

Dated

[XXX] November 2020

between

**New Zealand Blood Service**

and

**[XXX] District Health Board**

---

**Supply Agreement  
Products and Services**



Agreement dated: [XXX] November 2020

## Parties

---

New Zealand Blood Service (NZBS)

[XXX] District Health Board (DHB)

## Background

---

- A. NZBS has agreed to supply to the DHB and the DHB has agreed to receive and purchase from NZBS:
- (i) Products including blood, products derived from blood, controlled human substances and human tissue for therapeutic purposes; and
  - (ii) various services, including clinical and testing services,
- on the terms and conditions set out in this Agreement.
- B. The DHB acknowledges that blood is a gift of life and has been donated to NZBS by volunteer non-remunerated donors. The DHB confirms and undertakes that it shall treat all blood, blood products, controlled human substances and human tissue it receives from NZBS in a manner consistent with this acknowledgment.

## Agreement

---

### 1. INTERPRETATION

1.1 **Definitions:** In this Agreement unless the context otherwise requires:

**Agreement** means this Agreement.

**Annual Price Engagement Process** means the process that NZBS follows on an annual basis to review the prices it charges for the Deliverables under this Agreement as set out in clause 5.

**Blood** has the meaning given to it in the Human Tissue Act 2008.

**Blood Components** includes therapeutic components of Blood (including, but not limited to red cells, white cells, platelets and plasma components) that can be prepared by centrifugation, filtration, freezing, or other separation techniques or technologies.

**Commencement Date** means [XXX].

**Controlled Human Substances** has the meaning given to it in the Human Tissue Act 2008.

**Defective Products** means Products that the DHB believes or suspects do not meet the product Specifications.

**Deliverables** means Products and Services.

**Fractionated Products** means Products manufactured from human plasma using protein separation techniques.

**HSWA** means the Health and Safety at Work Act 2015 and any relevant regulations issued under that Act.

**Human Tissue** has the meaning given to it in the Human Tissue Act 2008.

**IANZ** means the body called International Accreditation New Zealand, an autonomous crown entity established under the Testing Laboratory Registration Council Act 1972, or such other body that may carry out those functions.

**Lead DHB CEO for NZBS matters** means the District Health Board CEO appointed to liaise with NZBS on behalf of all District Health Boards.

**Ordering Procedure** means the process which a DHB shall follow in respect of every order placed for the Deliverables.

**Personal Information** means personal information, as defined in the Privacy Act 1993 that is held by or on behalf of NZBS in connection with this Agreement.

**Policy and Technical Guidelines** means any policy or technical guidelines required by NZBS to be followed by the DHB and which relates to the handling, storage, distribution, and use of Products, as updated by NZBS from time to time during the Term and notified in writing to the DHB.

**Price** means the price for the Deliverables notified by NZBS to the DHB from time to time.

**Privacy Laws** means the Privacy Act 1993 and codes developed under the Privacy Act 1993, including the Health Information Privacy Code 1994. From 1 December 2020 these references shall change to the Privacy Act 2020 and the Health Information Privacy Code 2020.

**Purchase Order** means a documented order prepared by the DHB and received by NZBS which complies with the relevant Ordering Procedure.

**Products** include Blood Components, Fractionated Products, Controlled Human Substances and Human Tissue offered by NZBS to the DHB (as amended from time to time), and ancillary products associated with the supply and administration of such Products (eg blood bags and labels).

**Recombinant Products** means products not made from human blood, but made in a laboratory using recombinant technology.

**Service Level Agreement** means an agreement between the parties regarding specific Services that NZBS provides to the DHB under this Agreement, with additional detail regarding the obligations of each party in respect of such Services.

**Services** include, to the extent applicable for the DHB, on-site blood banking, storage and distribution services for Products and Recombinant Products, screening and testing services related to the provision and delivery of Products (including tissue typing), therapeutic services (including apheresis services and stem cell collection and processing services), and clinical and scientific advice on the practice of transfusion medicine, including clinical laboratory testing, pre-transfusion testing, screening and any other Blood and other Human Tissue services.

**Specifications** means the product specifications approved by Medsafe from time to time for Products and generally comprised in a relevant datasheet and / or monograph.

**Screening** means the timely laboratory testing of referred donation samples for Hepatitis B, Hepatitis C, HIV, HTLV, and Syphilis, including required confirmatory testing, and includes any other approved testing which may be carried out from time to time by NZBS.

**Term** means the period beginning on the Commencement Date and, subject to clause 2.1, terminating on [XXX].

**Working Day** means a Working Day as defined in the Companies Act 1993.

1.2 **Interpretation:** Unless the context otherwise requires, in this Agreement:

- (a) headings are inserted for convenience only and shall be ignored in construing this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) references to individuals include companies and other corporations and vice versa;
- (d) a reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision;
- (e) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (f) reference to a party, person or entity includes:
  - (i) an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having a separate legal personality; and
  - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (g) the schedules to this Agreement form part of this Agreement;
- (h) where any word or expression is defined in this agreement any other grammatical form of that word or expression has a corresponding meaning;
- (i) reference to a section, clause, subclause, schedule or a party is a reference to that section, clause, subclause, schedule or party in this Agreement unless stated otherwise.

## PART A – SPECIFIC PROVISIONS DEALING WITH DELIVERABLES

### 2. SUPPLY AND ORDERING OF DELIVERABLES

- 2.1 **Term:** From the Commencement Date and for the Term unless lawfully terminated under clause 15 NZBS agrees to supply the Deliverables at the Price to the DHB on the terms and conditions set out in this Agreement. If the parties continue to perform their obligations after expiry of the Term, this Agreement will be deemed to be renewed on the same terms and conditions as those applying on the expiry date, except this Agreement may be terminated by either party on three (3) months' notice.
- 2.2 **Price:** NZBS and the DHB agree and acknowledge that the Price does not include any charge for donated Blood, Human Tissue, or Controlled Human Substances.
- 2.3 **Supply:** On receipt of an order placed in accordance with the Ordering Procedures NZBS shall use its best endeavours to deliver or supply the Deliverables to the DHB at the time, and in the volumes requested in the Purchase Order.
- 2.4 **Ordering:** NZBS shall from time to time determine the Ordering Procedures for the Deliverables and shall provide these in writing to the DHB and publish the procedure on [www.nzblood.co.nz](http://www.nzblood.co.nz). The DHB shall follow the relevant Ordering Procedures when requesting the delivery or supply of Deliverables.
- 2.5 **Changes to Deliverables:** NZBS may review the Deliverables offered under this Agreement in order to ensure that all Deliverables offered are appropriate, having regard to up-to-date scientific and clinical information and value for money. Following any such review, NZBS may make changes to the Deliverables offered under this Agreement, provided that it consults with the DHB prior to making any such change.
- 2.6 **Additional Deliverables:** Without limiting clause 2.5, the parties acknowledge that during the Term NZBS is expected to assume responsibility for:
- (a) The oversight and clinical governance of the organ donation system, and support to the transplantation system, in New Zealand; and
  - (b) Heart valve banking in New Zealand,
- and the parties agree that as these extensions to NZBS' role take effect, this Agreement may be extended to address the provision of organ donation and transplantation services, and heart valve banking services, as additional Deliverables.

### 3. INVOICING AND PAYMENT

**Invoicing:** NZBS shall invoice the DHB for Deliverables provided in any calendar month at the end of that month and the DHB shall pay NZBS the amount invoiced by the 20th day of the month following supply, against an invoice.

### 4. OBLIGATIONS IN RELATION TO DELIVERABLES

- 4.1 **Provision of information:** NZBS shall:
- (a) Publish and maintain a list of the Deliverables provided under this Agreement, and the Ordering Procedure (on [www.nzblood.co.nz](http://www.nzblood.co.nz)) or otherwise make that information available to the DHB;
  - (b) Following the Annual Price Engagement Process, provide the DHB with an updated Deliverables price list; and

- (c) Maintain and make available to the DHB the Specifications, Policy and Technical Guidelines, and any other NZBS policy and procedures which NZBS determine are relevant to the Deliverables and this Agreement.

4.2 **Product supply:** When supplying Products, NZBS shall take all reasonable steps to ensure that all Deliverables comply with the relevant Specifications.

4.3 **Service supply:** To the extent that NZBS supplies Deliverables that are Services:

- (a) The parties will agree between them the specific Services that NZBS will provide to the DHB (acknowledging that NZBS provides different Services to different DHBs);
- (b) The parties may enter into one or more Service Level Agreement(s) that record additional detail regarding the way in which they will work together in respect of relevant Services. Without limiting the foregoing, the parties agree that Service Level Agreements are intended to detail the responsibilities of each party, the location(s) at which the Services will be provided, and any relevant standards with which the parties must comply. If there is any inconsistency between the terms of this Agreement and the terms of any Service Level Agreement, the Service Level Agreement will take priority to the extent of the inconsistency;
- (c) NZBS will exercise reasonable care and skill in the performance of those Services, or otherwise meet the standard of care as outlined in any relevant Service Level Agreement between the parties for those Services;
- (d) Unless otherwise agreed with the DHB, NZBS will perform the Services in accordance with relevant NZBS policies, procedures and guidelines;
- (e) Where such Services are provided directly to patients at the DHB's premises, the DHB:
  - (i) retains primary responsibility for patient care and clinical decision making; and
  - (ii) will ensure that appropriate clinical support systems are implemented and maintained, such that NZBS personnel providing Services at the DHB's premises are appropriately supported and able to access necessary clinical equipment and DHB personnel to facilitate the provision of appropriate patient care; and
- (f) Where such Services are testing Services:
  - (i) NZBS is entitled to rely on the information provided by the DHB regarding each test sample (including the labelling of the test sample), and the DHB's sample collection processes;
  - (ii) unless otherwise agreed with the DHB, NZBS will process test samples in accordance with relevant NZBS policies, procedures and guidelines;
  - (iii) NZBS will report all test results to the DHB in a form, and pursuant to test delivery methods, agreed between the parties; and
  - (iv) the DHB will take all reasonable steps to ensure that it has systems in place to ensure that the test results which it receives from NZBS are read and acted on in a timely manner.

## 5. ANNUAL PRICE ENGAGEMENT PROCESS

5.1 **Price review:** NZBS shall be entitled to review the Price for Deliverables under this Agreement on an annual basis, and adjust the Price as it sees fit, and in its absolute discretion.

- 5.2 **Price Review Obligation:** When reviewing the Price under this Agreement, NZBS shall use its best endeavours to ensure that any annual price increases are kept as low as possible in accordance with NZBS' annual Letter of Expectation from the Minister of Health accepting such best endeavours must be balanced against the need for NZBS to maintain its financial sustainability in a manner set out in section 51 of the Crown Entities Act 2004.
- 5.3 **Consultation:** NZBS shall consult annually with DHB's (via the Lead DHB CEO for NZBS matters) with NZBS providing an overview of the planned price settings for the new financial year as well as providing an environment scan setting out the reasons behind those planned price settings prior to finally confirming the Price prior to the start of a new financial year.

## 6. FORECASTING

- 6.1 **Forecasting:** In respect of any twelve month period the DHB shall:
- (a) within 10 Working Days prior to the first days of each of March, June, September and December, provide NZBS with a forecast of the DHB's anticipated Deliverable requirements for the following twelve month period beginning on the first day of the following month; and
  - (b) update any forecast in writing each quarter by making amendments to the relevant forecast; and
  - (c) notify NZBS in writing of any change during the preceding quarterly period, or anticipated change in the type, level or mix of health services that the DHB provided or intends to provide,

provided that where the DHB has not been providing forecasts to NZBS prior to the Commencement Date, the provision of forecasts and compliance with this clause 6.1 will be subject to NZBS requesting such forecasts on not less than three months' prior written notice to the DHB.

- 6.2 **Minimum stock levels:** Subject to clause 7.8:
- (a) the DHB will take reasonable steps to ensure on an ongoing basis that it holds a minimum level of stock of the Products, such minimum level to be agreed between the parties from time to time based on the DHB's historical demand for the Products over a reasonable period of time; and
  - (b) if the DHB regularly requires supply of any Product(s) on an urgent or emergency basis due to insufficient stock of Products being held on the DHB premises, the parties will work together in good faith to review and agree on revised minimum stock levels.

## 7. AUDIT, COMPLIANCE, AND RECORDS

- 7.1 **NZBS review:** The DHB shall provide NZBS with any documentation and information in its possession, power, or control that is relevant to any review of the supply, receipt, storage or use of the Deliverables that NZBS may (in its sole discretion) choose to implement. The DHB shall allow NZBS to inspect any premises to which the Deliverables have or will be supplied to in order to verify the DHB's compliance with NZBS requirements advised to the DHB from time to time, or any law or any requirement of NZBS notified to the DHB from time to time.
- 7.2 **Agreement compliance audit:** NZBS will monitor and review the DHB's compliance with this Agreement and the Policy and Technical Guidelines. For this purpose, the DHB shall provide NZBS with any relevant documentation (which includes the results of any IANZ inspection or any other relevant third party audit) and allow NZBS to inspect any DHB premises. The DHB shall comply and co-operate with NZBS when NZBS inspects any DHB premises. Where records are requested by NZBS pursuant to this clause 7.2 the DHB shall, at its cost, forthwith provide those records to NZBS.

7.3 **Records:** Each of NZBS and the DHB must maintain sufficient records to enable the other party to verify compliance with this Agreement, and must provide such records to the other party on written request.

7.4 **IANZ Accreditation:** Subject to clause 7.8:

- (a) the DHB confirms that as at the Commencement Date it holds IANZ accreditation in respect of any blood bank facility maintained and operated by the DHB;
- (b) the DHB agrees to ensure that it continues to hold IANZ accreditation in respect of its blood bank facility at all times during the Term, and if at any time during the Term:
  - (i) the DHB becomes aware of any issues associated with the operation or management of its blood bank facility that could threaten its continued IANZ accreditation;
  - (ii) IANZ conducts an audit or any other type of review of the DHB's blood bank and raises concerns about the operation or management of the blood bank, or imposes one or more corrective actions on the DHB in respect of the blood bank; or
  - (iii) the DHB's IANZ accreditation is withdrawn,

then the DHB agrees to promptly notify NZBS in writing, and provide NZBS with all relevant information (including any relevant correspondence with IANZ) regarding the issue(s);

- (c) the DHB will fully cooperate with NZBS and keep NZBS updated at all times as it remedies any issues associated with the operation and management of its blood bank facility; and
- (d) the DHB acknowledges that NZBS may suspend supply of Products if IANZ accreditation is withdrawn.

7.5 **Notice of New Facilities:** If at any time during the Term the DHB intends to establish and commence operating any new facility (or facilities) for the ongoing performance of blood transfusion or infusion (including without limitation any day stay infusion centre but excluding any temporary overflow facility) ("**New Facility**"), the DHB agrees to provide not less than 3 months' prior written notice to NZBS in relation to the proposed New Facility before commencing operation. The DHB acknowledges and agrees that nothing in this Agreement will require NZBS to supply any Products or Services to the DHB in respect of the New Facility until NZBS is satisfied, acting reasonably that proper systems are in place for the storage, handling and transfusion of Blood within the New Facility.

7.6 **NZBS Clinical Oversight Programme and training:** The DHB acknowledges that NZBS is responsible for the clinical oversight of transfusion practise throughout New Zealand, and that to this end NZBS has developed the "NZBS Clinical Oversight Programme". The DHB agrees that during the term it will:

- (a) participate in the NZBS Clinical Oversight Programme, as requested by NZBS from time to time, and in accordance with relevant NZBS policies, procedures and guidelines; and
- (b) ensure that all clinical staff involved in the transfusion chain receive regular training in pre-transfusion testing, ordering and transfusion administration (as appropriate to their role), and are assessed for competency in safe blood transfusion practice at an appropriate frequency.

7.7 **Complaints and incidents:** NZBS and the DHB each agree:

- (a) to promptly notify the other party of:



- (i) the death of any patient, if the death was medically unexpected and appears to have been the result of, or otherwise connected to, the provision of any Product or Service supplied under this Agreement, whether or not the death is referred to a Coroner;
  - (ii) any complaints or concerns which arise, or are likely to arise, that directly or indirectly relate to the Products or Services (including but not limited to any complaints made to the office of the Health and Disability Commissioner);
  - (iii) any breach of the Privacy Laws in connection with this Agreement;
  - (iv) any request for information made under the Official Information Act 1982 or other legislation, pursuant to which the recipient party is required to provide information relating to this Agreement;
  - (v) any request for information made under the Privacy Laws, pursuant to which the recipient party may be required to disclose Personal Information which was initially collected by the other party, or otherwise relates to this Agreement; or
  - (vi) any issues concerning the Products or Services that might have media or public interest; and
- (b) that if there is a complaint, concern, death or other issue that arises in connection with this Agreement, the parties will consider whether and how they can provide information, cooperate, and work collaboratively to address the complaint, concern, death or other issue. Without limiting the foregoing, the parties agree that where appropriate, they will collaborate and share information with each other (subject to confidentiality obligations and legal privilege) in connection with any internal investigation or review that either of them undertakes in connection with such complaints, concerns, deaths or other issues.

7.8 **NZBS as operator of blood bank:** To the extent that NZBS operates the blood bank facility at the DHB, the parties agree that NZBS will fulfil the obligations of the DHB under clause 6.2(a) and clause 7.4.

## 8. HEALTH AND SAFETY

- 8.1 Both parties agree to comply with all the requirements of the HSWA, including any regulations, codes and guidance made under the HSWA.
- 8.2 Where NZBS personnel are providing Services at DHB premises (for the purposes of this clause 8, "**Personnel**"):
  - (a) NZBS will ensure, so far as reasonably practicable, that:
    - (i) its Personnel are made aware that they must comply with relevant health and safety policies of the DHB while on DHB premises;
    - (ii) its Personnel attend any induction or other briefing provided by the DHB in respect of health and safety; and
    - (iii) it informs the DHB of any particular risks or issues of which it is aware in respect of its Personnel which are relevant to the DHB's management of health and safety at its site.
  - (b) The DHB will ensure, so far as reasonably practicable:

- (i) the provision and maintenance of a work environment that is without risks to health and safety;
  - (ii) the provision of adequate facilities for the welfare of Personnel at the DHB's premises;
  - (iii) that no act or omission causes a hazard, significant hazard, harm or serious harm to any Personnel at the DHB's premises;
  - (iv) that no act or omission is a breach of duty or obligation of the DHB under the HSWA; and
  - (v) that no act or omission does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSWA against the parties.
- (c) The DHB will ensure that all Personnel are briefed on the DHB's hygiene and infection control protocols and procedures, and will provide them, at no cost, with adequate protective clothing, consumables (such as gloves), and devices to enable hygiene and infection control.

8.3 The DHB recognises that NZBS does not monitor the DHB's premises, and is relying on the DHB's expertise in respect of the health and safety aspects of the premises. While NZBS will comply with its obligations under the HSWA, it is relying on this clause 8 and the DHB's reporting obligations to ensure the health and safety of Personnel at the DHB's premises. In recognition of this, the DHB will comply with all relevant health and safety laws with a view to ensuring the health and safety of Personnel at the DHB's premises at all times.

8.4 The DHB will record and report notifiable incidents, accidents, illnesses, injuries and near misses (for the purposes of this clause, "**Events**"), analyse injury and near miss data, and notify WorkSafe NZ if an Event is deemed as a notifiable event under the HSWA within the applicable notification timeframe. The DHB will also immediately notify NZBS if there is any Event involving Personnel (regardless of whether such an Event is notifiable to WorkSafe NZ), and at NZBS's request will:

- (a) provide NZBS with information regarding the Event, as reasonably requested by NZBS;
- (b) investigate the Event, and consult with NZBS throughout any such investigation; and
- (c) advise NZBS of the outcomes of any Event investigation including any actions that the DHB has taken, or intends to take, to prevent similar events in future.

## PART B – SPECIFIC PROVISIONS DEALING WITH PRODUCTS

### 9. DELIVERY, TITLE AND RISK IN PRODUCTS

- 9.1 **Delivery:** NZBS shall use its best endeavours to deliver all Products to the DHB at the location notified in the relevant Purchase Order. NZBS shall only be obliged to deliver Products to an IANZ accredited facility.
- 9.2 **Title:** Title to and any and all rights in and to the Products, including any and all property rights, shall remain with NZBS until the Products are transfused into any patient or disposed of in accordance with NZBS directions.
- 9.3 **Risk:** All Products shall be at NZBS risk until delivered in accordance with, and as set out in the relevant Ordering Procedures

### 10. DEFECTIVE PRODUCTS

- 10.1 **Defective Products:** In the event that the DHB believes that Products are Defective Products then the DHB shall immediately:
- (a) withdraw the Defective Products from use;
  - (b) notify NZBS that it has withdrawn the Defective Products from use and otherwise comply with the Ordering Procedures in relation to the Defective Products; and
  - (c) store the Defective Products under appropriate storage conditions until NZBS issues written instructions to either deliver the Defective Products to a nominated address or destroy the Defective Products.
- 10.2 **Credit note:** Where Defective Products are caused by the failure of NZBS to comply with its obligations under this Agreement, the Medicines Act 1981 or the Medicines Regulations 1984 then the DHB shall not be charged the Price for the Defective Products and where relevant NZBS shall issue a credit note to the DHB in respect of any invoice for Defective Products that have been invoiced. The DHB acknowledges that the remedies provided to it under this clause 10.2 will be the DHB's sole remedies in respect of Defective Products.

### 11. SHORT SUPPLY AND EMERGENCIES

- 11.1 **Short supply:** Where NZBS notify the DHB that any Products are in NZBS' sole opinion:
- (a) in short supply; or
  - (b) are not required to meet immediate DHB demand,

NZBS may require the DHB to make any Products supplied under this Agreement available to NZBS for redistribution and the DHB shall immediately and fully comply with any directions NZBS may give to the DHB in relation to those Products.

- 11.2 **Emergency:** In the event of any situation which NZBS reasonably determines to be an emergency or otherwise requiring a disaster response, the DHB shall follow NZBS reasonable directions in relation to any Products that are in the DHB's possession or control. NZBS and the DHB shall co-operate with each other to the fullest extent possible to ensure that the event requiring the disaster response is responded to as quickly and as fully as possible.

## 12. SPECIFIC DHB OBLIGATIONS IN RESPECT OF PRODUCTS

- 12.1 **Handling, storage and use:** When the DHB receives, handles, stores and uses Products, it shall ensure that it complies in all respects with:
- (a) the requirements of the 1996 Code of Health and Disability Services Consumers' Rights and any update, amendment or similar requirement which may replace this code;
  - (b) prudent clinical practice;
  - (c) any relevant Policy and Technical Guidelines; and
  - (d) any other applicable legislation, standards or regulations, including standards for the storage of Blood and other Products.
- 12.2 **Provision of Products to regional hospitals:** Notwithstanding anything in this Agreement, if the DHB elects to provide any Products to any regional or satellite hospital owned and operated by the DHB (a "**regional hospital**" for the purposes of this clause), the DHB:
- (a) shall ensure that the regional hospital meets the standards set out under this Agreement; and
  - (b) agrees to undertake a physical inspection and audit of the operations of the regional hospital to ensure that the regional hospital is meeting the standards required under this Agreement. Such an inspection and audit must be carried out if, at any time during the Term, there is cause for any concern that the standards set out in this Agreement are not being met by the regional hospital, unless the parties agree in writing that NZBS will take on responsibility for conducting such inspection and audit.
- 12.3 **On-supply of Products to third parties:** Notwithstanding anything in this Agreement, if the DHB elects to on-supply any Products to any hospital or other healthcare facility (including any primary care facility) which is owned and operated by a third party, and if there is no contract between NZBS and that third party in respect of that supply of such Products, the DHB shall ensure that the terms and conditions on which that on-supply occurs:
- (a) require the third party to meet the same standards as required of the DHB under this Agreement;
  - (b) allow the DHB to undertake a physical inspection and audit of the operations of the relevant third party to ensure that the third party is meeting the same standards as required of the DHB under this Agreement (and the DHB agrees to undertake such inspection and audit if, at any time during the Term, there is cause for any concern that standards are not being met by any such third party); and
  - (c) allow the DHB to cease supply, at NZBS' request, where NZBS has concerns about the third party's compliance with applicable standards.
- 12.4 **Not to Profit:** The DHB shall not require any consideration (financial or otherwise) for the Products from any person (irrespective of that person's eligibility status under the Ministry of Health 2011 Eligibility Direction) to whom such products are administered or from any other person with the intent that the DHB shall in no way be entitled to profit from the Products supplied to it by NZBS.
- 12.5 **Destruction or disposal:** The DHB shall not destroy or dispose of Products except in accordance with any instructions of NZBS or in accordance with the Policy and Technical Guidelines.
- 12.6 **General:** The DHB agrees as follows in relation to any Products supplied by NZBS:

- (a) The DHB conforms with the Medicines Act 1981, the Medicines Regulations 1984, Human Tissue Act 2008 and any other statutes, regulations (as amended from time to time) and notices and that it holds all necessary registrations or authorities in respect of the receipt, handling, storage, administration and supply of the Products.
- (b) It shall notify NZBS immediately of any defective or unsafe Products. All notifications must comply with the Medicines Act 1981 and the Medicines Regulations 1984. All defective or unsafe Products shall be immediately withdrawn from use and held by the DHB and in accordance with clause 10 of this Agreement.
- (c) The DHB collects and holds records (including patient NHI numbers) which ensure the full traceability (through to final disposition) of all Products supplied by NZBS and shall provide such records to NZBS on demand.

## PART C – GENERAL PROVISIONS

### 13. EXCLUSION AND LIMITATION OF NZBS LIABILITY

- 13.1 Under no circumstances shall NZBS be liable for any reason whatsoever to compensate the DHB for any loss, injury, liability, damage, costs or expense, howsoever arising (including as a result of lack of reasonable care on the part of NZBS). NZBS shall not be liable or responsible for any loss or damage sustained by the DHB or any other person by reason of any delay in the delivery or supply of Deliverables under this Agreement.
- 13.2 Notwithstanding clause 13.1, in no event shall any liability of NZBS to the DHB, howsoever arising under this Agreement exceed the invoice price of the relevant Deliverable to the DHB.

### 14. PRIVACY

- 14.1 **Management of Personal Information:** The parties acknowledge that they will collect, hold, use and share Personal Information in connection with their performance of this Agreement. Each party acknowledges the potential sensitivity of Personal Information, and the importance of managing such information in accordance with relevant Privacy Laws.
- 14.2 **Authorisation:** Each party must ensure that its use or disclosure of Personal Information in connection with this Agreement is permitted under law.

### 15. TERMINATION

- 15.1 **Termination for material breach:** Notwithstanding the Term of this Agreement, but subject to clause 15.2:
- (a) either party may terminate this Agreement, either in whole or in part, if the other party is in breach of this Agreement and fails to rectify the breach within the agreed period negotiated between the parties to rectify the breach (or failing any agreement as to that timeframe within a reasonable time); or
  - (b) NZBS may terminate this Agreement, either in whole or in part, if the DHB is in breach of any of clauses 11 [Short Supply and Emergencies], 12.1 [Handling, storage and use], or 12.4 [Not to profit].
- 15.2 **Termination a last resort:** The parties acknowledge that supply of the Products and some Services is essential to the DHB's provision of clinical services and performance of its functions in accordance with the New Zealand Public Health and Disability Act 2000. Each party agrees that it will only exercise its rights under clause 15.1 to terminate supply of Products or essential Services if:
- (a) it has notified the other party that it is considering terminating the Agreement, and has consulted with the other party regarding alternative options;
  - (b) it has consulted with the Ministry of Health regarding the proposed termination; and
  - (c) the terminating party, acting reasonably, considers that any alternative form of resolution is not practicable and termination is necessary and appropriate in the circumstances,
- and, to avoid doubt, NZBS acknowledges and agrees that in circumstances where the DHB has failed to pay for Products or Services (and the supply of such Products and Services in accordance with this Agreement is not in dispute) NZBS will only terminate this Agreement if it has first completed the following escalation process:
- (d) NZBS will give the DHB an opportunity to rectify the breach in accordance with clause 15.1(a);

- (e) if the matter is not resolved pursuant to subclause (d), NZBS will attempt to resolve the matter by charging default interest on any outstanding invoices (calculated and accrued daily from the due date until the date of full payment, at the business interest rate published by the Reserve Bank of New Zealand), and will pursue this option for resolution for at least three (3) months; and
  - (f) if the matter is not resolved pursuant to subclause (e), NZBS will comply with subclauses (a) to (c) above.
- 15.3 **No limitation of other rights:** Termination by a party under this clause 15 will not limit or affect any other rights or remedies that the terminating party may have under this Agreement or at law. Any termination of this Agreement will be without prejudice to any rights accrued or obligations owing as at the date of termination or expiry.
- 15.4 **Continuing obligations:** On termination or expiry of this Agreement this clause and clauses 13, 14 and 17 and all other provisions of this Agreement that are expressed to, or intended by the parties to, continue in full force and effect will do so.
- 15.5 **Enforcement costs:** Either party may recover any reasonable costs incurred by it enforcing the provisions of this Agreement, including debt collection costs and any legal costs as between solicitor and client.

16. **NOTICES AND COMMUNICATION**

- 16.1 **Writing:** Each notice, agreement and other communication (each a communication) to be given, delivered or made under this Agreement is to be in writing but may be sent by personal delivery, post, email or facsimile.
- 16.2 **Addresses:** Each communication under this Agreement is to be sent to the address of the relevant party set out below or to any other address from time to time designated for the purpose by at least 5 Working Days' prior notice to the other party. The initial address details of the parties are:

**NZBS:**

Street Address:

New Zealand Blood Service  
71 Great South Road  
Epsom  
Auckland 1051

Postal Address:

New Zealand Blood Service  
Private Bag 92-071  
Auckland Mail Centre  
Auckland 1142

Attention: Chief Executive Officer  
Facsimile: (09) 523-5754  
Email: ceo@nzblood.co.nz

**[XXX] DHB:**

Street Address

Postal Address:

**XX**

XX  
XX

Attention: XX  
Facsimile: XX  
Email: XX

16.3 **Methods:** A communication under this Agreement will only be effective:

- (a) in the case of personal delivery, when delivered;
- (b) if posted, 10 Working Days in the place of receipt, after posting or delivery;
- (c) if made by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates that the correct number of pages was sent to the facsimile number of the recipient designated for the purpose of this Agreement;
- (d) if made by email, when received as set out in the Electronic Transactions Act 2002 (NZ),

provided that any communication received or deemed received after 5 pm or on a day which is not a Working Day will be deemed not to have been received until the next Working Day.

## 17. RESOLUTION OF DISPUTES

17.1 **Good Faith:** The parties agree to meet and negotiate in good faith to resolve any dispute or disagreement (**Dispute**) relating to arising out of or in any way connected with this Agreement.

17.2 **Primary Escalation of Dispute Resolution:** If the parties cannot reach agreement over resolution of the Dispute, then the Dispute shall be escalated to the Chief Executive of NZBS and the Chief Executive of the DHB to resolve.

17.3 **Secondary Escalation of Dispute Resolution:** If the Chief Executive of NZBS and the Chief Executive of the DHB cannot, within a reasonable time, reach agreement over the resolution of the Dispute then the Dispute shall be escalated to the Chair of NZBS and the Chair of the DHB to resolve.

17.4 **Final Escalation of Dispute Resolution:** If the Chair of NZBS and the Chair of the DHB cannot, within a reasonable time, reach agreement over the resolution of the Dispute, then the Dispute shall be escalated to the Minister of Health to resolve. The Minister's decision on the matter will be final and binding on all parties.

17.5 **Obligations continue:** Pending the resolution of any Dispute in accordance with this Agreement, all parties will continue to perform all their obligations under this Agreement without prejudice to the Dispute.

## 18. MISCELLANEOUS

18.1 **Assignment:** Neither party may novate or assign this Agreement (in whole or in part) without the prior written consent of the other party.

18.2 **Force Majeure:**

- (a) Provided it complies with this clause 18.2, a party (the "**affected party**") will not be in breach of this Agreement because of any failure to perform its obligations under this Agreement if and, to the extent that it is unable to perform such obligations as a direct result of an emergency which includes any act of God, fire, wind, flood, earthquake, tsunami, epidemic or



pandemic disease, riot, war, industrial action, defaults by a third party, or other circumstances of a similar nature beyond its reasonable control, and also includes any other event which the affected party reasonably considers is outside of its direct control and may have a significant effect on usual operation of this Agreement (**Force Majeure Event**).

- (b) The parties acknowledge that both of them may be affected by the same Force Majeure Event, in which case both parties will constitute an “affected party” for the purposes of this clause 18.2.
  - (c) Where a party claims a Force Majeure Event has occurred it shall advise the other party that a Force Majeure Event exists and where practical should provide the other party with all available information in relation to the event and an estimate of the period of time required to remedy the event and end the suspension. The affected party must:
    - (i) take reasonable steps to mitigate the effect of the Force Majeure Event;
    - (ii) keeps the other party updated as to the extent to which its performance of this Agreement is affected; and
    - (iii) take all reasonably practicable steps to overcome the Force Majeure Event as quickly as possible.
  - (d) Acknowledging the parties’ roles and responsibilities as emergency services (as that term is defined in the Civil Defence Emergency Management Act 2002), the parties agree that where either or both of them are affected by a Force Majeure Event they will discuss whether it is possible to vary the obligations which are affected by the Force Majeure Event, on a temporary basis, such that both parties can continue to perform this Agreement. The DHB acknowledges that NZBS may provide alternative and/or reduced Products and Services as a result of a Force Majeure Event.
- 18.3 **Waiver:** No waiver by either party of any breach of this Agreement by the other party will be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.4 **Partial Invalidity:** If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain in force to the greatest extent permitted by law.
- 18.5 **Amendments:** No amendment of this Agreement will be effective unless it is in writing and signed by both parties.
- 18.6 **Counterparts:** This Agreement may be signed in counterpart copies, each of which will be deemed an original and all of which together constitute one and the same agreement. A party may enter into this Agreement by signing a counterpart copy and sending it to the other party. Each of the parties must promptly sign the original copies of this Agreement after signature of the counterpart copies.
- 18.7 **Entire Agreement:** NZBS and the DHB currently have a number of agreements in place for specific products and services, including Service Level Agreements for Services provided under this Agreement. The parties acknowledge that this Agreement is intended to govern NZBS’ supply of the Products and Services to the DHB:
- (a) and from the Commencement Date, this Agreement has the effect of terminating and replacing the supply agreement for products and services between NZBS and the DHB which was entered into in [2015];

(b) but is not intended to replace or otherwise effect any other specific arrangement already in place between the parties.

18.8 **Governing Law:** This Agreement will be construed and take effect as a contract made in New Zealand and will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## Signatures

---

Signed by **New Zealand Blood Service** in the presence of:

---

Sam Cliffe  
Chief Executive Officer

Witnessed by:

---

Signed by [XX] **District Health Board** in the presence of:

XX  
XX

Board member/ Authorised Person

XX  
XX

Board member / Authorised Person