations of, and providing for increased accountability of, the ARCBS ('the ARCS Oversight Cost'), but without double payment for any relevant costs which are taken into account for the determination of Product Unit Payments under this Deed.
- 9.2 ARCS Oversight Cost Reimbursement Payments will be determined and paid in accordance with the following process:
- 9.2.1 the Parties will, prior to each Financial Year, agree a reasonable estimate of the ARCS Oversight Cost for that Financial Year ('the Annual Estimate'), through the development of a proposed Annual Estimate by ARCS for agreement by the NBA (which agreement may not be unreasonably withheld);

- 9.2.2 either Party may propose a prospective variation to the agreed Annual Estimate at any time, if unforeseen events arise which are likely to have a significant impact on the Annual Estimate;
- 9.2.3 subject to invoices being submitted in accordance with this Deed, the NBA will make Monthly payments in advance calculated as one twelfth of the Annual Estimate;
- 9.2.4 as soon as practicable after each Financial Year, ARCS will arrange for the actual expenditure of ARCS in respect of the ARCS Oversight Cost for the Financial Year to be subject to independent external audit against the principle in **clause S6-9.1**, and a report of that audit will be promptly made available by ARCS to the NBA once available; and
- 9.2.5 if the audit shows that the total amount of ARCS Oversight Cost Reimbursement Payments made by the NBA in a Financial Year is in excess of the actual amount of ARCS Oversight Cost for that Financial Year determined in accordance with the principle in **clause S6-9.1**, the amount of the excess may be recovered by the NBA or set-off against future Payments in accordance with **clause 32**.

10. Application of change control and business case processes

- 10.1 The DCP process in **clause 17** does not apply to the processes of establishing or adjusting Payments as specified in this Schedule, provided that a Party may in any case propose a change to this Schedule under that process.
- 10.2 The business case process in **clause 17** may apply to the processes of establishing or adjusting Payments under this Schedule.
- 10.3 ARCBS acknowledges and agrees that:
 - 10.3.1 the funding for ARCBS for the provision of Products and Services under the Deed is intended to be determined through the processes for setting and adjusting the Payments, and associated processes of business planning, capital planning, supply planning and change control, provided for under the Deed;
 - 10.3.2 ARCBS can have no expectation that the NBA or Governments will agree to adjustments to the Payments to cover expenditure of ARCBS which is not disclosed to the NBA and agreed in advance where required in accordance with those processes, or where expenditure is undertaken by ARCBS after a specific request for funding for such expenditure has previously been denied by Governments; and
 - 10.3.3 the NBA and Governments do not, as a consequence of this Deed, bear any cost or risk in relation to activities undertaken by the ARCBS outside of the Products and Services provided under the Deed.

Part B - Invoicing and payment

11. Invoicing

- 11.1 ARCBS agrees to submit Monthly invoices in advance based on Product Unit Payments for Products (including value added features), Capital Payments, Change Program Funding Pool Payments Other Payments or ARCS Oversight Cost Reimbursement Payments which may be invoiced in that period in accordance with this Schedule, and taking into account any set-offs or other adjustments under this Deed applicable in that period. ARCS Oversight Cost Reimbursement Payments may be invoiced separately from other Payments.
- 11.2 Monthly payments in respect of Product Unit Payments will be determined and payable in the following manner:
- 11.2.1 the base amount of the total Monthly payment will be calculated by multiplying the per unit Product Unit Payment amount for each Product by the forecast volume of each Product to be supplied in the Month as specified in the relevant Reviewed Requirements, and totalling these amounts;
- 11.2.2 the total Monthly payment for the first three Months of each Financial Year will be the base amount calculated under **clause S6-11.2.1**;
- 11.2.3 the total Monthly payment for the fourth to the twelfth Months will be the base amount for that Month calculated under **clause S6-11.2.1**, plus or minus an adjustment amount in respect of the third previous Month (for example, for the fourth Month the adjustment amount will be for the first Month); and
- 11.2.4 the adjustment amount referred to in **clause S6-11.2.3** will be calculated by:
- (a) reconciling the actual amount of each Product supplied in the Month by the forecast amount for that Month which was used to calculate the base amount for the Month under **clause S6-11.2.1**;
 - (b) for each Product, multiplying the amount of any shortfall or excess under **clause S6-11.2.4(a)** by the relevant Product Unit Payment; and
 - (c) totalling the amounts under **clause S6-11.2.4(b)** (with shortfall amounts being treated as negative amounts).
- 11.3 An invoice under **clause S6-11.1** must:
- 11.3.1 be in the form of a Tax Invoice in accordance with the GST Law;
- 11.3.2 be provided in pdf or other software format as agreed between the Parties;
- 11.3.3 be supported by:
- (a) a summary of, and documented adjustment calculation based on, the supply report under **clause S3-32.1** for the Month which is

relevant for the calculation of the Product Unit Payment amount for the invoice in accordance with **clause S6-11.2**; and

- (b) a reference to the basis for the amount invoiced for any Capital Payments, Change Program Funding Pool Payments, Other Payments or ARCS Oversight Cost Reimbursement Payments; and

11.3.4 contain the following:

- (a) date of invoice;
- (b) period of invoice;
- (c) invoice number;
- (d) ARCBS' Name, Address and Australian Business Number;
- (e) total value, total GST and invoice total; and
- (f) any other requirement for a valid Tax Invoice under the GST law.

11.4 ARCBS agrees to submit invoices by the 15th Business Day of each Month, in respect of the Month which is two Months after the Month in which the invoice is given (for example, the invoice given in January will be in respect of March). Each invoice must be submitted in conjunction with the relevant supply reports under **clauses S3-32.1 and S3-32.2**.

11.5 ARCBS agrees to provide supporting documentation for invoices as reasonably requested by the NBA from time to time, and to comply with any reasonable requests issued in writing by the NBA from time to time, following consultation with ARCBS, in relation to the timing, format, specific content, or means of provision of, invoices and supporting documents under the Deed.

11.6 The Parties may agree on mutually satisfactory arrangements by which ARCBS has access to adequate working capital, or on some other mutually satisfactory arrangements, to support Payments being made in arrears, and may agree under **clause 17** on any necessary variations to this Deed to give effect to such arrangements.

12. Recalled or non-compliant Products

12.1 For this **clause S6-12**, 'Implicated Product' means a unit of Product which has been provided to an Approved Health Provider in accordance with the Deed, where before use by the Approved Health Provider, the unit of Product was recalled and, as a result of the recall, was subsequently not available to an Approved Health Provider for use.

12.2 ARCBS is entitled to claim Product Unit Payments in respect of an Implicated Product in the circumstances specified in the following table:

Payment basis for Implicated Products	
Circumstances of recall or non-compliance	Payment consequences
1. Recall arising from supplier negligence or breach of contract with ARCBS	No Payment is claimable. Adjustment to be made if payment already made.
2. Single donor related recall	ARCBS may claim the Payment which would have been due for the Product had the Product not been recalled or non-compliant.
3. ARCBS process related recall (where not covered in 1 or 2 above)	No Payment is claimable. Adjustment to be made if payment already made.

12.3 For certainty, this **clause S6-12** does not apply to Products which are returned to ARCBS by an AHP for the reason only that the Products have expired or are close to expiry or because the Products are not required for use by the AHP.

13. Payment and adjustment of invoices

13.1 Where the NBA is reasonably satisfied that an invoice is correctly rendered, the NBA must pay the invoiced amount by no later than the first Business Day of the Month to which the invoice relates.

13.2 Where at any time:

13.2.1 a Product is returned from one AHP and reissued by ARCBS to another AHP;
or

13.2.2 the NBA reasonably considers that an invoice issued by ARCBS is incorrect (whether or not any amount has been paid by the NBA in respect of the invoice);

ARCBS agrees to give to the NBA as reasonably required by the NBA:

13.2.3 a credit note and replacement invoice;

13.2.4 an adjustment note; or

13.2.5 an adjustment in subsequent invoices;

as required to correct the invoice, and in compliance with any requirements of the GST Law as defined in **clause 30**.

14. Verification of receipt

14.1 ARCBS agrees to comply with any reasonable instructions issued in writing by the NBA from time to time, following consultation with ARCBS, in relation to the processes for resolving any matter of clarification in respect of Products shown on an invoice as having been provided, or for undertaking any process of reconciliation of Products provided against an invoice, when required by the NBA.

Schedule 7 - Performance measurement

Part A – Performance measurement objectives

1.1 The Parties agree that measurement of the ARCBS' performance under this Deed will fall under the following four "domains" of ARCBS operations, and align with the following objectives within each domain:

Domain A: Donor management

Objectives:

1.1.1 Maintain a sufficient donor base to meet the ASEs.

Domain B: Supply chain management

Objectives:

1.1.2 Product is manufactured and supplied in accordance with all relevant safety and quality standards and in a cost efficient manner.

1.1.3 Maintenance and progressive improvement of organisational capacity and capability for ongoing supply.

Domain C: Quality and level of Service to Approved Health Providers

Objectives:

1.1.4 Approved Health Providers receive Products consistent with the ASEs.

1.1.5 Approved Health Providers receive appropriate advice in relation to Products when required.

Domain D: Governance and accountability

Objectives:

1.1.6 Meet all requirements under the Deed.

1.1.7 Product Unit Payments (PUPs) reflect the efficient use of resources.

Part B – Key Performance Indicators

2.1 The Parties agree that the Key Performance Indicators agreed and included in the Deed from time to time are to be:

2.1.1 specific (ie clear, unambiguous and targeted);

2.1.2 objectively expressed and measurable;

- 2.1.3 achievable (ie any agreed targets are able to be achieved within the resources of the ARCBS and within the stated timeframe);
 - 2.1.4 relevant (with a focus on motivating the achievement of key performance requirements of the ARCBS and be appropriate to policy and practice);
 - 2.1.5 timely (ie a reasonable timeframe is set for the ARCBS to achieve any agreed targets against Key Performance Indicators); and
 - 2.1.6 appropriate to allow for benchmarking of ARCBS performance.
- 2.2 The agreed Key Performance Indicators, timeframes, measurement and data sources are outlined at **Table A** to this **Schedule 5 (Performance Measurement)**.

Verification and reporting achievement against Key Performance Indicators

- 2.3 Verification of achievement and reporting on Key Performance Indicators will take place through:
- 2.3.1 periodic reporting on Key Performance Indicators to NBA (as outlined in **Table A** to this **Schedule 5 (Performance Measurement)**); and
 - 2.3.2 quarterly meetings between the ARCBS Chief Executive Officer and the NBA General Manager.

Implications for under-performance against Key Performance Indicators

- 2.4 Consistent and/or significant under-performance over a sustained period against any targets agreed for Key Performance Indicators may result in one or more consequences, including (but not limited to):
- 2.4.1 increased scrutiny of ARCBS operations by the NBA with all costs to be covered by the ARCBS;
 - 2.4.2 additional information requests or reporting requirements; or
 - 2.4.3 preparation and implementation by the ARCBS of action plans to correct under-performance.

Reviews of and changes to Key Performance Indicators

- 2.5 The Key Performance Indicators will be reviewed on an annual basis and monitored throughout the Term of the Deed.
- 2.6 The Parties will from time to time agree on baseline levels and agreed reasonable targets for achievement against the Key Performance Indicators.
- 2.7 All other changes to the Key Performance Indicators are to be undertaken in accordance with **Clause 17**.

Schedule 7 Table A – Key Performance Indicators and reporting timeframes

NB: All annually reported KPIs will be due by 30 September each year

Domain A: Donors

Objectives: (1) Maintain a sufficient donor base to meet the ASEs

KPI No.	KPI Descriptor	Frequency	Definition & Method of Calculation	Data Source	Timeframe
A1	Size of donor base by donor type: - WB donors - Apheresis plasma donors - Apheresis platelet donors	Annual	Count of donor base by type at 30 June	NBMS Legacy	First report on FY 2005 - 06 data
A2	Annual donations by type for: - WB donations - Apheresis plasma donations - Apheresis platelet donations	Annual	No. of donations by each type for the FY	NBMS	First report on FY 2005 - 06 data
A3	Frequency of donation by type - WB donations - Apheresis plasma donations - Apheresis platelet donations	Annual	(Annual no. of donations by type for the FY) divided by (size of donor base by donor type at 30 June)	NBMS	First report on FY 2005 - 06 data
A4	New donors as a percentage of the donor base at 30 June	Annual	(Count of new donors in the FY) divided by (donor base) x 100	NBMS	First report on FY 2005 - 06 data

Domain B: Supply chain management

Objectives: (1) Product is manufactured and supplied in accordance with all relevant safety and quality standards and in a cost efficient manner

(2) Maintenance and progressive improvement of organisational capacity and capability for ongoing supply

KPI No.	KPI Descriptor	Frequency	Definition & Method of Calculation	Data Source	Timeframe
B1	Supply requirements are met	Monthly	Variance between planned and actual supply (As per Monthly Supply Reports)	NBMS & other sources (Excel Workbooks)	First report on July 2005 data
B2	Process-related recall incidents after supply of Product	Annual	Count of process-related Incidents that involved Product that had been supplied.	Recall documentation	First report on FY 2005-06 data
B3	Efficiency of whole blood collection conversion to supply	Annual	(No. of whole blood and whole blood-derived red cells supplied for the FY) divided by (total whole blood collections less whole blood therapeutic collections for discard for the FY) x 100	NBMS & workfiles	First report on FY 2005-06 data
B4	Efficiency of apheresis plasma collection conversion to supply	Annual	(No. of apheresis plasma units supplied for the FY) divided by (total apheresis plasma collections less apheresis therapeutic collections for discard for the FY) x 100	NBMS & workfiles	First report on FY 2005-06 data
B5	Utilisation of collection facilities capacity by: - interview room - donor bed	Annual	(Interview room hours used) divided by (available interview room hours) x 100 (Donor bed hours used) divided by (available donor bed hours) x 100	Composite data from special surveys on a regular basis (National Facilities Data Model)	First report on FY 2006-07 data

Domain C: Quality and level of Services to Approved Health Providers

Objectives: (1) AHPs receive Products consistent with the ASEs / Reviewed Requirements and policies of Governments, if any, notified under Clause 23

(2) AHPs receive appropriate advice in relation to Products when required

KPI No.	KPI Descriptor	Frequency	Definition & Method of Calculation	Data Source	Timeframe
C1	ARCBS red cell inventory is adequate	Annual	No. of days when (red cell inventory) < [(ASEs for red cells) divided by (operational days) x (a no. of days as agreed between the Parties from time to time)]	NBMS ASE / Reviewed Requirements and Excel Workfiles	First report on FY 2005-06 data
C2	Freshness of ARCBS red cells supplied	Annual (indicated by FY quarter)	Average age of red cells at supply	NBMS	First partial report on FY 2005-06 data
C3	AHP satisfaction with ARCBS services: - helpfulness of distribution staff - product availability against Orders - timeliness of product delivery including urgent Orders - product quality, age of product at time of delivery - faulty products, labelling - availability of transfusion medicine advice - quality of transfusion medicine advice - availability, quality and adequacy of transfusion medicine materials provided	Annual	Percentage of surveyed respondents reporting good or higher levels of satisfaction in each of these service domains	Sample of survey of major AHPs	First report on FY 2005-06 data
C4	Percentage of hospitals covered by agreements to supply in each State and Territory	Annual	[No. of hospitals covered by a current agreement to supply in the State or Territory] divided by [total no. of AHPs (hospitals) in that State or Territory] x 100	Register of current agreements to supply (proposed) and NBA/CW AHP (hospital) listing	(Longer term goal. Timeframe to be agreed.)

Domain D: Governance and accountability

Objectives: (1) Meet all requirements under the Deed

(2) Product Unit Payments (PUPs) reflect the efficient use of resources

KPI No.	KPI Descriptor	Frequency	Definition & Method of Calculation	Data Source	Timeframe
D1	Meet all reporting requirements under the Deed	Annual	Register of reports with dates due and dates submitted	Deed Management records	First report on FY 2006-07
D2	Meet agreed requirements under the Deed Implementation Schedule	Six Monthly	Report on progress against Implementation Schedule	Deed Management records	First report on FY 2006-07
D3	Proportional contribution of each ARCBS Function to the highest red cell volume and highest volume category of plasma for fractionation: ARCBS Functions: <ul style="list-style-type: none"> - Donor Management and Recruitment - Collections - Testing - Processing - Inventory Management and Distribution - Specialist Services <ul style="list-style-type: none"> - Transfusion Medicine - Research & Development - Operations Support - Corporate Support and Planning 	Annual	Trend analysis against PUP calculations	PUP calculations	First report on FY 2007-08 data
D4	ARCBS is efficient as compared with international benchmarks	Annual	International Benchmarking Scorecard	International Benchmarking Scorecard	First report in FY 2006-07 on latest available data

Schedule 8 - Governance Standards

- 1.1 The ARCBS agrees to conform with the following best practice governance guidelines as set out in the Australian Standards:
- 1.1.1 AS 8000-2003 Good Governance Principles;
 - 1.1.2 AS 8001-2003 Fraud and Corruption Control;
 - 1.1.3 AS 8002-2003 Organizational Codes of Conduct;
 - 1.1.4 AS 8003-2003 Corporate Social Responsibility; and
 - 1.1.5 AS 8004-2003 Whistleblower protection programs for entities.
- 1.2 The ARCBS agrees to include in the published Annual Report under **Schedule 5 (Communications and Reporting)**, a statement regarding ARCBS Compliance with the Governance Standards in the Financial Year to which the Annual Report relates, in accordance with the certification (whether or not qualified) of the Third Party Reviewer under **clause 16** in respect of that Financial Year.

Schedule 9 - Insurance

1.1 ARCBS will maintain, at a minimum, and for the Term, the following policies and levels of insurance cover with reputable underwriters who hold no less than a Standard and Poors BBB credit rating, or reasonable equivalent, at the time of placement or renewal of the insurance cover. If any such insurances are not so available, the NBA and the ARCBS will consult with one another as to the steps to be taken.

Insurance Policy Type	Limit of Liability
Industrial Special Risks	[not disclosed]
General and Product Liability	[not disclosed]
Directors & Officers/ Company Reimbursement	[not disclosed]
Professional Indemnity/Medical Malpractice	[not disclosed]
Fidelity Guarantee	[not disclosed]
Marine Transport	[not disclosed]
Malicious Product Tamper	[not disclosed]
Workers Compensation	[not disclosed]
Motor Vehicles	[not disclosed]
Personal Accident/Travel (including Volunteer cover)	[not disclosed]

1.2 The minimum insurance levels specified above may be varied by the Parties in accordance with **clause 17**.

1.3 ARCBS will provide the NBA with a report of all insurance levels within thirty Business Days of annual insurance renewal.

1.4 ARCBS agrees to take into account any matters raised by the NBA from time to time in relation to the adequacy of insurance levels maintained by ARCBS.

1.5 The NBA acknowledges that insurance premiums are market based and variations in cost can exceed CPI and are thus appropriate for consideration within any annual review of Product Unit Payments in accordance with **Schedule 6 (Payments)**.

1.6 The Parties agree to consult and agree on:

1.6.1 the basis for and extent of ARCBS insurance in relation to, and the valuation for the purposes of insurance of, Group 3 and 4 Products; and

- 1.6.2 the appropriate method of accounting for any insurance recovery by ARCBS in relation to Group 3 and 4 Products.

Schedule 10 - Deed of Security

Parties

THE COMMONWEALTH OF AUSTRALIA (Commonwealth)

AUSTRALIAN RED CROSS SOCIETY, 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 (**ARCBS**)

Background

- A. The NBA and ARCBS are parties to the Deed (as defined in **clause 9.1.3** of this Deed of Security).
- B. Under the Deed, ARCBS 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, ARCBS 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, ARCBS 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 ARCBS to dispose of or deal with the Charged Property will be withdrawn, automatically and immediately in respect of all the Charged Property:
 - 1.5.1 in the event of ARCBS' 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 to ARCBS, restore to ARCBS 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 ARCBS or any other person, and any statutory requirement for notice or lapse of time is waived by ARCBS.

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 ARCBS 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 ARCBS, 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 ARCBS and will continue to apply to all remaining present and future Secured Obligations.

6 Representations and warranties

- 6.1 ARCBS represents and warrants to the NBA that:

6.1.1 the obligations of ARCBS 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 ARCBS the obligations of ARCBS under this Deed of Security, is hereby negated and excluded to the full extent that ARCBS 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 ARCBS, to reconvey, surrender or release (whatever the case requires) to ARCBS 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

Definitions

9.1 In this Deed of Security, the definitions set out in the Deed apply and, unless the context otherwise requires, the following definitions also apply:

9.1.1 '**Charge**' means, as the context requires, this Deed of Security or the security constituted by this Deed of Security.

9.1.2 '**Charged Property**' means all the right, title and interest of ARCBS in the Products.

9.1.3 '**Deed**' means the Deed of Agreement between the NBA and ARCBS executed on **[date to be completed]**.

9.1.4 '**Deed of Security**' means this document.

- 9.1.5 **'Secured Obligation'** means an obligation of ARCBS under **clause 24** of the Deed (including obligations under those clauses which survive the termination or expiration of the Deed).
- 9.1.6 **'Security Interest'** means:
- (a) 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
 - (b) an agreement to create or give any arrangement referred to in paragraph (a).
- 9.1.7 **'Trigger Event'** has the same meaning as applies in **clause 53.3** of the Deed.

Executed as a Deed.

[appropriate execution clauses to be included]

Schedule 11 - Transition

Part A - Objectives

- 1.1 The Parties acknowledge that some obligations of ARCBS under this Deed do not reflect ARCBS capacities at the time of entering into the Deed, and will be achieved on a transitional basis during the Term to allow ARCBS to build the necessary capacity or capabilities, or to implement specific enabling systems or activities.
- 1.2 In accordance with **clause 6**, this **Schedule 11** specifies:
 - 1.2.1 clauses of the Deed and the Schedules ('Transition Clauses') in relation to which the Parties agree that the obligations imposed on ARCBS are to be delayed or modified for a period of time;
 - 1.2.2 milestones and timeframes for the transitional operation of the Transition Clauses;
 - 1.2.3 key obligations of ARCBS in relation to developmental or implementation activities required in order to achieve the final operation of the Transition Clauses; and
 - 1.2.4 key dependencies for particular milestones, timeframes and obligations of ARCBS under this **Schedule 11**, and contingency arrangements to be followed in the event that particular milestones, timeframes and obligations cannot practicably be achieved.
- 1.3 **Clause 6.3** sets out the agreement of the Parties to comply with and implement this **Schedule 11**, including through the development of project plans, cooperation, communication and monitoring of progress, and updating of plans by agreement.
- 1.4 The Parties acknowledge that this **Schedule 11** or supporting project plans may need to be revised, or work around arrangements implemented, in the event that particular milestones, timeframes and obligations of ARCBS cannot practicably be achieved, or where particular key dependencies for particular milestones, timeframes and obligations of ARCBS do not eventuate. The Parties agree to consider specific proposals for revisions or work around arrangements in good faith.
- 1.5 Changes to this **Schedule 11** negotiated between the Parties will be agreed between the General Manager of the NBA and the Chief Executive Officer of the ARCBS, without requiring a DCP under **clause 17**. Joint project plans developed between the Parties may be agreed by, and if necessary changed by agreement of, representatives of each Party nominated by the General Manager of the NBA and the Chief Executive Officer of the ARCBS, respectively.
- 1.6 The NBA:
 - 1.6.1 agrees that where ARCBS has notified the NBA that the ability of ARBCS to meet a timing requirement of this **Schedule 11** is reliant on the prompt and

favourable consideration by the NBA of a request by ARCBS under **clause S6-7.2**, the NBA will, subject to **clauses 17.9 to 17.18**, give prompt consideration to that request; and

- 1.6.2 failure by the NBA to give prompt consideration to or to agree to a request referred to in **clause S11-1.6** may, without limitation to other rights of ARCBS under this Deed or at law, give rise to circumstances where ARCBS makes a proposal under **clause 46.1.4**.

Part B – Deed clauses

2. **Clause 8 (ARCBS Governance) and Schedule 8 (Governance Standards)**

- 2.1 **Clause 8.1** will not apply in full during 2006-07 and 2007-08. ARCBS will be fully compliant with this clause from 1 January 2008.
- 2.2 In relation to the requirements of **Schedule 8 (Governance Standards)**, the agreed compliance milestones will be as follows:
- 2.2.1 AS 8000-2003 Good Governance Principles - in place by 1 January 2007;
- 2.2.2 AS 8001-2003 Fraud & Corruption Control - in place by 1 January 2008;
- 2.2.3 AS 8002-2003 Organizational Codes of Conduct - in place by 1 January 2008;
- 2.2.4 AS 8003-2003 Corporate Social Responsibility - in place by 1 January 2008;
- 2.2.5 AS 8004-2003 Whistleblower Protection Programs for Entities - in place by 1 July 2008.
- 2.3 The Parties agree that a joint Third Party Review of ARCBS governance arrangements will be undertaken in 2006-07 and 2007-08 in accordance with the provisions of **clause 16** to review ARCBS' progress in developing programs to achieve compliance with the requirements of **clause 8** and to provide guidance on any adjustments to be made to those programs or further work to achieve compliance.
- 2.4 ARCBS agrees to include a statement regarding its compliance with the Governance Standards as set out in **Schedule 8 (Governance Standards)** in its Annual Reports for 2005-06 and 2006-07 and thereafter in accordance with **clause 8** and **Schedule 5 (Communications and Reporting)**.

3. **Clause 14 (Strategic Capital Investment Plan)**

- 3.1 ARCBS will use reasonable endeavours to comply with the requirements of **clause 14.3.8** in relation to the preparation of SCIPs for 2006-07 and 2007-08 and will be fully compliant with the requirements of **clause 14.3.8** for the 2008-09 Financial Year and beyond.

4. Clause 17 (Variations to the Deed - Deed Change Proposals and business case analyses)

4.1 ARCBS agrees to use reasonable endeavours to comply with **clauses 17.9 to 17.18** inclusive pending development of the standing protocols referred to in **clause 17.10** for changes or decisions requiring consideration under the National Blood Arrangements and in **clause 17.14** relating to business case analyses. ARCBS will be fully compliant with **clause 17** once such protocols are implemented.

5. Clause 19 (Review of this Deed)

5.1 **Clause 19.2** will not operate within 12 months from the Commencement Date except by agreement with ARCBS, and such agreement will not be unreasonably withheld.

6. Clause 20 (ARCBS Procurement and Subcontracting)

6.1 ARCBS will use reasonable endeavours to comply with **clauses 20.1 to 20.7** inclusive until 1 January 2008 and will be fully compliant from that date. By 1 January 2007, ARCBS will have reviewed its procurement policies and procedures in accordance with the provisions of **clauses 20.1, 20.2 and 20.3**, and will have fully implemented the Procurement Standards by 1 July 2007.

6.2 The Parties agree that **clauses 20.6 and 20.7** (relating to Third Party Review of Significant ARCBS Procurement Contracts) will not operate before 1 July 2007.

7. Clause 24 (Provision of Products)

7.1 For the purposes of **clauses 24.6 and 24.7** the Parties will confirm the continuation of current intensive product arrangements within 10 Business Days of the Commencement Date.

8. Clause 25 (ARCBS activities other than under this Deed)

8.1 ARCBS will use reasonable endeavours to comply with the requirements of **clauses 25.2.3, 25.2.4 and 25.4** from the Commencement Date. Full compliance with **clauses 25.2.3 and 25.2.4** (relating to charging and claims for Payment for the provision of Products and Services other than under the Deed) and with **clause 25.4** (relating to the annual overview reports to be provided regarding ARCBS activities other than under this Deed) will be achieved by the start of the 2008-09 Financial Year, following completion of a systematic and comprehensive review of all such activities and the development of procedures and systems to reliably and accurately capture relevant data during the 2007-08 Financial Year.

9. Clause 29 (Payments to be made)

- 9.1 ARCBS will use reasonable endeavours to comply with **clause 29.14** and **29.15** from the Commencement Date. In relation to **clause 29.14** (regarding use of the research and development component of the Product Unit Payments), full compliance will be achieved by 1 July 2008. Compliance with **clause 29.15** (relating to the requirement to separately identify operational, R&D, and capital Payments and expenditures in relevant accounts and reports, as well as the management of reserves derived from the Payments, and any interest earned from these components of the Payments) will be achieved by 30 June 2007, subject to reconfiguration of the associated financial systems and procedures.

10. Clause 34 (Financial management obligations of ARCBS)

- 10.1 ARCBS will use reasonable endeavours to comply with **clauses 34.1.1** and **34.1.2** from the Commencement Date. ARCBS will provide a report to the NBA on progress in developing and implementing financial management systems and procedures as required under **clause 34.1.2** at the Quarterly CFO Meeting to be held by 7 November 2006.

- 10.2 ARCBS will be fully compliant with these clauses by 1 January 2007

11. Clause 40 (Intellectual Property)

- 11.1 **Clauses 40.10** and **40.12** will not operate until 1 October 2006.

12. Clause 42 (ARCBS Assets)

- 12.1 ARCBS will use reasonable endeavours to comply with **clause 42.3** from the Commencement Date. Full compliance with **clause 42.3** will be achieved by 1 January 2008.

Part C - Schedules

13. Schedule 3 (Products and ARCBS Functions)

- 13.1 **Clause S3-5.1** will not operate until 1 January 2008.
- 13.2 **Clause S3-12.3.2** will not operate in Queensland until implementation of NBMS in that State.
- 13.3 In relation to **clause S3-12.3** generally, ARCBS will use reasonable endeavours to comply from the Commencement Date until 1 January 2007 and agrees to be fully compliant from that date.

- 13.4 In relation to **clause S3-15.4.1**, ARCBS will use reasonable endeavours to comply from the Commencement Date until 1 January 2007 and agrees to be fully compliant from that date.
- 13.5 In relation to clauses **S3-16.1** and **16.4**, the Parties will confirm the continuation of any current instructions within 10 Business Days of the Commencement Date.
- 13.6 In relation to **clauses S3-18.3** and **S3-18.4**, All NBMS sites will be compliant by 31 December 2006. The clauses will not operate in Queensland until implementation of NBMS in that State. NBA may not make a request under **clause S3-18.4** until 1 January 2007.
- 13.7 In relation to **clauses S3-19.1** and **S3-19.3**, ARCBS will use reasonable endeavours to comply from the Commencement Date until 1 January 2007 and agrees to be fully compliant from that date.
- 13.8 In relation to **clause S3-19.8**, ARCBS will use reasonable endeavours to comply from the Commencement Date until 1 January 2007 and agrees to be fully compliant from that date.
- 13.9 In relation to **clause S3-20.2**, all NBMS sites will be compliant by 31 December 2006. The clause will not operate in Queensland until implementation of NBMS in that State.
- 13.10 In relation to **clause S3-20.4**, operation of this clause not to apply in full until NBMS implemented nationally and subject to development and implementation of national procedures and systems for capturing 'proof of delivery'. As an interim step, ARCBS will continue existing processes if appropriate and propose to NBA potential solutions and interim options by 31 December 2006.
- 13.11 In relation to **clauses S3-22.2.1** and **S3-22.2.5**, ARCBS will not be obliged to have a nationally planned and coordinated collection facility strategy in operation until 1 January 2007. Prior to that date ARCBS agrees to provide at the reasonable request of the NBA relevant planning documentation concerning any collection facility strategy(ies) of ARCBS operating at that time.
- 13.12 In relation to **clauses S3-28** and **S3-29**, the Parties will confirm the ASEs and Reviewed Requirements applying at the Commencement Date, within 10 Business Days of the Commencement Date.
- 13.13 In relation to **clause S3-32**, ARCBS will use reasonable endeavours to comply with requirements in relation to supply reports from the Commencement Date, and will be fully compliant from 1 July 2008.

14. Schedule 4 (Planning and review cycle)

- 14.1 Transition aspects are set out in **Schedule 4 Table B**. For the period from the Commencement Date to 1 January 2007 the Parties agree that changes to the dates specified in **Schedule 4 Table B** may be agreed between the General Manager of the NBA and the Chief Executive Officer of the ARCBS, and that agreement to such

changes will not unreasonably be withheld where this is necessary despite reasonable endeavours to achieve the specified dates.

15. Schedule 5 (Communications and reporting)

- 15.1 ARCBS will use reasonable endeavours to comply with requirements in relation to inventory reports under **Schedule 5 Table A Item 39** for Group 3 and 4 Products from the Commencement Date, and will be fully compliant from 1 January 2007.
- 15.2 ARCBS will use reasonable endeavours to comply with requirements in relation to the provision of a copy of the Intellectual Property register and partial copy of the Procedures Register under **Schedule 5 Table A Items 61 and 62** and from the Commencement Date, and will be fully compliant from 1 September 2006.

16. Schedule 6 (Payments)

Output Funding Clauses

- 16.1 Subject to **clause S11-16.3, clauses S6-2, S6-3, S6-5, S6-6, S6-11, S6-12 and S6-13** (the 'Output Funding Clauses') will not operate from the Commencement Date.

Independent business studies

- 16.2 ARCBS agrees to participate in an independent business study commissioned by the NBA after consultation with the ARCBS, to inform decisions in relation to the basis for funding the ARCBS for 2007-08 and later years.
- 16.3 On completion of the independent business study, the Parties agree to meet and consult in good faith to discuss:
- 16.3.1 whether the Output Funding Clauses (or any varied form of those clauses) should operate during the Term; or
- 16.3.2 what other basis for funding should apply during the Term to give effect to the following principles for the provision of Government funding for ARCBS:
- (a) that Governments, through the NBA, accept responsibility for paying the fair and reasonable costs of the ARCBS in providing the products and services required by Governments and in accordance with any relevant policies decided by Governments; and
- (b) that funding will be provided to ARCBS on the basis of the Products and Services Ordered by AHPs, taking into account supply plans approved by or on behalf of Governments.

Product Unit Payments

- 16.4 Unless otherwise agreed between the Parties under **clause S11-16.3**, the NBA agrees to pay Product Unit Payments to ARCBS on the following basis:

- 16.4.1 a total Product Unit Payment amount for each Month will be calculated on the basis of the per unit Product Unit Payment amount for each Product and the volume of each Product expected to be supplied in that Month as shown in the Annual Supply Estimates applicable at the time of the payment;
- 16.4.2 if agreed by the Parties, the NBA will make an adjustment payment in respect of any Month between 1 July 2006 and the Commencement Date in order to bring the level of payment by the NBA to ARCBS in respect of Products supplied in that Month to a level that would have been payable under **clause S11-16.4.1** if that Month had been after the Commencement Date;

and for this purpose the Parties agree to:

- 16.4.3 confirm in writing the per unit Product Unit Payment amounts for each Product to apply for the 2006-07 Financial Year, within 10 Business Days of the Commencement Date; and
- 16.4.4 prior to the commencement of each subsequent Financial Year:
- (a) agree the per unit Product Unit Payment amounts for that Financial Year; and
 - (b) consult in good faith to discuss whether any change should be agreed to the basis for Product Unit Payments for that Financial Year.

Clause S6-9.2

- 16.5 The Parties agree to confirm in writing the Annual Estimate for the ARCS Oversight Cost Reimbursement Payments for the 2006-07 Financial Year within 10 Business Days of the Commencement Date. Monthly Payments in respect of the ARCS Oversight Cost Reimbursement Payments for the 2006-07 Financial Year will commence in respect of the first full Month occurring after the Commencement Date.

Clause S6-11.2

- 16.6 ARCBS to use reasonable endeavours to comply from the Commencement Date. However, the clause will not operate in Queensland until implementation of NBMS.

Invoicing and payment

- 16.7 Unless otherwise agreed between the Parties under **clause S11-16.3**, the invoicing and payment arrangements set out in **clauses S11-16.8 to S11-16.12** apply.
- 16.8 ARCBS agrees to submit Monthly invoices in advance by the third Business Day of each Month in respect of the following Month, based on Product Unit Payments, Capital Payments, Change Program Funding Pool Payments, Other Payments and ARCS Oversight Cost Reimbursement Payments which may be invoiced for that Month in accordance with this Deed, and taking into account any set-offs or other adjustments under this Deed applicable for that Month or invoice. ARCS Oversight Cost Reimbursement Payments may be invoiced separately from other Payments.

- 16.9 An invoice under **clause S11-16.8** must:
- 16.9.1 be in the form of a Tax Invoice in accordance with the GST Law;
 - 16.9.2 be provided in pdf or other software format as agreed between the Parties;
 - 16.9.3 be supported by a reference to the basis for the amount invoiced for any Capital Payments, Change Program Funding Pool Payments, Other Payments or ARCS Oversight Cost Reimbursement Payments; and
 - 16.9.4 contain the following:
 - (a) Date of invoice;
 - (b) period of invoice;
 - (c) invoice number;
 - (d) ARCBS' Name, Address and Australian Business Number;
 - (e) total value, total GST and invoice total; and
 - (f) any other requirement for a valid Tax Invoice under the GST law.
- 16.10 ARCBS agrees to provide supporting documentation for invoices as reasonably requested by the NBA from time to time, and to comply with any reasonable requests issued in writing by the NBA from time to time, following consultation with ARCBS, in relation to the timing, format, specific content, or means of provision of, invoices and supporting documents under the Deed.
- 16.11 Where the NBA is reasonably satisfied that an invoice is correctly rendered, the NBA must pay the invoiced amount by no later than the third Business Day of the relevant Month in respect of which the invoice is given.
- 16.12 Where at any time the NBA reasonably considers that an invoice issued by ARCBS is incorrect (whether or not any amount has been paid by the NBA in respect of the invoice), ARCBS agrees to give to the NBA as reasonably required by the NBA:
- 16.12.1 a credit note and replacement invoice;
 - 16.12.2 an adjustment note; or
 - 16.12.3 an adjustment in subsequent invoices;
- as required to correct the invoice, and in compliance with any requirements of the GST legislation as defined in **clause 30**.

Executed as a deed

SIGNED SEALED AND DELIVERED)
for and on behalf of the)
COMMONWEALTH OF AUSTRALIA)
acting through the)
NATIONAL BLOOD AUTHORITY)
on:)
_____)
Date)
by:)
_____)
Name of signatory)
_____)
Position of signatory)
in the presence of:)
_____)
Name of witness)

_____)
Signature)
_____)
Signature of witness)

Signed on behalf of the Australian Red Cross Society:

_____) <i>Full Name of ARC Board Member</i>	_____) <i>Signature</i>
_____) <i>Full Name of ARC Board Member</i>	_____) <i>Signature</i>
_____) <i>Full Name of Counter Signatory</i>	_____) <i>Signature</i>

Dated this day of 2006