



Australian Government

Department of Health

Deed of Agreement

between

The Commonwealth of Australia

represented by the Department of Health

ABN 83 605 426 759

and

[Insert]

ABN [Insert]

Table of contents

1	RECITALS	1
2	DEFINITIONS	1
3	INTERPRETATION	8
4	TERM OF DEED	9
5	CSO FUNDING POOL AND NDSS ADMINISTRATION.....	9
6	GENERAL OBLIGATIONS OF THE COMPANY	10
7	OBLIGATION OF COMPANY TO NOTIFY THE ADMINISTRATION AGENCY	11
8	OBLIGATION OF COMPANY TO PROVIDE DATA.....	12
9	PAYMENTS	12
10	COMPLAINTS PROCEDURE	14
11	REPORTING	14
12	SANCTIONS	15
13	REVIEW.....	16
14	AUDIT AND RECORDS.....	16
15	ACCESS TO PREMISES.....	17
16	GOODS AND SERVICES TAX	18
17	SUBCONTRACTORS.....	19
18	CONFLICT OF INTEREST	19
19	CONFIDENTIALITY.....	20
20	PRIVACY	21
21	INTELLECTUAL PROPERTY	21
22	INSURANCE.....	22
23	INDEMNITY	22
24	TERMINATION	23
25	RIGHT OF RECOVERY	25
26	NOTICES.....	25
27	AUTHORISED OFFICER.....	25
28	GIVING EFFECT TO THIS DEED.....	26
29	ANTI-COLLUSION	26
30	OPERATION OF THIS DEED	27
	SCHEDULE 1 - CSO COMPLIANCE REQUIREMENTS AND CSO SERVICE STANDARDS.....	28
1	DEFINITIONS	28
2	OBLIGATION OF COMPANY TO MEET THE CSO COMPLIANCE REQUIREMENTS AND CSO SERVICE STANDARDS.....	29
3	CSO COMPLIANCE REQUIREMENTS	30
4	CSO SERVICE STANDARDS	30
	SCHEDULE 1 ANNEXURE A.....	37

5	LIST OF LOCATIONS THAT FALL OUTSIDE THE REQUIREMENT TO SUPPLY CSO PRODUCTS WITHIN THE GUARANTEED SUPPLY PERIOD	37
	SCHEDULE 2 - PAYMENT ARRANGEMENTS	38
1	TOTAL AMOUNT OF PAYMENT FROM CSO FUNDING POOL	38
2	DEFINITIONS	38
3	PAYMENTS FOR NDSS DISTRIBUTION SERVICES	39
4	AMOUNT PAYABLE CALCULATION – NATIONAL CSO FUNDING POOL	39
5	AMOUNT PAYABLE CALCULATION – STATE BASED CSO FUNDING POOL	39
6	AMOUNT PAYABLE CALCULATION – NDSS DISTRIBUTION SERVICES	40
7	TIMING OF PAYMENTS	41
8	PAYMENT EXCLUSION POLICY	41
9	BILLING AND PAYMENT PROCESSES – PBS MEDICINES	42
10	BILLING AND PAYMENT PROCESSES – NDSS DISTRIBUTION SERVICES	42
11	PAYMENT ADJUSTMENTS	43
12	RESPONSIBILITY FOR PAYMENTS AND RECEIPT OF MONIES OWED	43
	SCHEDULE 3 – DATA AND REPORTS	49
1	DATA AND REPORTS REQUIRED FOR CSO PAYMENTS	49
2	DATA AND REPORTS FOR MONITORING CSO SERVICE STANDARDS	50
3	OTHER DATA AND REPORTS	50
	SCHEDULE 4 – COMPLAINTS PROCEDURE	52
1	DEFINITIONS	52
2	COMPLAINTS PROCEDURE	52
	SCHEDULE 5 – SANCTIONS	53
1	DEFINITIONS	53
2	BACKGROUND	53
3	GENERAL ARRANGEMENTS FOR THE APPLICATION OF SANCTIONS	53
4	ARRANGEMENTS FOR THE APPLICATION OF SANCTIONS FOR NATIONAL CSO DISTRIBUTORS	55
5	ARRANGEMENTS FOR THE APPLICATION OF SANCTIONS FOR STATE BASED CSO DISTRIBUTORS	56
6	ARRANGEMENTS FOR THE APPLICATION OF SANCTIONS RELATING TO NDSS DISTRIBUTION SERVICES	57
7	SANCTIONS APPLIED TO MAJOR NON-PERFORMANCE AGAINST CSO COMPLIANCE REQUIREMENTS	58
8	SANCTIONS APPLIED TO MAJOR NON-PERFORMANCE AGAINST CSO SERVICE STANDARDS	58
9	SANCTIONS APPLIED FOR MAJOR NON-PERFORMANCE IN RELATION TO THE NON-PROVISION OF DATA AND REPORTS	59
10	SANCTIONS APPLIED TO MAJOR NON-PERFORMANCE AGAINST A REMEDIAL BUSINESS PLAN	60

11 SANCTIONS APPLIED FOR A MAJOR NON-PERFORMANCE IN RELATION TO FAILURE TO NOTIFY THE ADMINISTRATION AGENCY OF ANY EXCLUSIVE SUPPLY ARRANGEMENTS.....	60
SCHEDULE 6 – ADMINISTRATION ROLES	61
SCHEDULE 7 – REMEDIAL BUSINESS PLAN	62
1 OBLIGATION OF THE COMPANY TO SUBMIT AND ADHERE TO A REMEDIAL BUSINESS PLAN TO RECTIFY NON-PERFORMANCE.....	62
2 FORMAT REQUIREMENTS OF THE REMEDIAL BUSINESS PLAN	62
SCHEDULE 8 – BUSINESS CONTINUITY PLAN	63
1 OBLIGATION OF THE COMPANY TO MAINTAIN A BUSINESS CONTINUITY PLAN.....	63
2 FORMAT REQUIREMENTS OF THE BUSINESS CONTINUITY PLAN.....	63
EXECUTED AS A DEED.....	65

EXECUTION

THIS Deed is made

BETWEEN the

COMMONWEALTH OF AUSTRALIA (Commonwealth) represented by the Department of Health ABN 83 605 426 759

AND

[INSERT] ABN **[INSERT]** [a company registered under the *Corporations Act 2001*], having its registered office at **[INSERT]** (**Company**)

1 RECITALS

- A The Commonwealth has established the CSO Funding Pool, which continues under the Sixth Agreement.
- B The primary objective of the CSO Funding Pool is to ensure that arrangements are in place to provide all Australians with ongoing, timely access, through Community Pharmacies, to all PBS Medicines.
- C Payments will be made from the CSO Funding Pool to eligible entities that meet specified service standards for the delivery of PBS Medicines to Distribution Points and which enter into a deed with the Commonwealth in the form of this Deed.
- D As part of the Sixth Agreement, it was determined that CSO Distributors would also be required to provide distribution services in relation to NDSS Products under the National Diabetes Services Scheme.
- E The Commonwealth, as part of the implementation of the Sixth Agreement, has indicated its intention that, to the extent possible, Community Pharmacies will become the sole Access Points for the purposes of the National Diabetes Services Scheme.
- F The Commonwealth and the Company have entered into this Deed to specify arrangements in relation to the CSO Funding Pool and the NDSS Distribution Services.

THE PARTIES AGREE as follows:

2 DEFINITIONS

- 2.1 In this Deed, including the Recitals, unless the contrary intention appears all capitalised terms have the following meanings:

Access Points means any Community Pharmacy or other organisation appointed by the NDSS Administrator or the Commonwealth to supply NDSS Product to Registrants and notified in writing to the Company from time to time.

Administration Agency means any one or more service providers contracted by the Commonwealth to provide administration functions in relation to the supply of PBS Medicines and NDSS Product under or as contemplated by this Deed.

Approved Ex-Manufacturer Price of a brand of a pharmaceutical item has the same meaning as in subsection 84(1) of the NH Act.

Approved Pharmacist has the same meaning as in the subsection 84(1) of the NH Act.

Australian Privacy Principles has the same meaning as in the *Privacy Act 1988* (Cth).

Authorised Officer means a person appointed by a party to act as its authorised officer for the purposes of this Deed.

Business Continuity Plan means a set of documents, instructions and procedures that are regularly tested and meet the requirements of Schedule 7 and which enable the Company to manage risk and minimise the outage period following a critical event, so that key business activities under this Deed, including the CSO Service Standards and CSO Compliance Requirements, are not interrupted.

Business Day means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or Public Holiday in that place.

Business Plan means a plan of action that details a timeframe, measurable milestones and activities.

Community Pharmacy means any premises which have been approved under section 90 of the NH Act from which an Approved Pharmacist conducts pharmacy business.

Complaint means:

- (a) any expression of dissatisfaction by any person about any aspect of the Company's performance against any of its Obligations under this Deed; or
- (b) complaints by the Company contemplated by clause 10.2.

Complaints Procedure means the procedure for dealing with Complaints in Schedule 4.

Confidential Information means information which is:

- (a) by its nature confidential;
- (b) designated by its Discloser to be confidential;
- (c) agreed by the parties to be confidential; or
- (d) by its nature capable of protection at Law or in equity as confidential information,

but does not include information that:

- (e) is or becomes public knowledge, other than by breach of this Deed or by any other unlawful means;
- (f) is in the possession of the Recipient without restriction in relation to disclosure before the date of receipt from the other party;
- (g) has been independently developed by the Recipient; or
- (h) is required to be disclosed by Law or court order.

Conflict includes any matter, circumstance, interest or activity, or any risk of a matter, circumstance, interest or activity, which may, or may appear to, impair the ability of the Company or its Personnel to participate fairly and independently in any aspect of the CSO Funding Pool or the NDSS or in performing any Obligations under this Deed.

Control has the same meaning as in the *Corporations Act 2001* and **Controlled** has a corresponding meaning.

CSO means Community Service Obligation.

CSO Compliance Requirements means the requirements specified in clause 3 of Schedule 1.

CSO Distributor means a Wholesaler that has entered into a deed with the Commonwealth in relation to the CSO Funding Pool and the NDSS Distribution Services and includes the Company.

CSO Funding Pool means the Commonwealth funding referred to in clause 5.1 of the Sixth Agreement.

CSO Jurisdiction means the jurisdiction(s), either National or State Based, in which the Company is Supplying CSO Product and is seeking to access the CSO Funding Pool.

CSO Operational Guidelines means the set of advice and guidelines of that name issued by the Commonwealth to the Company from time to time, in relation to the Company's Obligations under this Deed and administrative matters relating to the CSO Funding Pool and NDSS Distribution Services.

CSO Products means PBS Medicines and NDSS Products.

CSO Service Standards means the standards specified at clause 4 in Schedule 1.

CSO System means the system which is used to assist the Administration Agency in administering the CSO Funding Pool.

Daily means on any Business Day and also on Saturdays where the Company offers a Saturday delivery.

Data means the data that meets the requirements specified at Schedule 3 and the CSO Operational Guidelines and that:

- (a) whether or not specified in Schedule 3 or in the CSO Operational Guidelines, allows the Administration Agency to ascertain compliance with this Deed; and/or
- (b) is to be provided by the Company to the Administration Agency in the form of a Report.

Discloser means a party providing Confidential Information.

Deed means this document and includes any schedules and annexures.

Deed Material means all material brought into existence in the course of the Company's performance of this Deed. It includes documents, information, text and data stored by any means, but excludes this Deed itself.

Distribution Point means:

- (a) in respect of PBS Medicines, a Community Pharmacy; and
- (b) in respect of NDSS Products, an Access Point.

Eligible Entity means any entity that has the capacity to obtain and deliver pharmaceuticals and medical or surgical aids, equipment or appliances to Distribution Points.

Exclusive Supply Arrangement means any arrangement under which CSO Products are not made available by the relevant Manufacturer to all CSO Distributors, as recorded in the CSO Operational Guidelines from time to time.

Exempt List means the list maintained by the Commonwealth in accordance with clause 4.39 of Schedule 1 (as that list is amended from time to time).

Guaranteed Supply Period means:

- (a) for PBS Medicines on the High Volume List within 72 hours from the Regular Order Cut Off Time;

- (b) for all other PBS Medicines (including Low Volume PBS Medicines and NDSS Products), within 24 hours from the Regular Order Cut Off Time; and
- (c) for NDSS Products, within 24 hours from the Regular Order Cut Off Time.

Help Desk means a point of contact provided by the Administration Agency for CSO Distributors.

High Volume List means, those PBS Medicines that are not on the Low Volume PBS Medicines list based on the current threshold criteria for calculating Low Volume PBS Medicines.

Intellectual Property Rights includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws means any applicable statute, regulation, code, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes common law as applicable from time to time.

Liability means any liability (whether actual, contingent or prospective), including for any Loss, irrespective of when the acts, events, circumstances or things giving rise to the liability occurred or existed.

Listed Brand of a pharmaceutical item means a brand of the pharmaceutical item in relation to which a determination under subsection 85 (6) of the NH Act is in force.

Loss means all damages, losses, expenses and costs of any nature or description.

Low Volume PBS Medicines means, for any Year within the Term, those PBS Medicines that were sold by CSO Distributors to Community Pharmacies at an average rate of less than one Unit per Community Pharmacy per week, as calculated by the Administration Agency.

Major Non-Performance means:

- (a) a Non-Performance; or
- (b) a series of related Minor Non-Performances,

that, in the reasonable opinion of the Administration Agency, impacts the key objectives of the CSO Funding Pool or the NDSS.

Manufacturer means:

- (a) any manufacturer of CSO Products or that manufacturer's agent;
- (b) any pre-wholesaler of CSO Products; or
- (c) any other participant in the supply chain for CSO Products reasonably determined by the Commonwealth to be a 'Manufacturer' for the purposes of this Deed.

Minor Non-Performance means a Non-Performance that, in the reasonable opinion of the Administration Agency, is unlikely to directly impact on the objectives of the CSO Funding Pool or the NDSS on its own.

Month means a calendar month.

Moral Rights includes the following rights of an author of copyright material:

- (a) the right of attribution of authorship;

- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed.

National CSO Distributors means CSO Distributors that Supply Distribution Points in all Australian States and Territories.

National CSO Funding Pool means that part of the CSO Funding Pool made available to National CSO Distributors.

National Diabetes Services Scheme or **NDSS** means the Commonwealth's scheme to ensure that persons with diabetes have timely, reliable and affordable access, on a national basis, to the supplies and services required for the effective self-management of their condition.

National Sanctions Pool means:

- (a) the monies to be paid by National CSO Distributors to the Commonwealth, or deducted from Payments from the CSO Funding Pool, as a result of the application of financial Sanctions under any Deed between the Commonwealth and a National CSO Distributor; and
- (b) where there is only one State Based CSO Distributor monies to be paid by that State Based CSO Distributor to the Commonwealth, or monies to be deducted from Payments from the State Based CSO Funding Pool to that State Based CSO Distributor.

NDSS Agreement means the agreement between the Commonwealth and the NDSS Administrator.

NDSS Administrator means any one or more service providers contracted by the Commonwealth to provide Registrant support services and other services in respect of the NDSS.

NDSS Distribution Services means the Supply of NDSS Product as contemplated by this Deed.

NDSS Product means a product to be supplied under the NDSS as listed in the NDSS Product Schedule or in a written determination made by the Minister for Health.

NDSS Product Schedule means the product schedule published by the Commonwealth on its website or on the website of the NDSS (as updated or amended from time to time).

NDSS System means the system, which is used to assist the NDSS Administrator in reconciling orders and delivery of NDSS Products and administering Payments in relation to the NDSS Distribution Services.

NH Act means the *National Health Act 1953* (Cth).

Non-Performance means a non-performance by the Company of any Obligation under this Deed, including non-compliance with the CSO Compliance Requirements and the CSO Service Standards.

Obligation means any legal, equitable, contractual, statutory or other obligation, commitment, duty, undertaking or Liability, present or future.

Obligations under this Deed means, in respect of a party, their Obligations set out in this Deed or arising in connection with it.

Pack Quantity (PQ)

- (a) in relation to a PBS Medicine, has the same meaning as in subsection 84AK(2) of the NH Act.

Note: The Minister may determine one or more pack quantities for a brand of a pharmaceutical item under subsection 84AK(2) of the NH Act. The quantities determined are the quantities in the manufacturer's PBS packs.

(b) in relation to a brand of an NDSS Product, means the quantities or numbers of units of that brand of that NDSS Product, as listed in the NDSS Product Schedule.

Payment means a payment from the CSO Funding Pool or for NDSS Distribution Services under this Deed.

PBS means the Pharmaceutical Benefits Scheme.

PBS Medicines means all items listed on the Schedule of Pharmaceutical Benefits, but does not include pharmaceutical items that:

- (a) contain a drug for which there is a declaration under paragraph 85(2A)(b) of the NH Act [section 100 drug declaration], unless specified by the Commonwealth in writing to the Company;
- (b) are a pharmaceutical benefit for which there is a determination under paragraph 85(8)(a) of the NH Act [section 100 only pharmaceutical benefit determination], unless specified by the Commonwealth in writing to the Company;
- (c) the Company cannot Supply due to an Exclusive Supply Arrangement; or
- (d) medicines listed only for Supply under the Repatriation Schedule of Pharmaceutical Benefits.

Note: The Obligations mentioned in this Deed for a PBS Medicine relate to the medicine. Those Obligations do not vary based on the circumstances or purposes determined for a PBS Medicine under Part VII of the NH Act.

Personnel, in respect of a party or another person, means:

- (a) in the case of the Commonwealth, its officers, employees and agents; and
- (b) in the case of the Company, its officers, employees, agents and subcontractors (and the officers, employees and agents of those subcontractors).

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not.

Price to Pharmacists has the same meaning as in the determination under paragraph 98B(1)(a) of the NH Act.

Proportional Ex-Manufacturer Price of a brand of a pharmaceutical item has the same meaning as in section 85D of the NH Act.

Public Holiday means a public holiday in the State or Territory in which the Company is Supplying CSO Products for the purposes of this Deed.

Recipient means a person who receives Confidential Information.

Registrant means a person registered under the NDSS.

Regular Order Cut Off Time means the time, as agreed by the Company and the Distribution Point, by which orders must be lodged with the Company.

Related Body Corporate has the same meaning as in the *Corporations Act 2001*.

Remedial Business Plan means a Business Plan provided by the Company to rectify any Non-Performances.

Report means a report to be provided by the Company to the Administration Agency.

Review means any review referred to in clause 13.

Right means any legal, equitable, contractual, statutory or other right, power, authority, entitlement, benefit, privilege, immunity, remedy, discretion or cause of action.

Rights under this Deed means, in respect of a party, that party's Rights set out in this Deed or arising in connection with it.

Rural and Remote Location means a location that has been defined as Rural and Remote in the CSO Operational Guidelines.

Rural and Remote Pharmacies means a Community Pharmacy in a Rural and Remote Location.

Sales means:

- (a) total volume of sales of Units of PBS Medicines to Community Pharmacies; and
- (b) total volume of delivery of Pack Quantities of NDSS Products to Access Points,

within a specified period of time minus, in each case, any returns of CSO Products within that specified period of time.

Sanctions means the sanctions referred to in Schedule 5.

Sanctions Month means the Month in which a financial Sanction was, or is to be, applied to the Company.

Schedule of Pharmaceutical Benefits issued by the Department means the list of pharmaceutical items updated Monthly and authorised by the Minister for Health for availability as dispensed pharmaceutical benefits to patients at a Government-subsidised price under the PBS.

Single Business Entity means the single separately registered entity who has entered into and will be held accountable for meeting Obligations under this Deed.

Sixth Agreement means the Sixth Community Pharmacy Agreement between The Honourable Sussan Ley, MP, Minister for Health and Minister for Sport on behalf of the Commonwealth of Australia and the Pharmacy Guild of Australia.

State Based CSO Distributors means CSO Distributors that Supply any, but not all, Australian States and Territories.

State Based CSO Funding Pool means that part of the CSO Funding Pool made available to State Based CSO Distributors.

State Based Sanctions Pool means the monies to be paid by State Based CSO Distributors to the Commonwealth, or deducted from Payments from the State Based CSO Funding Pool, as a result of the application of financial Sanctions under any Deed between the Commonwealth and a State Based CSO Distributor.

Supply means to obtain and deliver a CSO Product to a Distribution Point.

Term means the period, including any extended period, referred to in clause 4.

Terminate this Deed means to bring this Deed, and the parties' Rights and Obligations under it (other than their respective Rights and Obligations which have accrued up to that time or which are expressed to survive its ending), to an end.

Threshold means the minimum requirement for Sales volumes referred to in clauses 4.4 and 4.15 of Schedule 1.

Unit means a pack size:

- (a) equal to a Pack Quantity;
- (b) less than a Pack Quantity; or
- (c) greater than a Pack Quantity, that can be broken down to a size that equals a Pack Quantity.

Use means the ability to use, communicate, publish, copy, modify, enhance, maintain, prepare derivative works and (in the case of software or data) load, execute, store, transmit and display.

Wholesaler means an entity that has the capacity to obtain and supply CSO Products to Distribution Points where those CSO Products are available from Manufacturers and where, further, the Commonwealth has determined the entity is eligible to participate in the CSO Funding Pool.

Year means a financial year from 1 July to 30 June.

3 INTERPRETATION

3.1 In the interpretation of this Deed the following provisions apply unless the context otherwise requires:

- 3.1.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 3.1.2 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 3.1.3 A reference in this Deed to any Law, 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.
- 3.1.4 A reference in this Deed to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 3.1.5 A reference to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of or to this Deed.
- 3.1.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 3.1.7 A reference to a party includes, where the context requires, any Authorised Officer and other Personnel of that party (provided that this clause does not, by itself, operate to impose personal liability on such Authorised Officers or other Personnel for the Obligations under this Deed of the relevant party).
- 3.1.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

- 3.1.9 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 3.1.10 References to the word 'include' or 'including' are to be construed without limitation.
- 3.1.11 A reference to this Deed includes the agreement recorded in this Deed.
- 3.1.12 Any schedules and attachments form part of this Deed.
- 3.2 The Laws of the Australian Capital Territory apply to this Deed.

4 TERM OF DEED

- 4.1 This Deed comes into effect and commences operation on 1 January 2017, or such other date as agreed in writing by the parties, whether it is signed before or after that date. The Term will continue until 30 June 2018, unless terminated in accordance with clause 24.
- 4.2 The Commonwealth may, by notice in writing, extend this Deed:
 - 4.2.1 for a further period of 2 years until 30 June 2020; and
 - 4.2.2 after 30 June 2020, for 2 further terms of not more than 12 months each.
- 4.3 The Commonwealth may, by notice in writing to the Company, and at any time during the Term, vary this Deed to ensure that it at all times remains consistent with the Sixth Agreement.
- 4.4 The Company must comply with any directions issued by the Commonwealth or the Administration Agency in respect of any transition requirements to the Sixth Agreement.

5 CSO FUNDING POOL AND NDSS ADMINISTRATION

- 5.1 The Commonwealth has entered, or intends to enter into an agreement with:
 - 5.1.1 the Administration Agency to administer the CSO Funding Pool; and
 - 5.1.2 the NDSS Administrator to provide Registrant support services and other services under the NDSS including administration of Payments for NDSS Distribution Services.
- 5.2 The role of the Administration Agency includes, but is not limited to the matters set out in Part A of Schedule 6.
- 5.3 The role of the NDSS Administrator includes, but is not limited to the matters set out in Part B of Schedule 6.
- 5.4 The Administration Agency and NDSS Administrator are not parties to this Deed, but the Company must:
 - 5.4.1 comply with actions and decisions taken by the Administration Agency or NDSS Administrator, or requests from the Administration Agency or NDSS Administrator, that are permitted by, or consistent with, this Deed;
 - 5.4.2 cooperate with the Administration Agency and NDSS Administrator as directed by the Commonwealth; and
 - 5.4.3 allow the Administration Agency to perform all necessary functions for the proper administration of the CSO Funding Pool and the NDSS generally

and the NDSS Administrator to perform all necessary functions for the performance of its obligations under the NDSS Agreement in respect of the NDSS.

- 5.5 Where the Commonwealth has appointed more than one Administration Agency or NDSS Administrator the Company must cooperate with each Administration Agency or NDSS Administrator as directed by the Commonwealth.
- 5.6 The Company acknowledges that the Commonwealth, the Administration Agency, the NDSS Administrator or another external contractor may rely on independently sourced information provided by an external entity for the purposes of exercising any Right or Obligation under this Deed.
- 5.7 The Commonwealth may exercise any Rights or Obligations expressed to be performed by the Administration Agency or the NDSS Administrator under this Deed and the Company must comply with any such exercise.

6 GENERAL OBLIGATIONS OF THE COMPANY

- 6.1 The Company must:
 - 6.1.1 meet the CSO Compliance Requirements and CSO Service Standards;
 - 6.1.2 comply with any Business Plan, Remedial Business Plan and Business Continuity Plan developed in accordance with the requirements in Schedules 1, 5, 6 or 7;
 - 6.1.3 comply with the CSO Operational Guidelines; and
 - 6.1.4 at all times act ethically and in good faith towards the Commonwealth, the Administration Agency and the NDSS Administrator in the performance of its Obligations under this Deed.
- 6.2 The Company:
 - 6.2.1 acknowledges that in complying with this Deed, it must comply with applicable Laws, including the NH Act and *Code of Good Wholesaling Practice for Medicines in Schedules 2, 3, 4 and 8*;
 - 6.2.2 undertakes to comply (at no additional cost) with any amendments to the NH Act, the *Code of Good Wholesaling Practice for Medicines in Schedules 2, 3, 4 and 8*, or any other Laws, which may come into force during the Term; and
 - 6.2.3 agrees that this Deed is automatically amended to reflect changes to applicable Laws from the date the change takes effect (and the Commonwealth will use its reasonable endeavours, to the extent permitted by law and further to the extent practicable (as determined by the Commonwealth in its absolute discretion), to notify the Company of any proposed change to Laws of the Commonwealth applicable to the CSO Funding Pool or the NDSS).
- 6.3 The Company must:
 - 6.3.1 comply with its Obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth); and
 - 6.3.2 not enter into any subcontract with an entity named in a report tabled in the Australian Parliament by the Director of the Workplace Gender Equality Agency as a supplier that has not complied with the *Workplace Gender Equality Act 2012* (Cth).

- 6.4 Without limiting the Company's Obligations under this Deed in respect of work health and safety, including those that will apply due to the operation of Commonwealth and State Laws, policies, standards and guidelines from time to time, the Company must:
- 6.4.1 ensure that a person conducting a business or undertaking (**PCBU**) meets the primary duty of care requirements of section 19 of the *Work Health and Safety Act 2011* (Cth) or corresponding State or Territory legislation;
 - 6.4.2 notify the Commonwealth of any work related injury arising in connection with or relating to the performance of the Obligations under this Deed of the Company that causes death or serious personal injury (in case of death notification is required within 2 hours) and any notifiable incident as defined at sections 35, 36 and 37 of the *Work Health and Safety Act 2011* (Cth), or corresponding State or Territory legislation. The Company must ensure the regulator is notified immediately under section 38 of the *Work Health and Safety Act 2011* (Cth) or corresponding State or Territory legislation; and
 - 6.4.3 notify the Commonwealth on each occasion it reports to, or notifies, a State authority under the *Work Health and Safety Act 2011* (Cth) and all applicable State or Territory Laws, including legislation, regulations and policies.
- 6.5 The Company must, and must ensure that its subcontractors and Personnel comply with, all relevant security procedures and other security requirements as specified by notice from the Commonwealth or the Administration Agency.
- 6.6 The Company must comply with such a security procedure or other security requirement immediately if directed by the Commonwealth or the Administration Agency or, if no direction is given, within a reasonable time, having regard to the nature of the requirement.
- 6.7 The Company must send the Commonwealth or the Administration Agency a notice identifying any potentially relevant security procedure or other security requirement of the Commonwealth or the Administration Agency of which it is aware and which is not the subject of a notice in accordance with clause 6.6.
- 6.8 The Company must use its reasonable endeavours to provide employment opportunities to Aboriginal and Torres Strait Islander people where there are positions available and there are Aboriginal or Torres Strait Islander people available with suitable qualifications and expertise.
- 6.9 The Company must, in performing its Obligations under this Deed, comply with applicable Commonwealth policies where those policies are publicly available or notified to the Company.

7 OBLIGATION OF COMPANY TO NOTIFY THE ADMINISTRATION AGENCY

- 7.1 The Company must immediately notify the Administration Agency in writing of any event or circumstance the Company considers relevant to the proper administration of the CSO Funding Pool or of the NDSS Distribution Services.
- 7.2 The Company must notify the Administration Agency immediately, in writing, of any Non-Performance by the Company of any of the CSO Compliance Requirements, CSO Service Standards or any other Obligations under this Deed, with the exception of the matters listed in clause 7.3.

- 7.3 On a Monthly basis, as part of its Monthly Reports to the Administration Agency, the Company must notify the Administration Agency of:
- 7.3.1 any bad debtor that the Company will not be Supplying CSO Products to;
 - 7.3.2 any CSO Product that the Company cannot Supply because the CSO Product is out-of-stock or cannot be Supplied by the Manufacturer;
 - 7.3.3 any Exclusive Supply Arrangement in which a CSO Distributor participates of which the Company is aware or becomes aware; and
 - 7.3.4 details of any Non-Performances notified to the Administration Agency under clause 7.2, including:
 - (a) for Minor Non-Performances, a summary of the Non-Performance; and
 - (b) for Major Non-Performances, a detailed report of the Non-Performance including background, causes and responses and impacts of the Non-Performance.

8 OBLIGATION OF COMPANY TO PROVIDE DATA

- 8.1 The Company must provide Data to the Administration Agency.
- 8.2 The Company must ensure that any Data, Reports or information provided under this Deed is accurate and complete.
- 8.3 The Company acknowledges that the timely submission of accurate and complete Data by the Company is critical to the calculation and release of Payments from the CSO Funding Pool or the making of Payments for NDSS Distribution Services.
- 8.4 The Administration Agency and/or the Commonwealth has the right, by reasonable notice in writing to the Company, to alter the Data requirements in Schedule 3 at any time after the first receipt of Data from the Company, including but not limited to the format of the Data to be provided by the Company in accordance with the Deed.
- 8.5 The Company must provide any additional data requested by the Administration Agency or NDSS Administrator within the timeframe reasonably specified by the Administration Agency or NDSS Administrator.

9 PAYMENTS

- 9.1 The Company:
- 9.1.1 acknowledges that there may be other CSO Distributors receiving payments from the CSO Funding Pool; and
 - 9.1.2 agrees and accepts that the Commonwealth is solely responsible for determining the amount of the CSO Funding Pool and the calculation of Payments from the CSO Funding Pool for each Year as permitted by this Deed.
- 9.2 The Commonwealth's Obligations under this Deed are conditional upon there being an appropriation by Parliament in respect of the CSO Funding Pool and the NDSS.
- 9.3 The Commonwealth may vary the total amount of the CSO Funding Pool for any Year during the Term (by reducing or increasing it) and will notify CSO Distributors before the commencement of each Year of the total value of the CSO Funding Pool for the next Year. The Commonwealth will not exercise its right under this clause to

reduce the total amount of the CSO Funding Pool to zero. This clause does not limit the Commonwealth's other Rights including in respect of Payments.

9.4 If the Company is a:

9.4.1 State Based CSO Distributor it must not access or attempt to access the National CSO Funding Pool and the provisions of this Deed relating to the National CSO Funding Pool and National Sanctions Pool will not apply to it; or

9.4.2 National CSO Distributor it must not access or attempt to access the State Based CSO Funding Pool and the provisions of this Deed relating to the State Based CSO Funding Pool and the State Based Sanctions Pool will not apply to it.

9.5 This applies to any entities:

9.5.1 engaged by the Company, as a subcontractor or otherwise, in connection with this Deed; or

9.5.2 with which the Company enters into any agreement, arrangement or understanding in respect of the Company's Obligations under this Deed.

9.6 Payments will be made from the CSO Funding Pool to CSO Distributors that meet their Obligations under this Deed in relation to PBS Medicines, including the CSO Compliance Requirements and CSO Service Standards.

9.7 NDSS Distribution Services Payments will be made to CSO Distributors that meet their Obligations under this Deed in relation to NDSS Products, including the CSO Compliance Requirements and CSO Service Standards.

9.8 Subject to compliance with its Obligations under this Deed in respect of the NDSS Distribution Services, Payments will be made to the Company in respect of the performance of the NDSS Distribution Services.

9.9 The Administration Agency may adjust Payments to the Company in situations including where audits of Reports or Data identify inaccuracies in calculations that must be corrected. Payment adjustments will not be used as a Sanction for Non-Performances. If the Administration Agency deems it necessary to impose a financial Sanction for a Non-Performance, the financial Sanction provisions in Schedule 5 will be used. Nothing in this clause restricts the Administration Agency from making a Payment adjustment to reflect a financial Sanction.

9.10 Payments from the CSO Funding Pool or in respect of NDSS Distribution Services will be calculated and paid Monthly in arrears to the Company in accordance with Schedule 2. Payments will only be made for Sales in respect of which Company has met all of its Obligations under this Deed. For the purpose of this clause, the Administration Agency will be responsible for determining which Sales are relevant to specific Obligations in respect of PBS Medicines and the NDSS Administrator will be responsible for determining which Sales are relevant to specific Obligations in respect of NDSS Products.

9.11 The Company must notify the Administration Agency of its identifying details, including name of bank, name of account owner, ABN of account owner, name of bank account, bank account number and bank account BSB code.

9.12 The Company must notify the Administration Agency immediately, in writing, of any changes to the bank account referred to in clause 9.11.

9.13 By 31 August in each Year, the Administration Agency will:

- 9.13.1 perform a final reconciliation of all Data submitted and Payments received by the Company in the preceding Year; and
 - 9.13.2 conduct a detailed assessment of the Company's annual performance against the CSO Service Standards and CSO Compliance Requirements.
- 9.14 Where the annual reconciliation identifies inaccuracies in calculations that must be corrected, the Administration Agency or NDSS Administrator may:
- 9.14.1 adjust Payments made to the Company for the Year in which the reconciliation occurs; and
 - 9.14.2 apply financial or non-financial Sanctions for any Non-Performance.
- 9.15 The reconciliation and assessment referred to in clause 9.13 will be the final determination of Payments payable to the Company for that Year, except in respect of resolution of Complaints made or errors detected after the completion of the reconciliation and assessment.

10 COMPLAINTS PROCEDURE

- 10.1 Complaints may be made by Distribution Points, consumers or others, about the Company's performance against any of its Obligations under this Deed, including the CSO Compliance Requirements and CSO Service Standards.
- 10.2 The Company may make a Complaint to the Administration Agency about any aspect of the Administration Agency's administration of this Deed or the NDSS Administrator's administration of Payments in relation to the NDSS Distribution Services.
- 10.3 Complaints will be dealt with on the basis of the Complaints Procedure.

11 REPORTING

- 11.1 Without limiting any other provisions of this Deed, the Company must provide Reports at the times and in the format as specified in Schedule 3 in the CSO Guidelines, or as reasonably required by the Administration Agency from time to time, including:
 - 11.1.1 the Data as required by clause 8 and Schedule 3; and
 - 11.1.2 in respect of its compliance with all its Obligations under this Deed including the CSO Compliance Requirements and the CSO Service Standards.
- 11.2 The Company must promptly comply with any requests for information in respect of Reports provided under this Deed and agrees that neither the Commonwealth nor the Administration Agency is liable to make a Payment under this Deed until the Administration Agency or the NDSS Administrator is satisfied that Data and Reports provided by the Company are accurate and complete.
- 11.3 The Administration Agency will provide access to the CSO System to the Company and the Commonwealth to manage Data and Reports. Neither the Commonwealth nor the Administration Agency is responsible for the quality or performance of the CSO System and the provision of the CSO System does not limit or affect the Company's Obligations.
- 11.4 The NDSS Administrator will provide access to the NDSS System to the Company, the Commonwealth and Access Points to assist with reconciliation of NDSS Products. Neither the Commonwealth nor the NDSS Administrator is responsible for

the quality or performance of the NDSS System and the provision of the NDSS System does not limit or affect the Company's Obligations.

- 11.5 The Company will be excused from strict compliance with its Obligations under this clause 11 to the extent (and only to the extent):
- 11.5.1 compliance by the Company is prevented directly by an issue relating to the quality or performance of the CSO System or the NDSS System; and
 - 11.5.2 that issue could not have been avoided, or compliance by the Company could not have been achieved, by the application of normal and reasonable business practices.

12 SANCTIONS

- 12.1 The Company:
- 12.1.1 recognises that the Commonwealth must comply with public accountability requirements, including the specific *Public Governance, Performance and Accountability Act 2013* audit and accountability requirements, in the expenditure of public money;
 - 12.1.2 agrees that it is reasonable that this Deed includes Obligations, including the CSO Compliance Requirements and CSO Service Standards, that must be adhered to by the Company; and
 - 12.1.3 agrees that it is reasonable that this Deed includes financial and non-financial Sanctions that may be applied for a Major Non-Performance and must comply in full with any Sanctions imposed by the Administration Agency on the Company, as a result of Non-Performance, in accordance with Schedule 5.
- 12.2 Where, in the Administration Agency's view, the Company has failed to meet any of its Obligations under this Deed, including one or more of:
- 12.2.1 meeting the CSO Compliance Requirements and/or the CSO Service Standards (including the applicable Thresholds for Sales to Rural and Remote Pharmacies and/or Sales of Low Volume PBS Medicines);
 - 12.2.2 submitting Data and Reports in accordance with Schedule 3; and
 - 12.2.3 meeting the timeframes, milestones and activities outlined in any Remedial Business Plan,
- and the Non-Performance represents a Major Non-Performance, the Administration Agency may apply financial or non-financial Sanctions. If the Administration Agency considers it necessary to impose a financial Sanction for a Major Non-Performance, the financial Sanction provisions in Schedule 5 will be used.
- 12.3 If the Administration Agency was to consider that the Company's Non-Performance was such as to warrant exclusion from the CSO Funding Pool or the NDSS, then it may recommend to the Commonwealth that the Commonwealth Terminate this Deed in accordance with clause 24.4.
- 12.4 The Administration Agency will notify the Company and (in respect of any Sanctions applicable to NDSS Distribution Services, the NDSS Administrator), in writing, of any decision to apply the Sanctions, in accordance with Schedule 5, and the Month or Months to which the Sanctions apply.

- 12.5 For the avoidance of doubt, before any Sanction is applied, the Company will be notified of, and given reasonable opportunity to respond in writing to, any alleged Non-Performance in accordance with Schedule 5.

13 REVIEW

- 13.1 Subject to clause 13.3, the Commonwealth may at any time, in consultation with the Agreement Oversight Committee referred to in the Sixth Agreement, the Administration Agency and CSO Distributors, conduct a Review of any aspect of the CSO Funding Pool or NDSS arrangements in accordance with the Sixth Agreement.
- 13.2 The Commonwealth may, as a result of a Review:
- 13.2.1 vary this Deed by notice in writing to CSO Distributors: or
- 13.2.2 terminate this Deed under clause 24.1.
- 13.3 The intention of the Commonwealth is to maintain the continuity of CSO arrangements and funding in future, consistent with that set out in the Sixth Agreement. A comprehensive review will be undertaken in accordance with the Sixth Agreement of matters including remuneration for supplying government subsidised medicines and rules about the location of pharmacies. This review may recommend changes to the CSO arrangements. Should the recommendations of the review identify that the system is inadequately remunerating wholesaler distributors of pharmaceuticals, or such wholesalers will not be viable in the medium to long term, the remuneration arrangements for the pharmaceutical wholesale sector will be considered by the Commonwealth.

14 AUDIT AND RECORDS

- 14.1 The Company must keep proper accounts and records of its transactions and affairs in accordance with the applicable Law in relation to its participation in the CSO Funding Pool and receipt of Payments for NDSS Distribution Services under this Deed.
- 14.2 Where the Commonwealth has received a request for access to a document created by or in the possession of, the Company or any subcontractor that relates to the performance of this Deed (and not to the entry into this Deed), the Commonwealth may at any time by written notice require the Company to provide the document to the Commonwealth and the Company must, at no additional cost to the Commonwealth, promptly comply with the notice.
- 14.3 The Company must keep its financial accounts and records in such a way as to enable an auditor or other person to examine them at any time.
- 14.4 The Administration Agency, the Australian National Audit Office, the Auditor-General, the Australian Information Commissioner, the Commonwealth, or a nominated independent entity, may audit the Company for compliance with their Obligations under this Deed including the CSO Compliance Requirements and CSO Service Standards.
- 14.5 The Company must comply with any audit or review requirements of the Administration Agency, the Australian National Audit Office, the Auditor-General, the Australian Information Commissioner and the Commonwealth or its authorised representative.
- 14.6 The Administration Agency, or any other entities referred to in clause 14.4, may as part of an audit, or at any time to check the accuracy of Data or Reports, review the

information used to compile these Data or Reports based on sample testing or any other verification methodology.

- 14.7 The Company must participate in audits at the frequency and in relation to the matters specified by the Administration Agency, the Australian National Audit Office, the Auditor-General, the Australian Information Commissioner and/or the Commonwealth, for the purpose of ensuring that its Obligations under this Deed are being properly performed.
- 14.8 Each party to an audit must bear its own costs of the audit.
- 14.9 The requirement for, and participation in, audits does not in any way reduce the Company's responsibility to perform its Obligations under this Deed.
- 14.10 The Administration Agency must act reasonably in exercising its rights under this clause 14, and to the extent it is reasonable and appropriate to do so it will use reasonable endeavours to:
- 14.10.1 minimise the potential impact on the Company's business and operations in determining the frequency, timing and scope of its audits and requests to access Data or Reports;
 - 14.10.2 minimise the frequency and scope of its requests for audit or to access Data or Reports other than those which are specifically required under the Deed or the CSO Operational Guidelines such as the Monthly Report;
 - 14.10.3 focus audits and requests to access Data or Reports on Major Non-Performances rather than Minor Non-Performances;
 - 14.10.4 ensure that communication with the Company for the purposes of this clause 14 is clear and concise and adequately explains the purpose of the enquiry; and
 - 14.10.5 allow the Company a reasonable amount of time to respond to requests for information or for access to Data or Reports.
- 14.11 If:
- 14.11.1 the Company considers that a request by the Administration Agency under this clause 14 or any other reporting requirement of the Administration Agency is unreasonable due to its business implications; and
 - 14.11.2 the Company has made reasonable efforts to resolve the issue directly with the Administration Agency,
- the Company may refer the matter to the Commonwealth for review. If the Commonwealth considers that the request or requirement is unreasonable due to its business implications for the Company, the Commonwealth may, at its sole discretion, waive or vary the request or requirement accordingly.

15 ACCESS TO PREMISES

- 15.1 The Company must allow:
- 15.1.1 the Administration Agency;
 - 15.1.2 the Australian National Audit Office;
 - 15.1.3 the Auditor-General;
 - 15.1.4 the Privacy Commissioner;
 - 15.1.5 the Australian Information Commissioner; and/or

15.1.6 the Commonwealth, or other persons authorised by the Commonwealth, to access the Company's premises at all reasonable times and to inspect and copy all relevant documentation and records, however stored, in the Company's possession or control, for purposes associated with the Deed or any Review or audit performed under this Deed.

15.2 The rights referred to in clause 15.1 are subject to:

15.2.1 the provision of reasonable prior notice to the Company;

15.2.2 compliance with the Company's reasonable security procedures; and

15.2.3 if reasonably requested by the Company, execution of a deed of confidentiality relating to non-disclosure of the Company's Confidential Information.

15.3 The Company will ensure that any subcontract entered into for the purpose of this Deed contains an equivalent clause granting the rights specified in this clause 15.

15.4 Clauses 15.1 to 15.3 apply for the Term and for a period of seven years from the date of expiration or termination of this Deed.

16 GOODS AND SERVICES TAX

16.1 In this clause 16:

16.1.1 words and expressions that are not defined in this Deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law;

16.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

16.2 Except as expressly provided otherwise in this Deed, all consideration payable under this Deed in relation to any supply is exclusive of GST.

16.3 If GST is payable in respect of any supply made by a supplier under this Deed (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 16.4, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Deed in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this Deed).

16.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 16.3.

16.5 If this Deed requires a party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:

16.5.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other party is entitled; and

16.5.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

16.6 If an adjustment event occurs in relation to a taxable supply under this Deed:

16.6.1 the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and

- 16.6.2 any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

17 SUBCONTRACTORS

- 17.1 The Commonwealth will only enter into this Deed with a Single Business Entity. The Company must therefore enter into this Deed as a Single Business Entity. For the Term, the Company must continue to meet its Obligations under this Deed as a Single Business Entity.
- 17.2 Subject to the requirements of this clause 17, clause 17.1 does not restrict the Single Business Entity from using other entities, such as subcontractors to provide logistic or transport services, to assist in ensuring the Obligations under this Deed are met.
- 17.3 Where the Company uses another entity to assist in ensuring the Obligations under this Deed are met, the Company must:
- 17.3.1 notify the Administration Agency of all subcontracting arrangements that it has in place within one week of the date of signing this Deed, and must notify the Administration Agency of any changes to these arrangements within one week of the date that these changes take effect;
 - 17.3.2 remain fully responsible for the performance of the subcontractor against all Obligations for which the entity is being used to assist the Company;
 - 17.3.3 ensure that the entity performs in a manner that is consistent with the Company's Obligations under this Deed; and
 - 17.3.4 demonstrate that it has adequate and appropriate mechanisms in place to monitor and assess the performance of that entity against all Obligations for which the entity is being used to assist the Company.

18 CONFLICT OF INTEREST

- 18.1 The Company warrants that, to the best of its knowledge and belief after making diligent inquiries, at the commencement of this Deed, no Conflict exists or is likely to arise:
- 18.1.1 during the Term; and/or
 - 18.1.2 in the performance of any of the Company's Obligations under this Deed.
- 18.2 During the Term, the Company must not enter into any arrangement, scheme or contract, however described, which may be perceived as, or cause, a Conflict.

Dealing with Conflict

- 18.3 If, during the Term, a Conflict arises, or is likely to arise, the Company must:
- 18.3.1 immediately notify the Administration Agency, in writing, of that Conflict and of the steps the Company proposes to take to resolve or otherwise deal with the Conflict;
 - 18.3.2 make full disclosure to the Administration Agency of all relevant information relating to the Conflict; and
 - 18.3.3 take such steps as the Administration Agency may reasonably require to resolve or otherwise deal with that Conflict.

Failure to deal with Conflict

- 18.4 If the Company:
- 18.4.1 fails to notify the Administration Agency in accordance with clause 18.3.1;
or
 - 18.4.2 is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Administration Agency;
- the Commonwealth may Terminate this Deed under clause 24.4.

19 CONFIDENTIALITY

- 19.1 No Confidential Information may be disclosed by the Recipient to anyone except:
- 19.1.1 the Recipient's Personnel requiring the information for the purposes of this Deed;
 - 19.1.2 with the consent of the Discloser (but in disclosing Confidential Information in those circumstances, the Recipient must comply with any conditions to which that consent is expressed to be subject);
 - 19.1.3 if the Recipient is the Commonwealth or the Administration Agency, to each other or to any State or Territory health or licensing authority, or to the NDSS Administrator;
 - 19.1.4 if the Recipient, being the Commonwealth:
 - (a) considers it in the national interest to do so;
 - (b) considers it necessary to avoid, or to avoid what the Commonwealth in its discretion regards as an unacceptable risk of, any outcome that would, in the Commonwealth's reasonable opinion, have a negative impact on the CSO Funding Pool, the carrying out of NDSS Distribution Services, the Sixth Agreement, the PBS, the NDSS, the quality, safety or efficacy of any CSO Products or any related Commonwealth policy arrangements; or
 - (c) is requested or required to do so by any judicial, parliamentary or Governmental committee, responsible or other minister, member, house, body, agency or authority:
 - (i) with whose requirements it must comply; and
 - (ii) with whose requests it customarily complies or to whose requirements it customarily conforms;
 - 19.1.5 if the Recipient is required to do so by Law or by a stock exchange;
 - 19.1.6 to obtain legal, financial or other technical or expert advice in connection with this Deed;
 - 19.1.7 if the Recipient is required to do so in connection with legal proceedings relating to this Deed; or
 - 19.1.8 without limiting the exceptions listed in clauses 19.1.1 to 19.1.7 of this Deed, if the Recipient is the Commonwealth or the Administration Agency to a person making a Complaint to the Administration Agency about the Company, except that the Recipient must obtain the consent of the Discloser before releasing any Confidential Information which is used in, or useable in, a trade and which, if disclosed to a competitor, would be liable to cause significant harm to the Discloser.

Use of Confidential Information

- 19.2 A party who has received Confidential Information in connection with this Deed will only use this information for the purposes of exercising its Rights or performing its Obligations under this Deed or to assist in any Review of the CSO Funding Pool or NDSS Distribution Services arrangements.

20 PRIVACY

- 20.1 The Company must, in respect of Personal Information held in connection with this Deed:
- 20.1.1 comply with the Australian Privacy Principles in the *Privacy Act 1988* (Cth) as if it were an 'agency' for the purposes of that Act, and comply with any other applicable privacy Law;
 - 20.1.2 use that information only for the purposes of discharging its Obligations under this Deed;
 - 20.1.3 not disclose that information without the consent of the Commonwealth except for the purposes of discharging its Obligations under this Deed;
 - 20.1.4 immediately notify the Commonwealth where the Company becomes aware that a disclosure of that information may be required by Law;
 - 20.1.5 not transfer that information outside Australia, or allow anyone outside Australia to have access to it, without the consent of the Commonwealth;
 - 20.1.6 maintain a privacy policy on access to and correction of that information, and other matters, that complies with the Australian Privacy Principles;
 - 20.1.7 ensure that its Personnel requiring access to that information are:
 - (a) under a legal Obligation not to access, use, disclose or retain it except in performing their duties of employment or engagement (as applicable); and
 - (b) informed that failure to comply with that Obligation may be a criminal offence and may also require the Company to take disciplinary action against them;
 - 20.1.8 comply with any directions, guidelines, determinations or recommendations referred to or relating to Personal Information given by the Commonwealth, or the Privacy Commissioner, or the Australian Information Commissioner or their delegates to the extent that they are not inconsistent with the other requirements of this clause 20.1; and
 - 20.1.9 notify the Commonwealth immediately if the Company becomes aware of a breach of this clause 20.1 or its equivalent by itself or by any subcontractor.

21 INTELLECTUAL PROPERTY

- 21.1 The Company grants the Administration Agency, the NDSS Administrator and the Commonwealth a non-exclusive, perpetual, irrevocable, world-wide, royalty-free licence (including the Right to sublicense) to Use any of the Company's Intellectual Property Rights or those of any third party in any of the Deed Material, for the Administration Agency's, the NDSS Administrator's or the Commonwealth's purposes.

- 21.2 Clause 21.1 does not apply to the Company's internal management, financial records and working papers created in the course of the Company's performance of its Obligations under this Deed.

Moral Rights

- 21.3 The Company:
- 21.3.1 must not enforce any Moral Rights it may have; and
 - 21.3.2 must do all that it reasonably can to procure from each author their express agreement not to enforce any Moral Rights they may have,
- presently or in the future, in any work or material produced in the performance of this Deed, including by executing any Moral Rights consents required by the Administration Agency or the Commonwealth.

22 INSURANCE

- 22.1 The Company must, for so long as any Obligations remain in connection with this Deed, effect and maintain:
- 22.1.1 appropriate workers compensation insurance, as required by Law;
 - 22.1.2 public liability insurance and products liability insurance on an occurrence basis for an insured amount of not less than \$20 million per occurrence;
 - 22.1.3 professional liability or "errors and omissions" insurance for an insured amount of not less than \$10 million for each and every Loss,
- for all the Company's Obligations under this Deed, including those which survive the expiration or termination of this Deed.
- 22.2 The Company must provide to the Administration Agency on demand current proof of insurance annually on expiration and renewal of the items at clause 22.1.

23 INDEMNITY

- 23.1 The Company must indemnify the Administration Agency, the NDSS Administrator and the Commonwealth, and their respective Personnel (**those indemnified**) from and against any:
- 23.1.1 Loss or Liability incurred by those indemnified;
 - 23.1.2 loss of or damage to property of those indemnified; or
 - 23.1.3 Loss incurred by those indemnified in dealing with any claim against it including legal costs and expenses on a full indemnity basis and the cost of time spent, resources used or disbursements paid by those indemnified,
- arising from:
- 23.1.4 any act or omission by the Company including its Personnel, in connection with this Deed, where there was fault (including, without limitation, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that Loss or Liability; or
 - 23.1.5 any breach by the Company of its Obligations under this Deed.
- 23.2 The Company's obligation to indemnify those indemnified under clause 23.1 will be reduced proportionately to the extent that any negligent or other tortious act or omission of those indemnified contributed to the relevant Loss or Liability.

- 23.3 The right of those indemnified to be indemnified under this clause 23:
- 23.3.1 is in addition to, and not exclusive of, any other right, power or remedy provided by Law; and
- 23.3.2 does not entitle those indemnified to be compensated in excess of the amount of the relevant Loss or Liability.
- 23.4 The Company agrees that the Commonwealth will be taken to be acting as agent or trustee for and on behalf of those indemnified from time to time.
- 23.5 The indemnity referred to in this clause 23 will survive the expiration or termination of this Deed.

24 TERMINATION

By the Commonwealth

- 24.1 The Commonwealth may Terminate this Deed at any time for any reason, including before the expiry or termination of the Sixth Agreement, by giving the Company 90 days prior notice in writing.
- 24.2 The Commonwealth may Terminate this Deed (and at its discretion in whole or in part) immediately if the Company is or becomes insolvent, bankrupt or goes into liquidation (either voluntary or otherwise).
- 24.3 The Commonwealth may Terminate this Deed (and at its discretion in whole or in part) immediately if the Company merges with a third party or has all or a material part of its business acquired by a third party which is not a Related Body Corporate of, or Controlled by, the Company and if the merger or acquisition is likely to have a material impact on the Company's ability to meet its Obligations under this Deed.
- 24.4 The Commonwealth may Terminate this Deed (and at its discretion in whole or in part) if:
- 24.4.1 the Company does not perform one or more of its Obligations under this Deed and that Non-Performance:
- (a) if capable of remedy, is not remedied within the period specified by the Administration Agency or the Commonwealth after the Company receives a notice from the Administration Agency or the Commonwealth, that:
 - (i) specifies that it is a notice given under this clause 24.4.1;
 - (ii) identifies the relevant Non-Performance or Non-Performances; and
 - (iii) requires the Company to remedy the Non-Performance or those Non-Performances within the period specified in the notice;
 - (b) is not capable of remedy; or
 - (c) results in the Commonwealth, Administration Agency or NDSS Administrator being in breach of any Law,
- and for the avoidance of doubt:
- (d) the parties acknowledge that a failure to meet any of the CSO Service Standards or CSO Compliance Requirements, including the applicable Thresholds for Sales to Rural and Remote

Pharmacies and/or Sales of Low Volume PBS Medicines will be considered a Non-Performance; and

- (e) the Commonwealth may Terminate this Deed if the Company fails to meet the CSO Service Standards and CSO Compliance Requirements, including the applicable Thresholds for Sales to Rural and Remote Pharmacies and/or Sales of Low Volume PBS Medicines, whether or not the failure is capable of remedy;

24.4.2 the Company ceases, or threatens to cease, to carry on the business it is conducting to perform its Obligations under this Deed:

- (a) at the date of this Deed; or
- (b) otherwise without the Commonwealth's consent;

24.4.3 the Company disposes of some or all of its Rights under this Deed other than:

- (a) as a result of a change in Control to which the Commonwealth has agreed; and
- (b) according to this Deed; or

24.4.4 another provision of this Deed gives the Commonwealth the Right to Terminate this Deed.

24.5 The Commonwealth may Terminate this Deed (and at its discretion in whole or in part) immediately if the Company commits an act of fraud against the Commonwealth, the Administration Agency or the NDSS Administrator.

24.6 The Commonwealth may Terminate this Deed immediately or at any time after it becomes aware that any of those events or circumstances in clauses 24.4 and 24.5 has occurred or exists.

24.7 The Commonwealth has no liability for compensation for termination under this clause 24.

24.8 Nothing in clause 24 limits the Commonwealth's Rights at common law to Terminate this Deed.

24.9 The date of Termination of this Deed in accordance with clause 24 will be the date specified in the notice from the Commonwealth to the Company.

By the Company

24.10 The Company may Terminate this Deed at any time, by giving 90 days' notice in writing to the Commonwealth and the Administration Agency.

24.11 The date of termination will be taken to be three Months from the date that the notice is received by the Commonwealth and the Administration Agency, unless otherwise specified in the notice.

Effect of termination by either party or expiry

24.12 If this Deed is Terminated by either party or expires, each party is released from its Obligations under this Deed other than in relation to:

24.12.1 clauses 13 (Review), 14 (Audit and Records), 15 (Access to Premises), 17 (Subcontractors), 18 (Conflict of Interest), 19 (Confidentiality), 20 (Privacy), 21 (Intellectual Property), 22 (Insurance) and 23 (Indemnity); and

24.12.2 any other provision of this Deed which by its terms or nature survives Termination.

25 RIGHT OF RECOVERY

- 25.1 The Administration Agency, the NDSS Administrator or the Commonwealth may recover, without limitation, legal costs incurred by them arising from a default by, or negligence of, the Company.

26 NOTICES

Form - all communications

- 26.1 Unless expressly stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with it must be:
- 26.1.1 to the relevant Authorised Officer;
 - 26.1.2 in writing;
 - 26.1.3 in English; and
 - 26.1.4 signed by the sender (if an individual) or an Authorised Officer of the sender.
- 26.2 Communications sent by email are taken to be signed by the named sender.

Delivery

- 26.3 Subject to clause 26.4, communications must be:
- 26.3.1 sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in clause 27;
 - 26.3.2 sent by email to the email address set out or referred to in clause 27; or
 - 26.3.3 given in any other way permitted by Law.
- 26.4 If the intended recipient has notified a changed address, fax number or email address, then communications must be sent to that address, fax number or email address.

When taken to be received

- 26.5 Communications are taken to be received:
- 26.5.1 if sent by post, three days after posting (or seven days after posting if sent from one country to another);
 - 26.5.2 if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
 - 26.5.3 if sent by email, when the sender receives a human generated response that the email has been received.

27 AUTHORISED OFFICER

- 27.1 The Commonwealth's Authorised Officer is:

Assistant Secretary
Pharmaceutical Access Branch
Pharmaceutical Benefits Division
Department of Health
MDP 1005
GPO Box 9848
Canberra ACT 2601
Email CSOandRemuneration@health.gov.au

27.2 The Administration Agency's Authorised Officer and the NDSS Administrator's Authorised Officer will be as notified in writing by the Commonwealth.

27.3 The Company's Authorised Officer is:

[INSERT]

28 GIVING EFFECT TO THIS DEED

28.1 Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Deed.

29 ANTI-COLLUSION

29.1 The Company warrants that, except to the extent requested by the Commonwealth, it has not entered into this Deed with any consultation, communication, contract, arrangement or understanding with any other CSO Distributor or the Administration Agency, other than:

- (a) where the Company has an agreement that has been authorised by the Australian Competition and Consumer Commission; or
- (b) where the Company has communicated with a subcontractor for the purpose of using the subcontractor to assist in ensuring the Obligations under this Deed are met, and where the communication with the subcontractor is limited to the information required to facilitate that particular subcontract.

29.2 In such a situation the Company agrees to notify the Administration Agency of the full nature and extent of any agreements with other CSO Distributors or subcontractors in accordance with clause 17.3.1 of this Deed.

29.3 If no such disclosure is made, the Company warrants that it has not entered into this Deed with any consultation, communication, contract, arrangement or understanding with any CSO Distributor or the Administration Agency, including but not limited to:

- (a) prices;
- (b) methods, factors or formulas used to calculate prices;
- (c) the intention or decision to enter, or not enter, this Deed;
- (d) the quality, quantity, specifications or delivery particulars of the goods and services to which this Deed relates; and
- (e) the terms of the Deed.

29.4 The Company acknowledges that the Commonwealth has engaged the Company in reliance on this warranty.

29.5 The Company agrees to promptly notify the Administration Agency if any of its Personnel, including directors and senior management, are or have ever been subject to proceedings, or an investigation, related to anti-competitive conduct in Australia or overseas. At a minimum, the information must include:

- (a) the names of the parties to the proceedings;
- (b) the case number;
- (c) the general nature of the proceedings; and
- (d) the outcome or current status of the proceedings.

- 29.6 If the Company:
- (a) fails to notify the Administration Agency in accordance with clause 29.2 or clause 29.5;
 - (b) breaches the warranties provided under clause 29.1 or clause 29.3;
 - (c) is unable or unwilling to resolve or deal with the anti-competitive conduct as reasonably required by the Administration Agency; or
 - (d) contravenes any or all of the anti-competitive provisions of the *Competition and Consumer Act 2010* (Cth) or equivalent Laws,
- the Commonwealth may Terminate this Deed under clause 24.
- 29.7 The Commonwealth reserves the Right to disclose any information, including Confidential Information, with respect to anti-competitive conduct or suspected anti-competitive conduct of the Company, to the Australian Competition and Consumer Commission.

30 OPERATION OF THIS DEED

- 30.1 This Deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Deed and has no further effect.
- 30.2 If this Deed is inconsistent with any other document or agreement between the parties, this Deed prevails to the extent of the inconsistency.
- 30.3 Except as permitted under this Deed, variations to this Deed must be made by a Deed of Variation executed by the parties.
- 30.4 Despite clause 30.3, the Commonwealth or the Administration Agency may relieve the Company from compliance with some or all of its Obligations under this Deed by notice in writing to the Company. Any relief given under this clause 30.4 will be for the period, and subject to the conditions, set out in the notice.

SCHEDULE 1 - CSO COMPLIANCE REQUIREMENTS AND CSO SERVICE STANDARDS

1 DEFINITIONS

1.1 For the purposes of this Schedule, in addition to the defined terms in this Deed, all capitalised terms have the following meaning:

Act of God means an event or occurrence, due to natural causes, that in the Commonwealth's reasonable opinion:

- (a) occurs independently of human intervention;
- (b) is beyond the control of the Company;
- (c) could not be foreseen by the Company;
- (d) could not have been prevented, avoided, or overcome by the Company taking all reasonable steps; and
- (e) could not reasonably have been prevented, avoided, or overcome by the Company before 1 July 2016.

Benchmark Price means the lowest Dispensed Price for a PBS Medicine, or for a reference priced group of PBS Medicines.

Brand means a name, make or mark used to identify a CSO Product as from a particular Manufacturer, wholesaler, pre-wholesaler, CSO Distributor or other producer.

Claimed Price means the amount specified in a determination in force under subsection 85B(3) of the NH Act.

Dispensed Price means the price of a PBS Medicine, including mark-ups and pharmacist fees.

Force Majeure Event means any of the following events:

- (a) fire, flood, earthquake, pandemic, other natural disaster or other Act of God;
- (b) war or other state of armed hostilities;
- (c) an emergency, that in the Commonwealth's reasonable opinion is a national disaster or critical emergency, affecting a region in which an Obligation must be performed.

Industry Average means the average Sales volume of PBS Medicines, calculated to one decimal place, to Community Pharmacies by all CSO Distributors in the preceding Year, based on Data and Reports provided by CSO Distributors to the Administration Agency throughout the Year. For the first Year of the Term, the Industry Average will be calculated on the basis of data and reports provided by those CSO Distributors who were eligible to access the CSO Funding Pool under the Sixth Agreement. For the following Years of this Deed, the Industry Average will:

- (a) be calculated on the basis of Data and Reports provided by CSO Distributors for the previous Year and as reconciled by the Administration Agency;¹
- (b) apply from October to September of the subsequent Year;
- (c) be used to calculate the applicable Thresholds for Sales to Rural and Remote Pharmacies and Sales of Low Volume PBS Medicines; and
- (d) be used to calculate the list of High Volume PBS Medicines.

Infrastructure means physical infrastructure, such as warehouses, distribution centres, and transport and logistics services.

Innovator Brand means the first Listed Brand.

Minimum Order Quantity, for any order of PBS Medicines on the High Volume List (other than Low Volume PBS Medicines) means:

- (a) for products which are not refrigerated, Shelf Packs of each product with an aggregate minimum value of at least \$15.00 ex manufacturer or, where there is no Shelf Pack, Units of each product, with an aggregate minimum value of at least \$15.00 ex manufacturer; and
- (b) for products which must be stored in refrigerated conditions, Shelf Packs of one or more products with an aggregate minimum value of at least \$150.00 ex manufacturer or, where there are no Shelf Packs, Units of one or more products, with an aggregate minimum value of at least \$150.00 ex manufacturer.

National includes all Australian States and Territories.

Shelf Pack means the form and quantity of product (if any) as agreed in writing between the Company and the Commonwealth as constituting a shelf pack.

State Based includes any, but not all, Australian States and Territories.

Stock means to have custody or possession of a CSO Product.

Wholesale Mark-Up, in relation to a PBS Medicine, means the amount worked out in accordance with clauses 4.23, 4.24 or 4.25 of Schedule 1, as the context provides.

- 1.2 Unless the contrary intention appears, all other capitalised terms in this Schedule have the same meaning as in clause 2 of this Deed.

2 OBLIGATION OF COMPANY TO MEET THE CSO COMPLIANCE REQUIREMENTS AND CSO SERVICE STANDARDS

- 2.1 The Company must, at all times, meet the CSO Compliance Requirements and CSO Service Standards set out in this Schedule.

3 CSO COMPLIANCE REQUIREMENTS

Requirement to provide a single entry point for Distribution Points

- 3.1 The Company must provide a single entry point through which:
- 3.1.1 Community Pharmacies within its CSO Jurisdiction can order any Brand of any PBS Medicine, and receive information or resolve any inquiries in relation to those orders; and
 - 3.1.2 Access Points within its CSO Jurisdiction can order any NDSS Products and receive information or resolve any inquiries in relation to those orders.
- 3.2 The requirement set out in clause 3.1 of this Schedule does not prevent a Company from providing additional entry points for Distribution Points within its CSO Jurisdiction to, for example:
- 3.2.1 access special pricing offers made available through a specific Manufacturer or under a specific program; and/or
 - 3.2.2 place turnover orders.

Requirement to maintain access to established Infrastructure and sufficient financial capacity to meet the CSO Service Standards and CSO Compliance Requirements.

- 3.3 The Company must maintain access to established Infrastructure and sufficient financial capacity to meet all its Obligations under the Deed.

Requirement to maintain the quality of CSO Products

- 3.4 The Company must maintain the quality of all CSO Products that it Supplies, including meeting all applicable storage condition requirements. The Company must hold all necessary State and Territory licences and/or certificates for their warehouses and distribution centres. The Company must also comply with the *Code of Good Wholesaling Practice for Medicines in Schedules 2, 3, 4 and 8 (the Code)*, where compliance with the Code is not already mandatory under the necessary State and Territory licences and/or certificates. For the avoidance of doubt, nothing in this Deed overrides the Code or any State or Territory regulations for the handling, storage, distribution or sale of medicines or medical or surgical aids, equipment or appliances.

4 CSO SERVICE STANDARDS

Requirement to Supply to any Distribution Point

- 4.1 The Company must Supply PBS Medicines to any Community Pharmacy and NDSS Products to any Access Point within its CSO Jurisdiction, including Distribution Points in Rural and Remote Locations.
- 4.2 The Company will not be required to Supply CSO Products to any Distribution Point while that Distribution Point is a bad debtor. The Company must resume Supply as soon as the Distribution Point is no longer a bad debtor.
- 4.3 The Administration Agency and/or the Commonwealth has the right, by notice in writing, to clarify or change the exception to the requirement to Supply to any Distribution Point in clause 4.2 of this Schedule.
- 4.4 The Company must ensure that its volume of Sales of PBS Medicines to Rural and Remote Pharmacies within its CSO Jurisdiction is not more than 10% below the Industry Average (the **Threshold**) for each Year and for each Month within each

Year within the Term. For the avoidance of doubt, Sales of NDSS Products will not be taken into account for the purposes of assessing compliance with this clause 4.4.

4.5 On this basis:

4.5.1 the Administration Agency will notify the Company of its performance against the applicable Threshold for Sales to Rural and Remote Pharmacies in each Year and Month within the Term; and

4.5.2 Sanctions may be applied if the Company fails to meet the applicable Threshold for Sales to Rural and Remote Pharmacies in any Year or Month.

4.6 Where the Company is a State Based CSO Distributor eligible to access the CSO Funding Pool in more than one State or Territory:

4.6.1 The Industry Average and applicable Threshold for Sales to Rural and Remote Pharmacies for the Company will be calculated based on Sales made by CSO Distributors in those State/s and/or Territory/ies in which the Company has been assessed as eligible to access the CSO Funding Pool. This calculation will be made by comparing:

(a) the proportion of total Sales to Rural and Remote Pharmacies by all CSO Distributors (National and State Based) in those State/s and/or Territory/ies in which the Company has been assessed as eligible to access the CSO Funding Pool; against

(b) total Sales by all CSO Distributors (National and State Based) in those State/s and/or Territory/ies in which the Company has been assessed as eligible to access the CSO Funding Pool.

4.6.2 The performance of the Company against the applicable Threshold for Sales to Rural and Remote Pharmacies will be calculated based on the proportion of the Company's total Sales to Rural and Remote Pharmacies against the total Sales by the Company across all State/s and/or Territory/ies in which the Company has been assessed as eligible to access the CSO Funding Pool.

Requirement to Supply any CSO Products

4.7 The Company must Supply any Brand of any CSO Product, where requested, to Distribution Points within its CSO Jurisdiction.

4.8 The Company will not be required to Supply CSO Products that are not available to it because of an Exclusive Supply Arrangement, or CSO Products that are out-of-stock with the Manufacturer or cannot be supplied by the Manufacturer.

Stocking Requirement for CSO Products

4.9 The CSO Distributor must hold Stock in its warehouses or distribution centres (that the CSO Distributor will use to meet the CSO Service Standards) of at least one Brand of every PBS Medicine. For multi-Branded PBS Medicines, the CSO Distributor must hold Stock of at least one Innovator Brand and one additional Brand which is Benchmark Priced.

4.10 The CSO Distributor must hold Stock in its warehouse or distribution centres (that the CSO Distributors will use to meet its CSO Service Standards) of at least one of each product listed on the NDSS Product Schedule.

4.11 The CSO Distributor will not be required to hold Stock of CSO Products that are not available to it because of an Exclusive Supply Arrangement, or CSO Product that are out-of-stock with the Manufacturer or cannot be supplied by the Manufacturer.

- 4.12 If a CSO Distributor is unable to Stock a particular CSO Product for any reason other than those mentioned in clause 4.10 of this Schedule, the CSO Distributor must provide the Administration Agency with an explanation as to why the CSO Product is unable to be Stocked. If the explanation, in the Administration Agency's reasonable opinion, is insufficient or is not provided, this will be considered a Non-Performance of the CSO Distributor's Obligations under this Deed.

Requirement to Supply any Low Volume PBS Medicine

- 4.13 The Company must Supply any Brand of any Low Volume PBS Medicine, including in single Units, where requested.
- 4.14 The Company must ensure that its volume of Sales of Low Volume PBS Medicines within its CSO Jurisdiction is not more than 10% below the Industry Average (the **Threshold**) for each Year and for each Month within each Year within the Term.
- 4.15 On this basis:
- 4.15.1 the Administration Agency will notify the Company of its performance against the applicable Threshold for Sales of Low Volume PBS Medicines in each Year and Month within the Term; and
- 4.15.2 Sanctions may be applied if the Company fails to meet the applicable Threshold for Sales of Low Volume PBS Medicines in any Year or Month.
- 4.16 Where the Company is a State Based CSO Distributor and is eligible to access the CSO Funding Pool in more than one State or Territory, the performance of the Company against the applicable Threshold for Sales of Low Volume PBS Medicines will be calculated based on the proportion of the Company's total Sales of Low Volume PBS Medicines against the total Sales of PBS Medicines (excluding NDSS Products) by that Company across all State/s and/or Territory/ies in which the Company has been assessed as eligible to access the CSO Funding Pool.

Requirement to Supply any PBS Medicine at or below the Price to Pharmacists or the Claimed Price plus the Wholesale Mark-Up

- 4.17 Subject to clause 4.18, the Company must Supply any PBS Medicine, in any quantity:
- 4.17.1 if the Unit equals a Pack Quantity:
- (a) at or below the Price to Pharmacists for the Pack Quantity of the PBS Medicine Supplied; or
- (b) if there is a Claimed Price for the Pack Quantity of the PBS Medicine Supplied, at or below the Claimed Price for the Pack Quantity plus the Wholesale Mark-Up calculated in accordance with clause 4.23; or
- 4.17.2 if the Unit does not equal a Pack Quantity:
- (a) at or below the pro-rata ex-manufacturer price for the Unit calculated in accordance with clause 4.19, plus the Wholesale Mark-Up calculated in accordance with clause 4.24; or
- (b) if there is a Claimed Price for the Pack Quantity of the PBS Medicine, at or below the pro-rata claimed price for the Unit calculated in accordance with clause 4.20, plus the Wholesale-Mark-Up calculated in accordance with clause 4.25.
- 4.18 Any order of PBS Medicines from the High Volume List (other than Low Volume PBS Medicines) must be for at least the Minimum Order Quantity unless the Community

Pharmacy agrees to pay an additional fee in accordance with this clause. If a Community Pharmacy requests the Company to Supply less than the Minimum Order Quantity of PBS Medicines from the High Volume List (other than Low Volume PBS Medicines), then in addition to any other charge provided for under this Deed, the Company may charge an additional amount deemed appropriate by the Company at their discretion for the increased service requirement. Such charges do not require the approval of the Administration Agency. The Company may not charge any additional amount under this clause 4.18 until the Company and the Commonwealth have agreed the form and quantity of product for the purpose of the definition of "Shelf Pack" in clause 1.1 in this Schedule. The Company and the Commonwealth will use their respective best endeavours to agree the form and quantity of product, each party acting reasonably and in good faith and will each, further, use all reasonable endeavours to reach an agreement.

- 4.19 For the purposes of clauses 4.17.2(a) and 4.24.2, the pro-rata ex-manufacturer price for the Unit is to be worked out proportionately from the Approved Ex-Manufacturer Price or Proportional Ex-Manufacturer Price for the Pack Quantity of the PBS Medicine.
- 4.20 For the purposes of clauses 4.17.2(b) and 4.25.2, the pro-rata claimed price for the Unit is to be worked out proportionately from the Claimed Price for the Pack Quantity of the PBS Medicine.
- 4.21 The Company is able to apply existing commercially acceptable fees of an accounting nature, such as fees applied for overdue accounts or fees applied for dishonoured payments. However, the Company must ensure that its trading terms and other agreements with Community Pharmacies do not circumvent or are otherwise inconsistent with their Obligations under this Deed, and must not apply fees that circumvent or are otherwise inconsistent with their Obligations under this Deed.
- 4.22 The Company must refer new fees and increases to existing commercially acceptable fees to the Administration Agency for consideration and approval. Before approving any new fee or increase, the Administration Agency must be satisfied that a new or increased fee is fully justified.

Wholesale Mark-Up if a Unit equals a Pack Quantity and if there is a Claimed Price for a Pack Quantity of a PBS Medicine

- 4.23 For the purposes of clause 4.17.1(b), the Wholesale Mark-Up for the Pack Quantity of the PBS Medicine is to be worked out using the methodology for calculating the wholesale mark-up for ready-prepared pharmaceutical medicines in the determination made under paragraph 98B(1)(a) of the NH Act, subject to the following:
- 4.23.1 for the purposes of identifying the appropriate wholesale mark-up formula in Step 2 of the methodology, the ex-manufacturer price for the relevant quantity is to be worked out proportionately from the Approved Ex-Manufacturer Price or Proportional Ex-Manufacturer Price for the Pack Quantity of the PBS Medicine; and
- 4.23.2 otherwise, the methodology is to be applied as if the Claimed Price for the Pack Quantity of the PBS Medicine were the Approved Ex-Manufacturer Price or Proportional Ex-Manufacturer Price for the Pack Quantity.

Wholesale Mark-Up if a Unit does not equal a Pack Quantity

- 4.24 For the purposes of clause 4.17.2(a), the Wholesale Mark-Up for the Unit of the PBS Medicine is to be worked out using the methodology for calculating the wholesale

mark-up for ready-prepared pharmaceutical benefits in the determination made under section 98B(1)(a) of the NH Act, subject to the following:

- 4.24.1 for the purposes of identifying the appropriate wholesale mark-up formula in Step 2 of the methodology, the ex-manufacturer price for the relevant quantity is to be worked out proportionately from the Approved Ex-Manufacturer Price or Proportional Ex-Manufacturer Price for the Pack Quantity of the PBS Medicine; and
- 4.24.2 otherwise, the methodology is to be applied as if the pro-rata ex-manufacturer price for the Unit calculated in accordance with clause 4.19 were the Approved Ex-Manufacturer Price or Proportional Ex-Manufacturer Price for the Pack Quantity.

Wholesale Mark-Up if a Unit does not equal a Pack Quantity and if there is a Claimed Price for a Pack Quantity of a PBS Medicine

- 4.25 For the purposes of clause 4.17.2(b), the Wholesale Mark-Up for the Unit of the PBS Medicine is to be worked out using the methodology for calculating the wholesale mark-up for ready-prepared pharmaceutical medicines in the determination made under section 98B(1)(a) of the NH Act, subject to the following:
 - 4.25.1 for the purposes of identifying the appropriate wholesale mark-up formula in Step 2 of the methodology, the ex-manufacturer price for the relevant quantity is to be worked out proportionately from the Approved Ex-Manufacturer Price or Proportional Ex-Manufacturer Price for the Pack Quantity of the PBS Medicine; and
 - 4.25.2 otherwise, the methodology is to be applied as if the pro-rata claimed price for the Unit worked out in accordance with clause 4.20 were the Approved Ex-Manufacturer Price or Proportional Ex-Manufacturer Price for the Pack Quantity.

Requirement to Supply any NDSS Product at no cost to Access Points

- 4.26 The Company must Supply any NDSS Product, in any quantity, at no cost to the Access Point. The Commonwealth will pay for the NDSS Distribution Services in accordance with Schedule 2.

Requirement for timely Supply

- 4.27 The Company must Supply any Brand of PBS Medicine to any Community Pharmacy within their CSO Jurisdiction and any NDSS Product to any Access Point within their CSO Jurisdiction within the Guaranteed Supply Period, unless:
 - 4.27.1 the Distribution Point specifies otherwise; or
 - 4.27.2 the location of the Distribution Point is on the list of locations provided by the Commonwealth at Schedule 1 that falls outside the requirement to Supply CSO Product within the Guaranteed Supply Period; or
 - 4.27.3 the Company is unable to meet this Service Standard due to a Force Majeure Event.
- 4.28 Where the Guaranteed Supply Period for a PBS Medicine on the High Volume List is 72 hours, the Company must Supply any Brand of that PBS Medicine within 24 hours or 48 hours if requested by a Community Pharmacy. If a Community Pharmacy requests and the Company agrees to Supply any PBS Medicines quicker than the Guaranteed Supply Period then, in addition to any other charge provided for under this Deed, the Company may charge an additional amount deemed appropriate by the Company at their discretion for the further service requirement. Such charges do

not require the approval of the Administration Agency but must be notified to the Administration Agency.

- 4.29 If the Company is unable to undertake its Obligations under this Deed due to a Force Majeure Event:
- 4.29.1 that Company must promptly give the Administration Agency written notice of that fact, including:
- (a) full particulars of the Force Majeure Event;
 - (b) an estimate of its likely duration;
 - (c) the Obligations affected by the Force Majeure Event and the extent of its effect on those Obligations; and
 - (d) the steps taken and to be taken to rectify it; and
- 4.29.2 if, in the Administration Agency's reasonable opinion, the written explanation is reasonable and sufficient, a Non-Performance will not be recorded by the Administration Agency.
- 4.30 The Company upon claiming a Force Majeure Event must remove, overcome or minimise the impact of that Force Majeure Event on its operations and the performance of Obligations as quickly as possible.
- 4.31 If a Force Majeure Event that affects the Company's distribution centre, continues for more than 30 Days, either party to this Deed may immediately terminate this Deed by written notice to the other. If the Commonwealth exercises its Right under this clause, it will not be liable for compensation for termination.
- 4.32 The Company must develop and maintain a Business Continuity Plan that complies with the requirements at Schedule 7 to mitigate any failure to Supply to Distribution Points within the Guaranteed Supply Period.
- 4.33 A day on which the Distribution Point is closed for business, such as a Sunday or Public Holiday, will not count towards the Guaranteed Supply Period.
- 4.34 The Administration Agency and/or the Commonwealth has the right, by notice in writing, to amend Annexure A or Annexure B of this Schedule.
- 4.35 The Company must make available a Daily delivery service to any Distribution Point within its CSO Jurisdiction as part of their standard service delivery Infrastructure, except where and to the extent:
- 4.35.1 particular Distribution Points within the Company's CSO Jurisdiction have identified that they do not need a Daily delivery service, or do not need all of their orders filled within the Guaranteed Supply Period;
- 4.35.2 the Company's failure to meet this Service Standard is a result of a Force Majeure Event and the explanation has been accepted by the Administration Agency under clause 4.29.2, in which case, clauses 4.30 and 4.31 apply; or
- 4.35.3 the Distribution Point does not have the capacity to receive deliveries on a particular Business Day.
- 4.36 The Company must provide an explanation to the Administration Agency as to why it failed to make a Daily delivery service available to any Distribution Point within its CSO Jurisdiction. If, in the Administration Agency's reasonable opinion, the explanation is reasonable and sufficient, a Non-Performance will not be recorded.

- 4.37 The Company may make available alternative delivery services to any Distribution Point within its CSO Jurisdiction than those specified in clause 4.35, on request by that Distribution Point. If the Company does so, in addition to any other charge provided for under this Deed the Company may charge that Distribution Point an additional amount deemed appropriate by the Company at their discretion for the increased service requirement. Such charges do not require the approval of the Administration Agency.

Exemption from obligation to stock and Supply certain PBS Medicines where Supplied at above ex-manufacturer price

- 4.38 The Commonwealth intends to support CSO Distributors charging the approved amounts to Community Pharmacies as set out in this Deed.
- 4.39 Where the Company stocks a PBS Medicine from a Manufacturer which is Supplied to a Community Pharmacy in accordance with this clause 4, and the Company is required to pay above the ex-manufacturer price to purchase stock of the PBS Medicine (including any additional fees levied by or on behalf of the Manufacturer in relation to the supply of the PBS Medicine):
- 4.39.1 the Company may notify the Commonwealth in writing, including a summary of the circumstances and appropriate supporting evidence demonstrating a continuing issue; and
- 4.39.2 if the Commonwealth determines the matter requires investigation:
- (a) it may investigate the circumstances including the costs, incurred by the Company in connection with the purchase of the PBS Medicine;
 - (b) the Commonwealth will use reasonable endeavours to attempt to resolve the situation; and
 - (c) if the Commonwealth is unable to resolve the situation within the timeframe the Commonwealth determines and the Commonwealth is satisfied that the Company would be required to continue to pay above the ex-manufacturer price to Supply that PBS Medicine in accordance with this clause 4, the Commonwealth may put that PBS Medicine on the Exempt List.
- 4.40 The Company will not be required to stock or Supply PBS Medicines which are included on the Exempt List referred to in clause 4.39.2(c), as updated by the Commonwealth from time to time.
- 4.41 The Commonwealth may update the Exempt List referred to in clause 4.39.2(c) from time to time, and may remove a PBS Medicine from that list where it is satisfied that CSO Distributors would no longer be charged above the ex-manufacturer price (including any additional fees levied by or on behalf of the Manufacturer in relation to the supply of the PBS Medicine) in order to Supply that PBS Medicine in accordance with this clause 4.

SCHEDULE 1 ANNEXURE A

5 List of locations that fall outside the requirement to Supply CSO Products within the Guaranteed Supply Period

- 1.1 The following locations fall outside the requirement to Supply CSO Products within the Guaranteed Supply Period:

Postcode	State / Territory	Community Pharmacy Location
0860	Northern Territory	TENNANT CREEK
2899	New South Wales	NORFOLK ISLAND
4871	Queensland	MORNINGTON ISLAND
4874	Queensland	WEIPA
4875	Queensland	THURSDAY ISLAND
6161	Western Australia	ROTTNEST ISLAND
6714	Western Australia	KARRATHA
6728	Western Australia	DERBY
6798	Western Australia	CHRISTMAS ISLAND

- 1.2 The CSO Distributor must make all reasonable efforts to Supply CSO Products within the Guaranteed Supply Period to the locations listed at clause 1.1 of this Annexure. Locations listed at clause 1.1 of this Appendix should not receive a lesser standard of service than they received at the time that the relevant CSO Distributor entered into a Deed.

SCHEDULE 2 - PAYMENT ARRANGEMENTS

1 TOTAL AMOUNT OF PAYMENT FROM CSO FUNDING POOL

- 1.1 The total value of the CSO Funding Pool available for CSO Distributors for any Year during the term of the Sixth Agreement is up to \$195,220,000 (inclusive of GST). The Commonwealth will not exercise its right to reduce the total value of the CSO Funding Pool under clause 9.3 during the first Year during the term of the Sixth Agreement below this amount.
- 1.2 Amounts payable in relation to the NDSS will be the subject of separate Commonwealth funding.
- 1.3 GST will be added to Payments made from the CSO Funding Pool to Company to reflect the GST liability of Company.
- 1.4 The Company acknowledges that the CSO Funding Pool will not necessarily be evenly distributed over each Year of the Term, and as a result the amount available for distribution to CSO Distributors in any particular Month may or may not equate to one twelfth of the total value of the CSO Funding Pool for that Year.

2 DEFINITIONS

- 2.1 For the purposes of this Schedule, in addition to the defined terms in this Deed, all capitalised terms have the following meaning:

Delivery Component means, for each Pack Quantity of NDSS Product supplied under this Deed to an Access Point during a Month, the amount of \$1.00.

Direct Cost Component is the amount equal to the price payable by the Company to the Manufacturer for a Pack Quantity of NDSS Product Supplied under this Deed to Distribution Points as agreed between the Commonwealth and the Manufacturer and set out in the NDSS Product Schedule (excluding GST).

Excluded Over the Counter PBS Medicines means an Over the Counter PBS Medicine that has been determined as excluded from the Company payment calculations in accordance with the CSO Operational Guidelines.

Over the Counter PBS Medicines means PBS Medicines that are provided over the counter at Community Pharmacies without a medical practitioner's prescription and those that are provided with a medical practitioner's prescription but are not dispensed.

Patient Co-Payment means:

- (a) for a person to whom, at the time that a pharmaceutical is supplied, paragraph 87(2)(b) of the NH Act applies – the current figure for the general patient reduced charge, as defined in section 99F of the National Health Act; or
- (b) for a person who is a concessional beneficiary in accordance with Section 84 of the NH Act – the current figure for the concessional beneficiary charge, as defined under section 99F of the National Health Act; or
- (c) for any other person- the current figure for the general patient charge, as defined in section 99F of the NH Act.

State Based means any, but not all, Australian States and Territories.

Supply Component means, for each Pack Quantity of NDSS Product supplied under this Deed to an Access Point during a Month, an amount equal to the per Unit Payment from the CSO Funding Pool to the Company for the Supply of a Unit of PBS Medicine in that Month.

Unspent Funds means the difference between the allocation for the State Based CSO Funding Pool and the total Payments from the State Based CSO Funding Pool in any given Month.

- 2.2 Unless the contrary intention appears, all other capitalised terms in this Schedule have the same meaning as in clause 2 of this Deed.

3 PAYMENTS FOR NDSS DISTRIBUTION SERVICES

- 3.1 The amount payable by the Commonwealth under this Deed for the Supply of NDSS Products to Access Points consists of:

- 3.1.1 the Direct Cost Component;
- 3.1.2 the Delivery Component; and
- 3.1.3 the Supply Component,

for each Pack Quantity of NDSS Product Supplied by the Company. For the avoidance of doubt, amounts payable in relation to NDSS Distribution Services are in addition to Payments made from the CSO Funding Pool.

4 AMOUNT PAYABLE CALCULATION – National CSO Funding Pool

- 4.1 The amount payable to each National CSO Distributor will be based on the proportion of their volume of Sales of PBS Medicines, compared to the total volume of PBS Medicine Sales to Community Pharmacies by all National CSO Distributors (combined) for the Month.

- 4.2 An example of the calculation of Payments to National CSO Distributors is at Annexure A to this Schedule.

- 4.3 In addition to clause 5.3 of this Schedule, the amount available for Payment to National CSO Distributors per Month may vary to reflect the application of financial Sanctions to the total amount of Payments in a previous Month. The Administration Agency has discretion within the framework of this Deed and the CSO Operational Guidelines to determine how and when the financial Sanctions are applied.

- 4.4 In the event that any funds allocated to the administration of the CSO Funding Pool each Year are not spent by the Administration Agency, the funds will be added to the National CSO Funding Pool for the following Year.

- 4.5 This clause 4 is subject to any Payment exclusions or Payment exclusion policy referred to in clause 8 of this Schedule and the arrangements for the application of Sanctions referred to in Schedule 5.

5 AMOUNT PAYABLE CALCULATION – State Based CSO Funding Pool

- 5.1 Monthly Payments for each CSO Jurisdiction will be calculated by:

- 5.1.1 identifying the volume of Sales of PBS Medicines to Community Pharmacies by each State Based Company;
- 5.1.2 from this, deriving a ratio for each State and Territory that compares the volume of Sales of PBS Medicines by each State Based Company in a

State or Territory to the total volume of Sales of PBS Medicines by all State Based CSO Distributors across Australia; and

- 5.1.3 allocating Monthly Payments within each CSO Jurisdiction on the volume of Sales of PBS Medicines to Community Pharmacies by each State Based Company in a State or Territory compared to the volume of Sales of PBS Medicines to Community Pharmacies by all State Based CSO Distributors (combined) in that State or Territory.
- 5.2 The Monthly Payments to State Based CSO Distributors will be capped to ensure that the per Unit Payments to any State Based CSO Distributor will not exceed that Paid to National CSO Distributors for the same period. The cap will be calculated based on the per Unit Payments to be made to National CSO Distributors prior to the application of any Sanctions or distribution of the National Sanctions Pool under Schedule 5.
- 5.3 Subject to clause 5.6 of this Schedule, any funds from the State Based CSO Funding Pool which remain unspent or undistributed in any Month will be transferred to the National CSO Funding Pool and:
- 5.3.1 added to the allocation for the next Month for the National CSO Funding Pool (in the case of all Months in a Year except June); and
- 5.3.2 in the case of the Month of June in each Year, added to the allocation for the National CSO Funding Pool for the Month of June.
- 5.4 Subject to clause 5.3 of this Schedule, the amount available for Payment to State Based CSO Distributors may vary to reflect the application of Sanctions to State Based CSO Distributors in a previous Month. The Administration Agency has discretion within the framework of this Deed and CSO Operational Guidelines, to determine how and when the Sanctions are applied.
- 5.5 An example of the calculation of Payments to State Based CSO Distributors is at Annexure B of this Schedule.
- 5.6 This clause 5 is subject to any Payment exclusions or Payment exclusion policies referred to in clause 8 of this Schedule and the arrangements for the application of Sanctions referred to in Schedule 5.

6 AMOUNT PAYABLE CALCULATION – NDSS Distribution Services

- 6.1 Subject to 6.2, the amount payable to the Company for NDSS Distribution Services will be based on its volume of NDSS Products Supplied to Access Points within its CSO Jurisdiction(s) for the Month, as identified by the NDSS Administrator.
- 6.2 The amount payable to the Company in relation to the Supply Component for Supplies of NDSS Products will be calculated by the Administration Agency. An example of the calculation of Payments for the Supply Component is Annexure C to this Schedule.
- 6.3 In addition to clause 6.4 of this Schedule, the amount available for Payment to the Company per Month may vary to reflect the application of financial Sanctions to the total amount of Payments in a previous Month. The Administration Agency has discretion within the framework of this Deed and the CSO Operational Guidelines to determine how and when the financial Sanctions are applied, and will notify the NDSS Administration of any applicable financial Sanctions relevant to the NDSS Distribution Services.

- 6.4 This clause 6 is subject to any Payment exclusions or Payment exclusion policy referred to in clause 8 of this Schedule and the arrangements for the application of Sanctions referred to in Schedule 5.

7 TIMING OF PAYMENTS

- 7.1 Payments will be made to the Company by the Commonwealth Monthly in arrears.
- 7.2 Payments may not be made, or may not be made within the specified timeframe, if the Company fails to provide Data and Reports as required by this Deed.
- 7.3 The Commonwealth will endeavour to make Payments to CSO Distributors from the CSO Funding Pool on or before the last Business Day of the Month after the Month for which the Payment is calculated. The timing of Payments from the CSO Funding Pool is contingent upon the following:
- 7.3.1 the receipt of Data and Reports from all CSO Distributors by such date as is notified by the Administration Agency in writing;
 - 7.3.2 the data integrity, editing processes and aggregation of all Data received from CSO Distributors;
 - 7.3.3 the calculation of Payments in accordance with this Schedule, including the potential application of Sanctions in accordance with Schedule 5;
 - 7.3.4 notification of the Payment amounts to each CSO Distributor; and
 - 7.3.5 the receipt of a correctly rendered tax invoice by the Administration Agency.
- 7.4 The Commonwealth will endeavour to make Payments in respect of NDSS Distribution Services to the Company in accordance with clause 10 of this Schedule. The timing of Payments of NDSS Distribution Funding is contingent upon the following:
- 7.4.1 the confirmation by the NDSS Administrator of the volume of Sales of NDSS Products in the previous Month;
 - 7.4.2 the calculation of Payments in accordance with this Schedule, including the potential application of Sanctions in accordance with Schedule 5;
 - 7.4.3 notification of the Payment amounts to each Company; and
 - 7.4.4 the receipt of a correctly rendered tax invoice by the NDSS Administrator.

8 PAYMENT EXCLUSION POLICY

- 8.1 CSO Products that appear on the Exclusive Supply Arrangement list or on the Exempt List will be excluded by the Administration Agency from the calculation of total Sales of CSO Products for each Company and will therefore not be counted for the purpose of calculating Payments from the CSO Funding Pool.
- 8.2 Sales of Excluded Over the Counter PBS Medicines will also not be included in the Payment calculation. The process for calculating the proportion of Over the Counter PBS Medicines which are excluded will be revised from time to time as determined by the Commonwealth. Once this process is finalised, CSO Distributors will be notified by the Administration Agency. Excluded Over the Counter PBS Medicines will not be included in the Payments calculation from the date of the notification.
- 8.3 The Commonwealth, has the right, by notice in writing, to introduce any Payment exclusion policies that are to be inserted into this Schedule. These Payment

exclusion policies will be deemed to be included in the Deed from the date of notice from the Commonwealth.

9 BILLING AND PAYMENT PROCESSES – PBS MEDICINES

- 9.1 The Administration Agency will calculate Payments in respect of PBS Medicines in the manner described in this Schedule and will notify each Company in writing of the amount of their Payment for each Month after receiving the Data and Reports from all CSO Distributors.
- 9.2 The Company must then submit, to the Administration Agency, a correctly rendered tax invoice for the amount of the Payment. The tax invoice must specify:
- (a) the name of the Company;
 - (b) that the invoice relates to Supply of PBS Medicines;
 - (c) the Australian Business Number (ABN) of the Company;
 - (d) the invoice number;
 - (e) the Month of the Payment; and
 - (f) the amount of applicable GST.
- 9.3 Subject to the Administration Agency's confirmation that all matters upon which Payment is contingent under clause 7.3 of this Schedule have been completed, the Commonwealth will process correctly rendered tax invoices received from the Administration Agency within 10 Business Days of receipt, and will deposit the amount into the Company's bank account as specified in clause 9.11 of the Deed.

10 BILLING AND PAYMENT PROCESSES – NDSS DISTRIBUTION SERVICES

- 10.1 The NDSS Administrator Agency will calculate Payments in respect of NDSS Distribution Services in the manner described in this Schedule and will notify the Company in writing of the amount of their Payment for NDSS Distribution Services for each Month.
- 10.2 The Company must then submit to the NDSS Administrator a correctly rendered tax invoice for the amount of the Payment. The tax invoice must specify:
- (a) the name of the Company;
 - (b) that the invoice relates to NDSS Distribution Services;
 - (c) the Australian Business Number (ABN) of the Company;
 - (d) the invoice number;
 - (e) the Month of the Payment; and
 - (f) the amount of applicable GST.
- 10.3 Subject to the NDSS Administrator's confirmation that all matters upon which Payment is contingent under clause 7.4 of this Schedule have been completed, the Commonwealth will process correctly rendered tax invoices received from the NDSS Administrator within 15 Business Days of receipt, and will deposit the amount into the Company's bank account notified under clause 9.11 of the Deed.

11 PAYMENT ADJUSTMENTS

- 11.1 The Administration Agency and NDSS Administrator may adjust Payments to the Company in situations including, but not limited to, where audits of Reports or Data (or information from the Company under clause 1.4 of Schedule 3) identifies inaccuracies in calculations that must be corrected. Payment adjustments will not be used as a Sanction for Company Non-Performances but a Payment adjustment may be made to reflect the application of a Sanction.
- 11.2 An adjustment to a Payment for a Month will be made in subsequent Months as described in clause 11.6 of this Schedule.
- 11.3 The Company has an Obligation to repay any Payments in excess of those due under this Deed (over Payments) to the Commonwealth, once notified of the over Payment by the Administration Agency or the NDSS Administrator. The Commonwealth may, at its discretion, direct the Administration Agency or NDSS Administrator to make adjustments to future Payments to be made to the Company to reflect any previous over Payment.
- 11.4 If the Administration Agency or NDSS Administrator determines that an over Payment has occurred the Administration Agency or NDSS Administrator may determine that this amount is a debt owed to the Commonwealth, which, subject to clause 11.6 of this Schedule, must be repaid to the Commonwealth.
- 11.5 The Commonwealth has an Obligation to repay any under Payments to CSO Distributors. The Commonwealth may pay any amount owing under this clause together with the next Payment due to that CSO Distributor.
- 11.6 The timing of repayments of any CSO Funding Pool monies or over Payments for NDSS Distribution Services owed by the Company to the Administration Agency will be discussed between the Company and the Administration Agency (in respect of CSO Funding Pool monies) or the NDSS Administrator (in respect of Payments for NDSS Distribution Services). The Administration Agency and NDSS Administrator, in determining the time by which a repayment must be made, will take into account the potential impact of the repayments on the financial position of the Company. The Administration Agency and NDSS Administrator may consider reducing future Monthly Payments until a full amount of any over Payment has been repaid. The Administration Agency and NDSS Administrator retain absolute discretion in determining the timing and manner of repayments and the Company must comply with any direction from the Administration Agency or NDSS Administrator.
- 11.7 The amount of the CSO Funding Pool available for distribution will be varied as required to reflect Payment adjustments made under this clause.

12 RESPONSIBILITY FOR PAYMENTS AND RECEIPT OF MONIES OWED

- 12.1 The Administration Agency is responsible for the calculation of Payments in respect of PBS Medicines and determining any financial Sanctions. The NDSS Administrator is responsible for the calculation of Payments in respect of NDSS Distribution Services.
- 12.2 Despite any provision to the contrary in this Schedule or Deed, the Commonwealth may direct that the Administration Agency or NDSS Administrator will not be responsible for making any Payment to, or receiving any money from, CSO Distributors.
- 12.3 Based on the Administration Agency's and NDSS Administrator's calculations under clause 12.1 of this Schedule:

- 12.3.1 the Commonwealth will make Payments directly to CSO Distributors;
- 12.3.2 the Commonwealth will receive any monies owed by CSO Distributors directly from those CSO Distributors; and
- 12.3.3 all references in this Deed to money payable by or owed to the Administration Agency or NDSS Administrator must be read as if those references are to money payable by or owed to the Commonwealth.

Example of the calculation of Payments from the National CSO Funding Pool

Payment calculation assumptions:

- Four CSO Distributors are participating in the National CSO Funding Pool.
- The value of National CSO Funding Pool for July 2011 is \$15 million.

For July 2011

	Volume of Sales of PBS Medicine	Payments from the National CSO Funding Pool
CSO Distributor A	6.1 million Units (24.3%)	\$3.645 million
CSO Distributor B	8.7 million Units (34.7%)	\$5.199 million
CSO Distributor C	5.5 million Units (21.9%)	\$3.287 million
CSO Distributor D	4.8 million Units (19.1%)	\$2.869 million
All CSO Distributors	25.1 million Units (100%)	\$15 million

This Payment equates to \$0.60 per Unit of PBS Medicine Sold.

State Based Funding Pool Payment Calculations

Funding for the State Based CSO Funding Pool is apportioned across each Month and is calculated by:

- Identifying the volume of PBS Medicines supplied under the CSO to Community Pharmacies by each State Based CSO Distributor; and
- From this, deriving a ratio for each State that compares the volume of CSO Sales of PBS Medicines by each State Based CSO Distributor in a State to the total volume of CSO Sales of PBS Medicines by all State Based CSO Distributors across Australia.

The following three tables provide examples of the calculation of and allocation of State Based Funding Pool Payments.

Example 2 – Number of PBS Medicines supplied by State Based CSO Distributors in a Month

CSO Distributor	PBS Medicine Supplied	Percentage of CSO Sales across each State
CSO Distributor A (Victoria)	150,000 Units	60% of Vic CSO Sales
CSO Distributor B (Victoria)	100,000 Units	40% of Vic CSO Sales
CSO Distributor B (South Australia)	300,000 Units	100% of SA CSO Sales
<i>Total (Victoria)</i>	250,000 Units	-
<i>Total (South Australia)</i>	300,000 Units	-
Total (All)	550,000 Units	

In the example above, CSO Distributor A supplied 60% of the total CSO Sales to Victoria, with CSO Distributor B supplying the remaining 40%. CSO Distributor A supplied 100% of the total CSO Sales to South Australia. Once the Monthly allocation of funding for CSO Distributors A and B have been determined, these proportions of CSO Sales are used to determine the level of Payment that each State Based CSO Distributor will receive.

Example 3 – Ratio of Sales of PBS Medicines across each State

State	Percentage of CSO Sales	Total Monthly Allocation
Victoria	45.45% (250,000/550,000)	\$127,272.73 (45.45% of \$280,000)
South Australia	54.55% (300,000/550,000)	\$152,727.27 (54.55% of \$280,000)
Total	100% (550,000)	100% (\$280,000)

For the purposes of the example above, the Monthly CSO Funding Pool State allocation is assumed to be \$280,000. The allocation of Monthly funding within each State Based jurisdiction is then based on the volume of Sales of PBS Medicines supplied to Community Pharmacies by each State Based CSO Distributor in a State, compared to the total volume of Sales of PBS Medicines supplied to Community Pharmacies by all State Based CSO Distributors (combined) in that State.

Example 4 – Allocation of Payment to State Based CSO Distributors

CSO Distributor	Payment
CSO Distributor A	\$76,363.64 (60% of \$127,272.73)
CSO Distributor B	\$203,636.36 (40% of \$127,272.73) + (100% of \$152,727.27)
Total	\$280,000 (\$203,636.36 + \$76,363.64)

The amount of funding that each State Based CSO Distributor receives is then based on the proportion of CSO Sales that each CSO Distributor made in each State. In this example, CSO Distributor A would receive 60% of the \$127,272.73 allocation for Victoria, which equates to \$76,363.64.

CSO Distributor B would receive the remaining 40% of the allocation for Victoria, which equates to \$50,909.09, plus the full \$152,727.27 allocation for South Australia, as CSO Distributor B was the only State Based CSO Distributor operating in South Australia.

Calculating the National Cap

Monthly Payments to State Based CSO Distributors are capped to ensure that the per unit Payments to any State Based CSO Distributor will not exceed that paid to National CSO Distributors for the same period. Any unspent funds from the State Based Funding Pool in any Month are added to the National Funding Pool.

Example 5 – Total Number of PBS Medicines Distributed by all National CSO Distributors in a Month

CSO Distributor	PBS Medicine Supplied	National Funding Pool allocation	National Cap
CSO Distributor W	6.1 million units		
CSO Distributor X	8.7 million units		
CSO Distributor Y	5.5 million units		
CSO Distributor Z	4.8 million units		
Total	25.1 million units	\$15 million	\$0.60

For the purposes of the example above, the Monthly CSO Funding Pool National Allocation is assumed to be \$15 million.

The National Funding Pool Cap is calculated as the Monthly National Funding Pool allocation divided by the total number of Units of PBS Medicines supplied by National CSO Distributors in a Month. This particular example results in a National Cap of \$0.60 per unit of PBS Medicine sold, i.e. \$15 million/25.1 million units.

If Payments to State Based CSO Distributors (which are based on the total number of units of PBS Medicines sold by all State Based CSO Distributors and divided by the Monthly State Based Funding Pool allocation), exceeds Payments calculated based on the National Cap (\$0.60 in the above example), the National Cap will apply to Payments to State Based CSO Distributors.

Example 6 – Payment to all State Based CSO Distributors in a Month - adjusted for National Funding Pool Cap

Total PBS Medicines Supplied	State Based Funding Pool Allocation	Payment based on National Cap of \$0.60	Actual Payment due
450,000 units	\$280,000	\$279,000	\$279,000

In the above example, the State Based Funding Pool Allocation (\$280,000) exceeds the total payment due to all State Based CSO Distributors calculated based on the National Cap of \$0.60 (\$279,000), and therefore \$279,000 would be paid, i.e. the National Cap would be applied.

Example 7 – Payment to all State Based CSO Distributors in a Month - no adjustment required for National Funding Pool Cap

Total PBS Medicines Supplied	State Based Funding Pool Allocation	Payment based on National Cap \$0.60	Actual Payment due
550,000 units	\$280,000	\$341,000	\$280,000

In the above example, the State Based Funding Pool Allocation (\$280,000) is less than the total payment due to all State Based CSO Distributors based on the National Cap of \$0.60 (\$341,000), and therefore \$280,000 would be paid, i.e. the National Cap would not be applied.

NDSS Distribution Service Payment Calculations

Funding for the NDSS Distribution Service is dependent on demand through the NDSS and may not necessarily be evenly distributed over each Year of the Term of the Deed.

The amount payable to a CSO Distributor for NDSS Distribution Services will be based on its volume of NDSS Products Supplied to Access Points within its CSO Jurisdiction(s) for the Month, and consists of:

- The Direct Cost Component;
- The Delivery Component; and
- The Supply Component.

Payment for the Direct Cost and Delivery Components will be calculated by the NDSS Administrator, and payment for the Supply Component will be calculated by the Administration Agency.

The Supply Component for each unit of NDSS Product supplied to an Access Point during a Month is an amount equal to the per Unit Payment from the CSO Funding Pool for the Supply of each Unit of PBS Medicine during that Month.

Example 8 – Calculation of Payment to CSO Distributors for the Supply Component of NDSS Distribution Services

CSO Distributor	NDSS Products Supplied	Payment for Supply Component
CSO Distributor W	150,000 Units	\$90,000
CSO Distributor X	100,000 Units	\$60,000
CSO Distributor Y	300,000 Units	\$180,000
CSO Distributor Z	200,000 Units	\$120,000

For the purposes of the example above, the Unit Payment from the CSO Funding Pool for the Supply of a Unit of PBS Medicine in that Month is assumed to be \$0.60 (refer Example 1).

The Payment amount to CSO Distributors per Month may vary to reflect the application of financial Sanctions to the total amount of Payments in a previous Month.

The CSO Administration Agency has discretion within the framework of the Deed and the CSO Operational Guidelines to determine how and when the financial Sanctions are applied. Any financial sanctions will then be incorporated into future NDSS payments.

Example of the calculation of Payments for the NDSS Distribution Services

	Cost of NDSS Product	Supply Fee	Unit Payment	TOTAL
Company A	\$39.29	\$1	0.65c	\$40.94
Company B	\$13.00	\$1	0.65c	\$14.65
Company C	\$145.83	\$1	0.65c	\$147.48
Company D	\$19.65	\$1	0.65c	\$21.30

SCHEDULE 3 – DATA AND REPORTS

1 Data and Reports required for CSO Payments

- 1.1 The Administration Agency will collect or receive Data from the Company on a Monthly basis in support of a claim for Payment from the National or State Based CSO Funding Pool. The NDSS Administrator will also access Data from the NDSS System on a Monthly basis in support of a claim for Payment for NDSS Distribution Services.
- 1.2 The Company will provide this Data in aggregate form in a format specified by the Administration Agency. The Data will comprise specified Data on Sales of CSO Products, separately identifying the volume of Sales relating to PBS Medicines and NDSS Products and including any fees charged by the Company to a Distribution Point.
- 1.3 The Company must include in its Data all Sales made by the Company in the relevant Month, regardless of whether or not the Company met all its Obligations under this Deed in respect of those Sales. In accordance with clause 9 of this Deed, the Company will only receive Payments from the CSO Funding Pool or Payments for NDSS Distribution Services for Sales in respect of which the Company has met its Obligations under this Deed. The Administration Agency reserves the Right to apply financial or non-financial Sanctions where the Company has received Payment for a Sale in respect of which the Company has not met all of its Obligations under this Deed.
- 1.4 The Company must provide an explanation to the Administration Agency for any inaccurate, missing or late Data and/or Reports. This explanation should include a detailed report (including background, causes, responses and impacts) for Major Non-Performances but may be in summary form for Minor Non-Performances. If, in the Administration Agency's reasonable opinion, the explanation is reasonable and sufficient, a Non-Performance will not be recorded.
- 1.5 Any Sales Data submitted by the Company after the annual reconciliation for a Year has been finalised, will not be accepted or considered for the purposes of calculating Payments. This does not restrict other Rights available to the Commonwealth or Administration Agency under this Deed.
- 1.6 The Company must not edit, select or otherwise manipulate its Data or Reports. In particular, the Company must not manipulate its Data or Reports so as to improve or vary the measurement under this Deed of its performance against the CSO Service Standards, CSO Compliance Requirements, or any other Obligation under this Deed.
- 1.7 For example, and without limiting the effect of clauses 1.3 and 1.6 of this Schedule, the Company must not:
 - 1.7.1 omit Sales from its Data, or alter or otherwise manipulate its Data, in order to affect the calculation of the Company's performance against applicable Thresholds and thereby reduce the risk of Sanctions being applied to the Company for a failure to achieve the Thresholds;
 - 1.7.2 omit Sales from its Data or Reports, where a particular Brand of PBS Medicine was requested by a Community Pharmacy, but was not Supplied by the Company, so as to reduce the risk of Sanctions being applied to the Company for a failure to meet the requirement to Supply any Brand of any PBS Medicine;

- 1.7.3 omit Sales from its Data or Reports, where delivery was requested by a Distribution Point, but not achieved by the Company in accordance with this Deed, so as to reduce the risk of Sanctions being applied to the Company for a failure to meet the requirement for timely Supply; or
 - 1.7.4 omit Sales from its Data or Reports, where a Daily delivery service was requested by a Distribution Point, but not provided by the Company in accordance with this Deed, so as to reduce the risk of Sanctions being applied to the Company for a failure to meet the requirement for timely Supply.
- 1.8 In accordance with Schedule 5, and without limiting the Rights of the Commonwealth or the Administration Agency under this Deed, Sanctions may be applied:
- 1.8.1 if, in the reasonable opinion of the Commonwealth, the Administration Agency or the NDSS Administrator:
 - (a) the Company knowingly excludes Sales from its Data or Reports; or
 - (b) the Company otherwise presents or manipulates its Data or Reports in a way that undermines the primary objective of the CSO Funding Pool, as described in Recital B of this Deed or of the NDSS; and/or
 - 1.8.2 in respect of any:
 - (a) errors or inaccuracies in the Data or Reports submitted by the Company; and/or
 - (b) Sales in respect of which the Company did not meet all the Obligations under this Deed.

2 Data and Reports for monitoring CSO Service Standards

- 2.1 The Company must submit Monthly Reports to the Administration Agency against all the Obligations under this Deed using a standard format to be specified. This must be provided at the same time, and together with, the Data referred to in clause 1 of this Schedule. Monthly Reports should identify any Non-Performances, including a detailed report (including background, causes, responses and impacts) for Major Non-Performances and a summary of any Minor Non-Performances.
- 2.2 The Company must provide the Administration Agency with an annual report on its compliance with all its Obligations under this Deed against a set of standard output and performance indicators to be made available to the Company. This will enable the Administration Agency to perform an annual assessment, including reconciliation of Data, against the Company's performance in meeting its Obligations under this Deed.

3 Other Data and Reports

- 3.1 The Company must provide any Data and Reports sought by the Administration Agency to assess and resolve Complaints by consumers, Distribution Points, Registrants and others regarding the performance of the Company against its Obligations under this Deed.
- 3.2 The Company must provide any Data and Reports sought by the Administration Agency as part of a periodic assessment carried out by the Administration Agency to ensure the continued achievement by the Company of the requirements for access to

the CSO Funding Pool or to Payments for NDSS Distribution Services set out in this Deed.

- 3.3 The Company must provide any other Data and Reports required for activities contained within this Deed and the CSO Operational Guidelines, including audits in accordance with clause 14 of the Deed and Reviews of the CSO Funding Pool and NDSS arrangements referred to in clause 13 of the Deed.

SCHEDULE 4 – COMPLAINTS PROCEDURE

1 DEFINITIONS

- 1.1 Unless the contrary intention appears, all capitalised terms in this Schedule have the same meaning as in clause 2 of this Deed.

2 Complaints Procedure

- 2.1 A Complaints Procedure will be established to receive, assess and resolve:
- 2.1.1 Complaints lodged by consumers, Distribution Points, Registrants and others regarding the performance of the Company against the Obligations under this Deed; and
 - 2.1.2 Complaints lodged by CSO Distributors about any aspect of the Administration Agency's administration of the CSO Funding Pool or the NDSS Administrator's administration of Payments for the NDSS Distribution Services.
- 2.2 The Complaints Procedure will be established and operated by the Administration Agency. The NDSS Administrator may participate in the Complaints Procedure to the extent it relates to the administration of the NDSS.
- 2.3 The Complaints Procedure will be approved by the Commonwealth and publicised by the Administration Agency to Distribution Points, consumers, Registrants and CSO Distributors.

Notification of Complaints

- 2.4 Where a Complaint has been lodged about the Company's performance against its Obligations under this Deed, the Administration Agency will discuss the Complaint with the Company as outlined in the CSO Operational Guidelines. The Administration Agency will then notify the Company, in writing, of the action (if any) to be taken as a result of the Complaint.
- 2.5 Where a Complaint has been lodged by the Company about the Administration Agency's administration of the CSO Funding Pool or the NDSS Administrator's administration of Payments for NDSS Distribution Services, the Administration Agency or NDSS Administrator (as applicable) will discuss the Complaint with the Company. The Administration Agency or NDSS Administrator will then notify the Company, in writing, of the action (if any) to be taken as a result of the Complaint.

Review Rights

- 2.6 In the event that the Company is dissatisfied with the action taken in clause 2.4 or clause 2.5 of this Schedule, the Company may refer the Complaint, in writing, to the Commonwealth's Authorised Officer or the Commonwealth's nominee within 28 days after receiving notification from the Administration Agency or NDSS Administrator.
- 2.7 The decision made by the Commonwealth's Authorised Officer or nominee will be final and binding.
- 2.8 There are no other review rights in relation to a Complaint except as allowed in clause 2.6 of this Schedule.

SCHEDULE 5 – SANCTIONS

1 DEFINITIONS

- 1.1 For the purposes of this Schedule, in addition to the defined terms in this Deed, all capitalised terms have the following meaning:

Quarterly means the three Month periods from 1 July to 30 September, 1 October to 31 December, 1 January to 31 March and 1 April to 30 June.

- 1.2 Unless the contrary intention appears, all other capitalised terms in this Schedule have the same meaning as in clause 2 of this Deed.

2 BACKGROUND

- 2.1 In accordance with clause 12 of this Deed, Sanctions may be applied when the Company does not meet its Obligations under this Deed, including those relating to Supply of PBS Medicines and NDSS Distribution Services and/or its Obligations under the CSO Operational Guidelines.
- 2.2 It is the responsibility of the Administration Agency to apply the Sanctions in accordance with clause 12 of this Deed and this Schedule. If the Administration Agency was to consider that the Company's Non-Performance was such that the Company should be excluded from the CSO Funding Pool or cease to provide NDSS Distribution Services, then the Administration Agency may provide a recommendation to the Commonwealth to Terminate this Deed. The Commonwealth retains the sole right to Terminate this Deed.
- 2.3 The Commonwealth may vary the Sanctions at any time during the Term by giving notice in writing to the Company.

3 GENERAL ARRANGEMENTS FOR THE APPLICATION OF SANCTIONS

- 3.1 Any decision to impose Sanctions will include consideration of:
- 3.1.1 the extent of the Major Non-Performance under this Deed;
 - 3.1.2 the level of cooperation and assistance from the Company in the investigation;
 - 3.1.3 the Company's performance history;
 - 3.1.4 the scale and impact of the Major Non-Performance;
 - 3.1.5 any remedial action taken or planned by the Company;
 - 3.1.6 the CSO Operational Guidelines, as amended from time to time, by the Commonwealth; and
 - 3.1.7 any extenuating circumstances or other considerations.
- 3.2 The Administration Agency has the discretion to determine the extent to which or whether the Company's Major Non-Performance should attract the financial and/or non-financial Sanctions referred to in this Schedule.
- 3.3 The Company:
- 3.3.1 recognises that the Commonwealth must comply with public accountability requirements, including the specific *Public Governance, Performance and*

- Accountability Act 2013* audit and accountability requirements, in the expenditure of public money;
- 3.3.2 agrees that it is reasonable that this Deed includes Obligations, including the CSO Compliance Requirements and CSO Service Standards, that must be adhered to by the Company; and
- 3.3.3 agrees that it is reasonable that this Deed includes financial and non-financial Sanctions that may be applied for Major Non-Performance and must comply in full with any Sanction imposed by the Administration Agency on the Company, as a result of the Major Non-Performance, in accordance with this Schedule.
- 3.4 Where, in the Administration Agency's view, the Company has failed to meet any of their Obligations under this Deed, including, but not limited to:
- 3.4.1 meeting the CSO Compliance Requirements and/or the CSO Service Standards in accordance with Schedule 1, including the applicable Thresholds for Sales to Rural and Remote Pharmacies and/or Sales of Low Volume PBS Medicines; and/or
- 3.4.2 submitting Data and Reports in accordance with Schedule 3,
- and such Non-Performance represents a Major Non-Performance, the Administration Agency may apply financial and/or non-financial Sanctions.
- 3.5 In circumstances where the Company has already received Payment/s and the Administration Agency has ascertained that the Company did not meet one or more of its Obligations under this Deed in the Month/s in which the Payment/s were made, the Administration Agency may apply financial and/or non-financial Sanctions and adjust the Payment/s made to the Company accordingly.
- 3.6 The Administration Agency will notify the Company, in writing, of any decision to apply the financial and/or non-financial Sanction, in accordance with Schedule 5, and the Month or Months to which the Sanction/s apply. Where Sanctions are applied in respect of NDSS Distribution Services, the Administration Agency will also notify the NDSS Administrator.
- 3.7 For the duration of the Term, CSO Distributors will be notified in writing by the Administration Agency of any Non-Performance of their Obligations under this Deed and will be required to produce a statement explaining the reason/s for any identified failures and, if requested by the Administration Agency, the strategy to be adopted to prevent further occurrences.
- 3.8 The Administration Agency will take into account the reasons and information provided by the Company, in response to this written notification, and on this basis, may deem that:
- 3.8.1 Non-Performance has not occurred and Sanctions will not apply;
- 3.8.2 a Minor Non-Performance has occurred;
- 3.8.3 a Major Non-Performance or a Minor Non-Performance has occurred but Sanctions will not apply; or
- 3.8.4 a Minor Non-Performance or a Major Non-Performance has occurred and Sanctions will apply.
- 3.9 The Administration Agency has the sole discretion in determining the Sanctions to be applied. However, in the event that the Company is dissatisfied with this determination, the Company may refer this determination, in writing, to the

Commonwealth's Authorised Officer or the Commonwealth's nominee. The decision made by the Commonwealth's Authorised Officer or nominee will be final and binding.

- 3.10 The application of Sanctions and any distribution of the National and State Based Sanctions Pools will be calculated in accordance with the principle that a Non-Performing CSO Distributor will not be permitted to benefit unreasonably from the application of Sanctions and, in particular, the principle that a Non-Performing CSO Distributor will not be permitted to benefit from a Sanction that has been applied against it.
- 3.11 The application of the Sanctions does not limit the remedies available to the Commonwealth and the Administration Agency under this Deed.
- 3.12 For the avoidance of doubt:
- 3.12.1 a Non-Performance only in relation to the supply of PBS Medicines will not attract a Sanction which affects amounts payable to the Company in connection with NDSS Distribution Services. Similarly, a Non-Performance only in relation to the NDSS Distribution Services will not attract a Sanction which affects amounts payable to the Company from the CSO Funding Pool; and
- 3.12.2 A Sanction imposed in connection with the NDSS Distribution Services is recoverable only out of amounts paid or payable to the Company in connection with the Supply Component relating to NDSS Products supplied.

4 ARRANGEMENTS FOR THE APPLICATION OF SANCTIONS FOR NATIONAL CSO DISTRIBUTORS

- 4.1 If financial Sanctions are not applied to all National CSO Distributors in a Month, the value of the financial Sanctions applied to National CSO Distributors in that Month (the **Sanctions Month**) will be deducted from the National CSO Funding Pool amount for that Month and transferred to a separate National Sanctions Pool. The value of the financial Sanction applied to a National CSO Distributor in a Month will be deducted from the Payment to be made to that National CSO Distributor from the National CSO Funding Pool amount for that Month.
- 4.2 The National Sanctions Pool for the Sanctions Month will be distributed in the next applicable Payment period to those National CSO Distributors who did not incur any financial Sanctions in the Sanctions Month.
- 4.3 If the Administration Agency determines that financial Sanctions should be applied to all National CSO Distributors in a Month, the Administration Agency will withhold part or all of the Payment to be made to each National CSO Distributor for that Month. This amount will not be transferred to the National Sanctions Pool, but will be withheld until such time as the Administration Agency determines that the National CSO Distributors have rectified the Non-Performance issue. This amount will then be returned to the National CSO Distributors at the same time as the Monthly Payment due after the rectification.
- 4.4 This clause applies in addition to any guidelines issued under clause 3.1.6 of this Schedule.

5 ARRANGEMENTS FOR THE APPLICATION OF SANCTIONS FOR STATE BASED CSO DISTRIBUTORS

- 5.1 Subject to clause 5.3 of this Schedule, if there is only one State Based CSO Distributors, and a financial Sanction is applied to that State Based CSO Distributor in a Month, the value of the financial Sanction applied to that State Based CSO Distributor will be deducted from the Payment to be made to that State Based CSO Distributor from the State Based CSO Funding Pool amount for that Month and transferred to the National Sanctions Pool. Distribution of the National Sanctions Pool will be in accordance with clause 4 of this Schedule.
- 5.2 Subject to clause 5.3 of this Schedule, if there is more than one State Based CSO Distributor:
- 5.2.1 the value of any financial Sanctions applied to State Based CSO Distributors in a Month will be deducted from the State Based CSO Funding Pool amount for that Month and transferred to a separate State Based Sanctions Pool. The value of the financial Sanction applied to a State Based CSO Distributor in a Month will be deducted from the Payment to be made to that State Based CSO Distributor from the State Based CSO Funding Pool amount for that Month; and
 - 5.2.2 the State Based Sanctions Pool for the Sanctions Month will be distributed in the next applicable Payment period to those State Based CSO Distributors who did not incur any financial Sanctions in the Sanctions Month; or
 - 5.2.3 if the Administration Agency determines that financial Sanctions should be applied to all State Based CSO Distributors in a Month, the Administration Agency will withhold part or all of the Payment to be made to each State Based CSO Distributor for that Month. This amount will not be transferred to the State Based Sanctions Pool, but will be withheld until such time as the Administration Agency determines that the CSO Distributor has rectified the Non-Performance issue. This amount will then be returned to the CSO Distributor at the same time as the Monthly Payment due after the rectification.
- 5.3 If the Administration Agency determines that financial Sanctions should be applied to all CSO Distributors (National and State Based) in a Month, the Administration Agency will withhold part or all of the Payment to be made to each CSO Distributor for that Month. This amount will not be transferred to the National or State Based Sanctions Pool, but will be withheld until such time as the Administration Agency determines that the CSO Distributor has rectified the Non-Performance issue. This amount will then be returned to the CSO Distributor at the same time as the Monthly Payment due after the rectification.
- 5.4 This clause applies in addition to any guidelines issued under clause 3.1.6 of this Schedule.

**6 ARRANGEMENTS FOR THE APPLICATION OF SANCTIONS
RELATING TO NDSS DISTRIBUTION SERVICES**

- 6.1 If the Administration Agency determines that financial Sanctions should be applied to the Company in a Month, the Administration Agency will notify the NDSS Administrator, and the NDSS Administrator will withhold part or all of the Payment to be made to the Company for that Month. This amount will be withheld until such time as the Administration Agency determines that the Company has rectified the Non-Performance issue. This amount will then be returned to the Company at the same time as the Monthly Payment due after the rectification.
- 6.2 This clause applies in addition to any guidelines issued under clause 3.1.6 of this Schedule.

7 SANCTIONS APPLIED TO MAJOR NON-PERFORMANCE AGAINST CSO COMPLIANCE REQUIREMENTS

Non-Performance issue	Sanction	Remedial Obligations
7.1 Failure to meet any single CSO Compliance Requirement.	<p>The Administration Agency may, after giving consideration to the extent and reasons for the Non-Performance, the Company's performance history and the CSO Operational Guidelines:</p> <ul style="list-style-type: none"> • decide not to apply any Sanctions. • reduce or withhold, or determine that the NDSS Administrator should reduce or withhold, all or part of the Payment to the Company until such a time as the Non-Performance is remedied. • determine that no Payment will be made to the Company for the Month or Months until the Non-Performance is remedied. • recommend to the Commonwealth that this Deed be Terminated. 	<p>After notification, the Company must submit a written statement with information explaining the Non-Performance and the strategy to be adopted to prevent further occurrences.</p> <p>The Administration Agency may require the Company to submit a formal Remedial Business Plan that specifies a timeframe, measurable milestones, and activities that the Company will undertake to rectify the Non-Performances. When approved by the Administration Agency, this Remedial Business Plan will be deemed to be included in this Deed.</p>

8 SANCTIONS APPLIED TO MAJOR NON-PERFORMANCE AGAINST CSO SERVICE STANDARDS

Non-Performance issue	Sanction	Remedial Obligations
8.1 Failure to meet any single CSO Service Standard.	<p>The Administration Agency may, after giving consideration to the extent and reasons for the Non-Performance, the Company's performance history and the CSO Operational Guidelines:</p> <ul style="list-style-type: none"> • decide not to apply any Sanctions. • reduce or withhold, or determine that the NDSS Administrator should reduce or withhold, all or part of the Payment to the Company until such a time as the Non-Performance is remedied. • determine that no Payment will be made to the Company for the Month or Months until the Non-Performance is remedied. • recommend to the Commonwealth that this Deed be Terminated. 	<p>After notification, the Company must submit a written statement with information explaining the Non-Performance and the strategy to be adopted to prevent further occurrences.</p> <p>The Administration Agency may require the Company to submit a formal Remedial Business Plan that specifies a timeframe, measurable milestones, and activities that the Company will undertake to rectify the Non-Performances. When approved by the Administration Agency, this Remedial Business Plan will be deemed to be included in this Deed.</p>

9 SANCTIONS APPLIED FOR MAJOR NON-PERFORMANCE IN RELATION TO THE NON-PROVISION OF DATA AND REPORTS

9.1 The Company must contact the Administration Agency, within one (1) Business Day following the due date, to inform it of any delay in Data and/or Report submission.

Non-Performance issue	Sanction	Remedial Obligations
9.2 Delay of up to 3 Business Days to submit required Monthly Data and/or Reports.	<p>The Administration Agency may:</p> <ul style="list-style-type: none"> • decide not to apply any Sanctions; • reduce, or determine that the NDSS Administrator will reduce, the amount of a Payment by up to 10% for each Non-Performance; or • withhold, or determine that the NDSS Administrator will withhold, all or part of the Payment to the Company until such a time as the Non-Performance is remedied. 	The Company must provide written advice as to the reason for the delay.
9.3 Delay of between 3 and 14 Business Days to submit required Monthly Data and/or Reports.	<p>The Administration Agency may:</p> <ul style="list-style-type: none"> • decide not to apply any Sanctions; • impose, or determine that the NDSS Administrator will impose, a reduction in Payment of up to 20% for each Non-Performance; or • withhold, or determine that the NDSS Administrator will withhold, all or part of the Payment to the Company until such a time as the Non-Performance is remedied. 	<p>After notification, the Company must submit a written statement with information explaining the Non-Performance and the strategy to be adopted to prevent further occurrences.</p> <p>The Administration Agency may require that the Company create a formal Remedial Business Plan for achieving on-time delivery of Data and/or Reports. When approved by the Administration Agency, this Remedial Business Plan will be deemed to be included in this Deed.</p>
9.4 Delay of 15 or more Business Days to submit required Monthly Data and/or Reports.	<p>The Administration Agency may reduce or withhold, or determine that the NDSS Administrator will reduce or withhold, all or part of the Payment by any amount it deems appropriate or determine that no Payment will be made for that Month.</p> <p>If this occurs on 3 or more occasions in a 12 Month period then the Administration Agency may recommend to the Commonwealth that this Deed be Terminated.</p>	After notification, the Company must submit a written statement with information explaining the Non-Performance and the strategy to be adopted to prevent further occurrences.
9.5 Data and/or Reports are not provided in the required format and/or are incomplete, and/or have significant errors or inaccuracies.	<p>The Administration Agency may:</p> <ul style="list-style-type: none"> • decide not to apply any Sanctions; • reduce, or determine that the NDSS Administrator will reduce, the amount of the Payment for that Month by 10% for each Non-Performance that is not remedied within 2 Business Days; or • withhold, or determine that the NDSS Administrator will withhold, all or part of the Payment to the Company until such a time as the 	The Company must re-submit the Data and/or Reports in the correct format to the Administration Agency within 2 Business Days of notification by the Administration Agency of the Non-Performance.

	Non-Performance is remedied.	
--	------------------------------	--

10 SANCTIONS APPLIED TO MAJOR NON-PERFORMANCE AGAINST A REMEDIAL BUSINESS PLAN

Non-Performance issue	Sanction	Remedial Obligations
10.1 Failure of the Company to adhere to a Remedial Business Plan that has been developed to rectify another Non-Performance issue.	<p>The Administration Agency may, after giving consideration to the extent and reasons for the Non-Performance, the Company's performance history and the CSO Operational Guidelines:</p> <ul style="list-style-type: none"> • decide not to apply any Sanctions. • reduce or withhold, or determine that the NDSS Administrator will reduce or withhold, all or part of the Payment to the Company until such a time as the Non-Performance is remedied. • determine that no Payment will be made to the Company for the Month or Months until the Non-Performance is remedied. • recommend to the Commonwealth that this Deed be Terminated. 	After notification, the Company must submit a written statement with information explaining the Non-Performance and the strategy to be adopted to prevent further occurrences.

11 SANCTIONS APPLIED FOR A MAJOR NON-PERFORMANCE IN RELATION TO FAILURE TO NOTIFY THE ADMINISTRATION AGENCY OF ANY EXCLUSIVE SUPPLY ARRANGEMENTS

Non-Performance issue	Sanction	Remedial Obligations
11.1 Failure to notify the Administration Agency of any Exclusive Supply Arrangement in which it is participating.	<p>The Administration Agency may, after giving consideration to the extent and reasons for the seriousness of the non-disclosure, the Company's performance history and the CSO Operational Guidelines:</p> <ul style="list-style-type: none"> • recalculate and/or reduce, or determine that the NDSS Administrator will recalculate and/or reduce, the Payments to the Company engaged in any Exclusive Supply Arrangement for the Month or Months where the Exclusive Supply Arrangement was in place. 	<p>After notification, the Company must submit a written statement with information:</p> <ul style="list-style-type: none"> • explaining the reasons for the non-disclosure; • providing details about when the Company became involved in or aware of any Exclusive Supply Arrangement; • providing details of what PBS Medicines are subject to an Exclusive Supply Arrangement; and • where applicable, providing evidence of when the Company entered in an Exclusive Supply Arrangement; <p>within 3 Business Days of receiving this notice.</p>

SCHEDULE 6 – ADMINISTRATION ROLES

Part A – Role of Administration Agency

- assessing payment claims by the Company in relation to PBS Medicines and allocating the CSO Funding Pool on the basis of approved claims;
- calculating the Supply Component of Payments in relation to NDSS Distribution Services based on information from the NDSS Administrator;
- ensuring the ongoing compliance of the Company with all its Obligations under the Deed, including the CSO Compliance Requirements and CSO Service Standards;
- monitoring the effect of any terms and conditions applied by the Company to Daily orders. This will form a part of a regular report from the Administration Agency to the Commonwealth;
- considering requests to increase any existing commercially acceptable fees applied to the Supply of PBS Medicines to Community Pharmacies. The Administration Agency will report to the Commonwealth on all fees applied to the Supply of PBS Medicines to Community Pharmacies, and on any increases to such fees which it approves and the reasons for doing so;
- receiving and resolving Complaints;
- providing a Help Desk service for the Company to receive information on matters such as Payments and the provision of Data and Reports;
- maintaining the CSO System;
- analysing and investigating Data; and
- conducting site audits of the Company's infrastructure.

Part B – Role of NDSS Administrator

- liaising with CSO Distributors, to the extent permitted under the Deed, in relation to queries Distributors have about the NDSS Distribution Services;
- calculating the Direct Cost and Delivery Components of NDSS Payments based on the Units of NDSS Products Supplied and the cost of those NDSS Products;
- providing information to the Administration Agency regarding the Units of NDSS Products delivered, to enable the Administration Agency to calculate the Supply Component;
- deducting sanctions as approved by the Administration Agency;
- participating in the Complaints Procedure as required to properly administer the NDSS; and
- overseeing, maintaining and supporting the ordering gateway for Access Points to order and receive NDSS Products from CSO Distributors.

SCHEDULE 7 – REMEDIAL BUSINESS PLAN

1 OBLIGATION OF THE COMPANY TO SUBMIT AND ADHERE TO A REMEDIAL BUSINESS PLAN TO RECTIFY NON-PERFORMANCE

- 1.1 The Company must, on request of the Administration Agency, submit and adhere to a Remedial Business Plan.
- 1.2 Where, in the Administration Agency's view, the Company has failed to demonstrate satisfactory progress against the Remedial Business Plan, the Administration Agency may apply the Sanctions referred to in Schedule 5.

2 FORMAT REQUIREMENTS OF THE REMEDIAL BUSINESS PLAN

- 2.1 At a minimum, the Remedial Business Plan must include timeframes, measurable milestones, and activities that will be undertaken by the Company. The Company must submit as part of its Remedial Business Plan any additional information requested by the Administration Agency or the Commonwealth.

[Schedule 7 Annexure A (containing the Remedial Business Plan as approved by the Administration Agency) will be inserted here]

SCHEDULE 8 – BUSINESS CONTINUITY PLAN

1 OBLIGATION OF THE COMPANY TO MAINTAIN A BUSINESS CONTINUITY PLAN

- 1.1 The Company must have and maintain a Business Continuity Plan.
- 1.2 The Business Continuity Plan must cater for extenuating or exceptional circumstances that may impact upon the Company's operations and compliance with any of their Obligations under this Deed, including the CSO Service Standards and CSO Compliance Requirements.
- 1.3 The Company agrees at all times to comply with the Business Continuity Plan and, whether or not a risk is identified in the Business Continuity Plan, to perform its Obligations under this Deed in a manner that facilitates effective identification, control, management and mitigation of risks in connection with this Deed.

2 FORMAT REQUIREMENTS OF THE BUSINESS CONTINUITY PLAN

- 2.1 The Business Continuity Plan must include practised activities and mitigating actions that will be undertaken by the Company to continue meeting its Obligations under this Deed, including the CSO Service Standards and CSO Compliance Requirements.
- 2.2 The Company's Business Continuity Plan must comply with the framework and process provided in the Australian Standard AS/NZS 5050:2010 'Business Continuity – Managing disruption-related risk'.
- 2.3 This Business Continuity Plan must:
 - 2.3.1 identify a wide range of risks and events that may affect the Company's ability to comply with its Obligations in a timely and uninterrupted manner;
 - 2.3.2 assess the likelihood of the occurrence of each risk or event, in accordance with the following ratings:
 - (a) almost certain;
 - (b) likely;
 - (c) possible;
 - (d) unlikely;
 - (e) rare;
 - 2.3.3 assess the consequence of the occurrence of each risk or event, in accordance with the following ratings:
 - (a) extreme;
 - (b) major;
 - (c) moderate;
 - (d) minor;
 - (e) insignificant;
 - 2.3.4 determine the overall level of each risk or event, in accordance with the following ratings:
 - (a) extreme;

- (b) high;
- (c) significant;
- (d) low;
- (e) negligible; and

2.3.5 identify and include comprehensive and appropriate response actions to enable continued compliance with its Obligations during and after a disruption, including but not limited to any disruption or outage of the System;

2.3.6 identify and include comprehensive and appropriate strategies to mitigate, minimise and resolve the disruption or outage; and

2.3.7 include an exercise Schedule in the Business Continuity Plan to be regularly practiced by the Company and its Personnel.

2.4 The Company must implement, maintain and, as necessary, update the Business Continuity Plan from time to time, or if directed by the Administration Agency.

EXECUTED as a Deed

Signed Sealed and Delivered for and on behalf)
of the **COMMONWEALTH OF AUSTRALIA** by an)
authorised officer of the Department of Health in)
the presence of:)

.....
Signature

.....
Signature of Witness

.....
Name of signatory

.....
Print full Name of Witness

.....
Position

Date of signing:/...../ 2016

Executed by **[INSERT]** acting by the following
persons or, if the seal is affixed, witnessed by the
following persons:

.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director (print)

.....
Name of director/company secretary (print)