

Confidential

Independent Verifier Deed

Northern Beaches Hospital

Health Administration Corporation and the Northern Sydney
Local Health District (together the **State**)

NBH Operator Co Pty Ltd in its capacity as trustee for the
NBH Operating Trust (**Operator**)

NBH Operator B Pty Ltd (**Operator B**)

Davis Langdon Australia Pty Ltd (**Independent Verifier**)

MinterEllison

L A W Y E R S

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Details

Date

Parties

Name **Health Administration Corporation**, a corporation sole constituted under section 9 of the *Health Administration Act 1982 (NSW)*
ABN 45 100 538 161
Short form name **HAC** and, together with NSLHD, the **State**
Notice details Chief Executive, Health Infrastructure
Level 8, 77 Pacific Highway
North Sydney NSW 2060
Facsimile: (02) 8904 1377
Email: sam.sangster@health.nsw.gov.au
Attention: Sam Sangster

Name **Northern Sydney Local Health District**
ABN 63 834 171 987
Short form name **NSLHD** and, together with HAC, the **State**
Notice details Chief Executive
Northern Sydney Local Health District
PO Box 4007
Royal North Shore Hospital LPO
St Leonards NSW 2065
Facsimile: (02) 9463 1029
Email: Vicki.taylor@health.nsw.gov.au
Attention: Adjunct Associate Professor Vicki Taylor

Name **NBH Operator Co Pty Ltd**
ACN 169 029 181
Capacity and ABN In its capacity as trustee for the NBH Operating Trust ABN 83 722 380 020
Short form name **Operator**
Notice details Level 1, 312 St Kilda Road, Melbourne VIC 3004
Facsimile: 61 3 9926 7553
Email: healthscope@northernbeacheshospital.com.au
Attention: General Counsel

Name **NBH Operator B Pty Ltd**
ACN 602 943 911
Short form name **Operator B**
Notice details Level 1, 312 St Kilda Road, Melbourne VIC 3004
Facsimile: 61 3 9926 7553
Email: healthscope@northernbeacheshospital.com.au
Attention: General Counsel

Name Davis Langdon Australia Pty Ltd
ABN 40 008 657 289
Short form name **Independent Verifier**
Notice details Level 21, 420 George Street, Sydney NSW 2000
Facsimile: 61 2 8934 0001
Email: gtrain@davislangdon.com.au
Attention: Gary Train

Background

- A The parties have entered into this document to appoint the Independent Verifier as the independent verifier for the purposes of the Project.
- B By entering into this document the Independent Verifier accepts its appointment under this document and agrees to carry out its obligations and fulfil its functions under this document and under the Project Deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Commercially Sensitive Information means:

- (a) any information relating to the Financing Facilities;
- (b) any information relating to the Operator or the Independent Verifier's cost structure or profit margins;
- (c) any information relating to any of the Operator or the Independent Verifier's Proprietary Material; or
- (d) any information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to the Operator or the Independent Verifier or the Operator's or the Independent Verifier's shareholders, financiers or subcontractors,

including but not limited to the information described in Schedule 3.

Dispute Representatives has the meaning given to that term in clause 15.2.

Fee means the fee as set out in the Payment Schedule.

HAC means Health Administration Corporation (ABN 45 100 538 161), a corporation sole constituted under section 9 of the *Health Administration Act 1982* (NSW).

IV Representative means the person from time to time appointed in accordance with clause 2.1A.

NSLHD means Northern Sydney Local Health District.

Obligations means:

- (a) each obligation, function, task, duty or service contemplated to be performed by the Independent Verifier under this document, including the obligation to perform each of the Services;
- (b) without limiting paragraph (a), all other things and tasks not described in this document, if those things and tasks should have been reasonably anticipated by an experienced and competent professional provider of the Services as being necessary for the performance of the Services or which are otherwise capable of inference from this document; and
- (c) each obligation, function, task, duty or service contemplated to be performed by the Independent Verifier under the Project Deed in the manner and to the extent such obligations, functions, tasks, duties or services are described in Schedule 1.

Payment Schedule means Schedule 2 of this document.

Project Breach means a breach by the Operator of any of its obligations under the Project Deed.

Project Deed means the deed entitled '*Project Deed – Northern Beaches Hospital*' dated on or about the date of this document between the State, Operator B and the Operator.

Representative means an officer, employee or agent of the Independent Verifier, who is appointed by the Independent Verifier to perform any of the Obligations.

Services means those services listed in Schedule 1.

State means HAC and the NSLHD.

Substitute Verifier has the meaning given to that term in clause 8.

Surviving Clauses has the meaning given to that term in clause 17.9.

1.2 Definitions in Project Deed

Subject to clause 1.1, terms used in this document that are defined in the Project Deed have the same meanings in this document.

1.3 Interpretation

The parties agree to be bound by clause 1.2 of the Project Deed as if set out in its entirety in this clause 1.3, except that for the purposes of this document:

- (a) clause 1.2(c) of the Project Deed will be deemed to be omitted;
- (b) references in clause 1.2 of the Project Deed to 'this document' or 'the Project Deed' shall be read as references to 'this document'; and
- (c) references in clause 1.2 of the Project Deed to 'the Operator' shall be read as references to 'the Operator and the Independent Verifier'.

1.4 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under, in relation to or in connection with this document howsoever such rights, obligations or liabilities are sought to be enforced.

1.5 Multiple parties

If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party:

- (a) (other than in relation to clause 2.2) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

1.6 Client Representative

The State must procure that the parties to this document are notified, within 5 Business Days after the date of the appointment of the Client Representative, of the identity and address of the Client Representative, and, as soon as practicable, of any changes in the identity or address of the Client Representative

1.7 No liability

Subject only to the terms of the Project Deed in respect of the Operator, notwithstanding the terms of this document, the State shall not be liable to the Operator or the Independent Verifier under this document or otherwise and neither the Operator or the Independent Verifier shall have any entitlement under this document or otherwise for an act or omission of the State or any State Related Party to the extent that the State's act or omission is caused by an act or omission of the Operator, an Operator Related Party or the Independent Verifier.

1.8 Approvals and consents

- (a) For the avoidance of doubt, in respect of all approvals, consents, decisions or exercises of discretion required to be given or made by the State or the Client Representative:

- (i) relating to, or arising under or in connection with this document;
- (ii) relating to the satisfaction of a condition precedent pursuant to the terms of this document; or
- (iii) sought in relation to or in connection with, or referable to, or determinative of, the occurrence of any Project Breach,

and regardless of whether the requirement of the approval, consent, decision or exercise of discretion is express or implied, the State or the Client Representative (as the case may be), has or have the right to give or make its approval, consent or decision or exercise its discretion conditionally or unconditionally or to withhold its approval, consent, decision or exercise of discretion but in giving or withholding its approval, consent, decision or exercise of discretion, or in imposing any conditions, the State or the Client Representative (as the case may be) must act reasonably.

- (b) Without limitation, the State or the Client Representative will not be acting unreasonably if, in giving or withholding any approval or consent, or in imposing any conditions, the State or the Client Representative:
 - (i) acts in accordance with relevant government policies;
 - (ii) adopts a "whole of government" approach; or
 - (iii) acts to protect its reputation.

1.9 Novation to State Nominee

The parties acknowledge that:

- (a) each of HAC and the NSLHD may separately, at any time, elect to assign or novate its rights and obligations under this document to a nominee being an agency of the NSW Government (**State Nominee**); and
- (b) if HAC or the NSLHD elects to assign or novate its rights and obligations under this document to a State Nominee:
 - (i) each of the parties consents to that assignment or novation;
 - (ii) the parties must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Independent Verifier, HAC or the NSLHD (as applicable) and the State Nominee) to give effect to that assignment or novation;
 - (iii) the State Nominee's rights and liabilities under this document will be supported by a guarantee from the NSW Government on terms no less favourable than those contained in the PAFA Act Guarantee; and
 - (iv) from the date of such assignment or novation to the State Nominee:
 - (A) this clause 1.9 will be deleted; and
 - (B) all references to 'the State' in this document will be deemed to include references to the State Nominee in place of HAC or the NSLHD (as applicable).

1.10 Conditions Precedent

- (a) This document (other than this clause 1.10 and clauses 16 and 17) is conditional upon the satisfaction or waiver of the Conditions Precedent in accordance with clause 3 of the Project Deed.

- (b) If the Conditions Precedent are not satisfied or waived in accordance with the Project Deed, this document automatically terminates and none of the parties have any liability to other parties or each other arising out of or relating to any such termination.

1.11 Relations between Operator B and Operator

Clause 1.11 of the Project Deed applies to this document as if set out in full in this document, with any necessary amendments.

2. Appointment of Independent Verifier

2.1 Appointment of Independent Verifier

- (a) The State and the Operator jointly appoint the Independent Verifier under this document to perform the Obligations.
- (b) The Independent Verifier confirms its acceptance of the appointment referred to in clause 2.1(a).

2.1A IV Representative

The Independent Verifier must, following consultation and agreement with the State and the Operator as to the identity of the IV Representative, appoint the IV Representative who:

- (a) must be a natural person and who may exercise the powers, duties, discretions and authorities of the Independent Verifier under this document as agent for the Independent Verifier; and
- (b) will have the full power and authority to act for and on behalf of and to bind the Independent Verifier under this document.

Actions of the IV Representative are binding on the Independent Verifier.

2.2 Payment

The Operator and the State must each pay to the Independent Verifier 50% of the Fee in accordance with the Payment Schedule.

3. Independent Verifier's Obligations

3.1 Acknowledgments by Independent Verifier

The Independent Verifier acknowledges and agrees that:

- (a) it has received a copy of the Project Deed and that it has read, and is familiar with the terms of that document;
- (b) it must perform the Obligations;
- (c) the Obligations extend to and include the obligations, functions, duties and services of the 'Independent Verifier' as described in the Project Deed; and
- (d) the Services are not intended to be a complete description of the Obligations under the Project Deed or any other document.

3.2 Key personnel

- (a) The Independent Verifier must provide experienced and skilled personnel to perform the Obligations and must within 10 Business Days of the date of this document give written notice to the Operator and the Client Representative of the identity and contact details of such personnel.
- (b) The Independent Verifier must ensure that any of its Representatives:

- (i) perform the services required of their respective positions;
- (ii) are not removed without the prior written consent of the Client Representative and the Operator (which consent must not be unreasonably withheld or delayed), and if any such Representative is removed, they must be replaced by a person of at least equivalent skill and experience; and
- (iii) are available for consultation as the Client Representative or the Operator may reasonably require from time to time.

3.3 Subcontracting

The Independent Verifier:

- (a) may not subcontract the performance of any of the Obligations without the prior written consent of the Client Representative and the Operator (which consent must not be unreasonably withheld or delayed);
- (b) remains responsible for the performance of the Obligations in accordance with this document, notwithstanding any such subcontracting; and
- (c) must ensure that any subcontract includes a provision to the effect that, to the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under, in relation to, or in connection with the subcontract howsoever such rights, obligations or liabilities are sought to be enforced.

3.4 Quality assurance

- (a) The Independent Verifier must implement a quality system in accordance with ISO9000, and otherwise in a form reasonably acceptable to the Client Representative and the Operator to ensure performance of the Obligations with the requirements of this document.
- (b) The Independent Verifier will not be relieved of any requirement to perform any Obligations as a result of:
 - (i) performance with the quality assurance requirements of this document; or
 - (ii) any acts or omissions of the other parties with respect to the quality assurance requirements of this document, including any audit under clause 3.5 of this document.

3.5 Audit

- (a) The Independent Verifier must:
 - (i) allow any audit of its quality assurance system under this document by a third party, at the request of the Client Representative or the Operator; and
 - (ii) fully co operate with that third party in respect of the carrying out of the quality assurance audit.
- (b) Without limiting the foregoing, the Independent Verifier must, at all times:
 - (i) give to the third party access to premises occupied by the Independent Verifier where the Obligations are being undertaken; and
 - (ii) permit the third party to inspect applicable information relevant to the quality assurance audit.

3.6 Information provided to Independent Verifier

The Independent Verifier is entitled to rely on information provided to it by either of the State or the Operator as being true and correct in all material respects unless:

- (a) such information is:
 - (i) manifestly incorrect;
 - (ii) provided on a qualified basis; or
 - (iii) actually known or ought to have been known by the Independent Verifier to be untrue or incorrect; or
- (b) the State or the Operator (as the case may be) subsequently informs the Independent Verifier of any change to the information provided to it.

3.7 Reporting

- (a) The Independent Verifier must submit a written report to the Client Representative and the Operator:
 - (i) each month and at least 3 Business Days before each meeting scheduled under clause 3.7(b);
 - (ii) which is tailored to the phase of the Project Program at the time of the report and contains an executive summary of key aspects of that report;
 - (iii) which includes:
 - (A) details and status of previously identified and any new key issues in relation to the Project Works or the Project Program, including recommendation on actions or measures which may be taken to resolve those issues;
 - (B) details of key Services performed by the Independent Verifier in the immediately preceding month, including all documents prepared by the Independent Verifier in connection with the Services;
 - (C) details of key Project Works anticipated in the succeeding month, including details of:
 - (I) documents or reports to be produced by the Independent Verifier in connection with the Services;
 - (II) reviews or certifications required in connection with the Project Works; and
 - (III) any key decisions by the Client Representative, the Operator or any Key Subcontractor in connection with the Project Works which may have an impact the Independent Verifier's performance of the Services;
 - (D) compliance by the Client Representative and the Operator of their respective responsibilities which may have an impact on the Independent Verifier's performance of the Services;
 - (E) an annotated Project Program showing:
 - (I) the status and estimated progress of the Independent Verifier's performance of the Services;

- (II) the actual progress of the Project Works up to the date of the report; and
 - (III) the remainder of the Project Works to be completed,
- with respect to the Project Program, including details of any known delay and its impact on the Project Program;
- (F) details of any issues which may have an impact on the Base Case or the scope of the Project;
 - (G) details and status of any Change proposed in connection with the design of the Facility or the Project Works and any other key risk issues the Independent Verifier is aware of; and
 - (H) details of the decisions required to be made by the Independent Verifier, the Client Representative and the Operator at that meeting; and
- (iv) in such form and covering such other matters in respect of the Services and the Project as may be reasonably required by either the Client Representative or the Operator and notified to the Independent Verifier.
- (b) The Independent Verifier, the Client Representative and the Operator agree to meet at intervals of not more than one month or such other period as is agreed by the Client Representative and the Operator, to discuss any matters relating to the Project Works or the Project Program (including matters arising from the report prepared by the Independent Verifier in accordance with clause 3.7(a)).

4. Notifications

The Independent Verifier agrees to promptly notify the State and the Operator if it becomes aware in the course of performing the Obligations:

- (a) that any matter stated or certified by a Designer, the Construction Contractor, or the Operator or certificate provided under any Project Document is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which in its reasonable opinion:
 - (i) may materially or adversely affect the Construction Contractor or Operator's ability to achieve Technical Completion by the Date for Technical Completion or Final Completion by the Date for Final Completion;
 - (ii) it considers to be, in the context of the Project, of material interest to the State and/or the Operator;
 - (iii) may involve a material breach of any Project Document; or
 - (iv) may involve a material dispute between any party to any Project Document or any other person in relation to a Project Document or the Project.

5. Benefit of Independent Verifier's Obligations

The Independent Verifier:

- (a) acknowledges and agrees that:
 - (i) each of the State and the Operator:

- (A) is relying upon its skill and experience in the performance of the Obligations; and
 - (B) may suffer Loss if it does not perform the Obligations in accordance with the requirements of this document; and
- (ii) it has no authority to:
- (A) give directions to the State or the Operator other than may (if at all) be expressly set out in this document or any of the documents referred to in Schedule 1;
 - (B) waive or alter any terms of the Project Documents; or
 - (C) discharge or release a party from any of its obligations pursuant to the Project Documents;
- (b) warrants to the State and the Operator that at all times during the performance of the Obligations:
- (i) it will comply with all Laws;
 - (ii) it will act within the time requirements for the performance of the Obligations;
 - (iii) it will attend the Site and conduct all physical inspections of the Project Works, the Facility and the Site necessary or appropriate to the performance of the Obligations;
 - (iv) it must do so in a manner which will not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Operator and the Construction Contractor), except where it is the unavoidable consequence of performing the Obligations; and
- (c) warrants to the State and the Operator that:
- (i) at the date of signing this document, no conflict of interest (actual or perceived) exists or is likely to arise in the performance of its obligations under this document or the Project Deed;
 - (ii) it will not, during the performance of the Obligations, undertake any activities, work or provide any services that may give rise to a conflict or risk of conflict of interest; and
 - (iii) if, during the performance of the Obligations, any conflict or risk of conflict of interest arises, the Independent Verifier will notify the parties immediately of that conflict or risk and take such action to avoid or mitigate the conflict or risk of conflict of interest as the parties may require.

6. Independent Verifier to be independent

The Independent Verifier warrants to each of the State and the Operator that in the performance of the Obligations and that in respect of any obligation which requires the Independent Verifier to independently certify or determine (as applicable) any matter, it will:

- (a) act independently of each of the State and the Operator;
- (b) owe a duty of care and professional responsibility to each of the State and the Operator in connection with the performance of the Obligations;

- (c) act honestly, reasonably and with the degree of professional care, knowledge, experience, skill and diligence which may reasonably be expected of a firm of engineers experienced in the performance of the same or similar services to the Obligations;
- (d) act within the time prescribed under each of the Project Deed, and this document, or, where no time is prescribed, within a reasonable time;
- (e) arrive at a reasonable measure or value of work, quantities or time (if applicable);
- (f) immediately notify the Client Representative and the Operator in writing upon becoming aware of the existence or possibility of a conflict of interest; and
- (g) not act for a Debt Financier or a Subcontractor in respect of the Project.

7. State and Operator to have no Liability

Each of the State, the Operator and the Independent Verifier acknowledges and agrees that neither the State nor the Operator is, nor will they be taken to have a liability, or to have assumed or become (on enforcement of any of its powers or otherwise), liable:

- (a) to any party to this document by reason alone of that party being a party to this document; or
- (b) for the performance of any obligation of any other party under this document or the Project Deed.

This clause 7 does not apply to relieve any party from any obligation under this document.

8. Change to Obligations, Suspension of Obligations and Appointment of Substitute Verifier

- (a) The State and the Operator may, by written notice to the Independent Verifier jointly signed by them, direct the Independent Verifier to carry out a change to the Obligations (including an addition or omission) which is within the general scope of this document, and the Independent Verifier must comply with that direction.
- (b) The Fee to be paid to the Independent Verifier in relation to a change to the Obligations referred to in clause 8(a) will be determined in accordance with the schedule of rates set out in the Payment Schedule. If an amount for the change to the Obligations cannot be determined by reference to the schedule of rates, the amount will be a reasonable amount determined by the Operator and the State.
- (c) The State and the Operator may, by written notice to the Independent Verifier jointly signed by them, direct the Independent Verifier to suspend any or all of the Obligations for the period of time specified in that notice.
- (d) The Independent Verifier acknowledges and agrees that the parties may appoint another verifier (**Substitute Verifier**) to carry out those Obligations which are omitted as a result of a change to the Obligations as directed under clause 8(a), and any decision of a Substitute Verifier appointed shall be treated (between the State and the Operator but not as between the State, the Operator and the Independent Verifier) as if it is a decision of the Independent Verifier, and the Substitute Verifier shall have all of the rights and powers of the Independent Verifier under the Project Deed in connection with those Obligations.
- (e) Notwithstanding a change to the Obligations or the appointment of a Substitute Verifier, the Independent Verifier must continue to perform the Obligations, as varied in accordance with this clause 8, in accordance with this document. Without prejudice to

any claim in respect of the performance of the Independent Verifier, the Independent Verifier is not responsible for the performance of the Substitute Verifier.

9. Obligations of the State and the Operator

9.1 No interference or influence

- (a) Subject to clause 9.1(b), the State, the Client Representative and the Operator must not interfere or attempt to influence the Independent Verifier in the performance of the Obligations.
- (b) Clause 9.1(a) will not prevent either the Client Representative or the Operator from providing information or written submissions to the Independent Verifier setting out that party's opinion on a particular matter relating to this document or the Obligations, provided that nothing in this clause 9.1(b) itself will require the Independent Verifier to act in accordance with that information or written submission. If a party provides any information or written submissions to the Independent Verifier then that party must, at the same time, provide a copy of such information and submissions to each other party.

9.2 Cooperation

Without limiting their obligations under clause 9.1, each of the State, the Client Representative and the Operator must:

- (a) co operate with the Independent Verifier;
- (b) provide all necessary information and documents within its possession, custody or control to the Independent Verifier; and
- (c) procure for the Independent Verifier access to such premises owned, leased or licensed to it as may be reasonably necessary,

to enable the Independent Verifier to perform the Obligations.

10. General Representations and Warranties of Independent Verifier

- (a) The Independent Verifier represents and warrants that:
 - (i) it is a company, duly incorporated and existing under Australian Law and has the power to execute, deliver and perform the Obligations and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) the information provided by it in connection with this document is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
 - (iii) the Obligations are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and Laws in respect of the enforcement of creditors' rights;
 - (iv) the execution, delivery and performance of this document by it will not contravene any Law to which it is subject or any deed or arrangement binding on it;
 - (v) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);

- (vi) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its Obligations; and
 - (vii) it has not acted for a Debt Financier or a Subcontractor in respect of the Project.
- (b) Except as otherwise provided, each representation and warranty contained in this document:
- (i) is made on the date of this document; and
 - (ii) will be deemed to be repeated immediately before each notice or certificate is issued by the Independent Verifier under this document or the Project Deed, with reference to the facts and circumstances then subsisting.

11. Assignment

11.1 Assignment by Independent Verifier

- (a) Except as set out in this document, the Independent Verifier may not assign or transfer its rights or obligations under this document without the prior written consent of the State and the Operator (which may be given or withheld in their absolute discretion and with or without conditions).
- (b) The Independent Verifier must not create or allow to exist any Security Interest over its rights under this document.

11.2 Assignment by State

The State may at any time assign its rights under this document at any time to any entity which succeeds to the rights of the State under the Project Deed and must promptly give the Independent Verifier written notice of any such assignment.

11.3 Assignment by Operator

- (a) Without limiting clause 86 of the Project Deed, the Operator may at any time assign (in whole or part) its rights and obligations under this document at any time to any entity to which it assigns its rights under and in accordance with the Project Deed and must promptly give the Independent Verifier written notice of any such assignment.
- (b) The parties consent to the grant by the Operator of any Security Interest contemplated by the Project Documents and the Financing Agreements over the Operator's assets (including its rights and interests under this document).

12. Insurance and Indemnity

12.1 Liability

- (a) Subject to clause 12.1(b), the Independent Verifier's liability to the Operator and the State for all Claims and Loss under this document and the Project Deed for the performance or non-performance of the Services howsoever arising whether under contract, indemnity, in tort, equity or otherwise at law shall be limited in aggregate to
- (b) The limitation of liability in clause 12.1(a) does not apply to any Claims arising out of or in connection with any of the following on the part of the Independent Verifier or anyone for whom it is responsible:
 - (i) fraud; or

- (ii) wilful misconduct being any conduct, act or omission done or to be done which results from wanton and reckless disregard to any provision of this document or the rights or welfare of those who are or may be affected by that conduct, act or omission.

12.2 Insurances

- (a) The Independent Verifier must hold and maintain:
 - (i) professional indemnity insurance with:
 - (A) a limit of indemnity of not less than _____ for any single claim and _____ in the aggregate for any period of insurance in respect of legal liability arising from a breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Verifier or its employees, agents or consultants; and
 - (B) a deductible of not more than _____
 - (ii) workers compensation insurance in accordance with all applicable statutory requirements endorsed to the extent permissible by law to indemnify the State and the Operator for their liability as principals;
 - (iii) public liability insurance:
 - (A) endorsed to include the State and the Operator as additional insureds;
 - (B) covering, without limitation, the Independent Verifier's liability under clauses 12.3 and 12.4;
 - (C) with a limit of indemnity of not less than _____ for any single claim; and
 - (iv) such other insurance as may be reasonably required by the State and the Operator.
- (b) The Independent Verifier must notify the Client Representative and the Operator of any material event which could affect its insurance cover and its ability to perform the Services under this document and the Project Deed, and immediately notify them if any policy is cancelled, avoided or allowed to lapse.
- (c) The Independent Verifier must provide to the Client Representative and the Operator certificates of currency of the insurances effected and maintained by the Independent Verifier for the purposes of this clause 12, at any time and from time to time on request and on renewal of each policy.
- (d) The Independent Verifier must keep:
 - (i) the professional indemnity insurance current for a period commencing on the date of this document and ending on the seventh anniversary of Final Completion;
 - (ii) the workers compensation insurance current until it ceases to perform the Obligations;
 - (iii) the public liability insurance current until it ceases to perform the Obligations; and
 - (iv) any other insurances current for such time as may reasonably be required by the Client Representative or the Operator.
- (e) The requirement to effect and maintain insurance in this clause 12 does not limit the liability or Obligations of the Independent Verifier under this document.

12.3 Indemnity in relation to property/persons

The Independent Verifier is liable for and indemnifies each of the State and the Operator against any Claim or Loss which they may pay, suffer or incur in respect of:

- (a) any damage to or loss of, or loss of use of, property; or
- (b) death or illness of, or injury to, any person,

insofar as the Claim or Loss arises out of, or is connected with, the negligent act, error or omission of the Independent Verifier, its employees, agents or consultants.

12.4 Indemnity in relation to breach

The Independent Verifier is liable for and must indemnify each of the State and the Operator against any Claim or Loss which they may pay, suffer or incur in respect of any breach of this document by the Independent Verifier (including any Claim or Loss the State or the Operator may have to another party arising from such breach).

13. Termination of Appointment and Novation

13.1 Termination by the other parties

- (a) Each of the State and the Operator may terminate the appointment of the Independent Verifier by notice in writing served on the Independent Verifier and the other party:
 - (i) if the Independent Verifier is in breach of this document and the breach is not remediable in the reasonable opinion of the Client Representative or the Operator;
 - (ii) if the Independent Verifier is in breach of this document and the breach, being remediable in the reasonable opinion of the Client Representative and the Operator, has not been remedied within 10 Business Days of the service by the Client Representative or the Operator of a notice requiring the breach to be remedied;
 - (iii) if an Insolvency Event occurs in relation to the Independent Verifier;
 - (iv) for the convenience of the State and the Operator at any time and for any reason, upon 10 Business Days' written notice to the Independent Verifier by the Client Representative or the Operator;
 - (v) if there is a Change in Control of the Independent Verifier; or
 - (vi) if the IV Representative appointed under clause 2.1A ceases to be the IV Representative or otherwise is no longer engaged or employed by the Independent Verifier.
- (b) Notwithstanding clause 13.1(a) and unless the State and the Operator otherwise agree, the State or the Operator may:
 - (i) in the case of clauses 13.1(a)(i) to (v) and 13.1(b)(ii)(B), only terminate the appointment of the Independent Verifier if the State and the Operator first agree to the appointment of a replacement Independent Verifier and (subsequently) a replacement IV Representative; or
 - (ii) in the case of clause 13.1(a)(vi):
 - (A) agree to the continuation of the appointment of the Independent Verifier and (subsequently) to appoint a replacement IV Representative; or
 - (B) agree to terminate the appointment of the Independent Verifier, in which case clause 13.1(b)(i) will apply.

Any appointment of a replacement Independent Verifier and or IV Representative (as the case may be) under this clause must be made in a manner consistent with the principles set out in clause 2.1A, and otherwise on such terms and conditions as the State and the Operator reasonably propose, including as to payment of the replacement Independent Verifier's remuneration.

- (c) The Independent Verifier acknowledges and agrees that, on termination of the appointment of the Independent Verifier under clause 13.1(b)(ii)(B):
 - (i) the State and the Operator are not precluded from appointing the IV Representative (being no longer employed or engaged by the Independent Verifier) or, for the avoidance of doubt, any other person in any role in connection with the Project; and
 - (ii) it may not do anything (including enforcing any rights) which would preclude the State and the Operator from giving effect to subparagraph (c)(i).

13.2 Termination of the Project Deed

The parties acknowledge and agree that if the Project Deed is terminated then, unless a novation is required as contemplated under clause 13.7, this document is terminated with effect from the date of termination of the Project Deed and without necessity of notice, but without prejudice to any rights or liabilities which may have accrued prior to that date.

13.3 Time of termination

Unless the State and the Operator otherwise agree, the termination of appointment of the Independent Verifier under clause 13.1 shall take effect upon receipt of notice from the Client Representative and the Operator confirming the appointment of a replacement to the Independent Verifier under clause 13.1(b).

13.4 Obligations following termination

- (a) Upon the date of termination of its appointment, the Independent Verifier:
 - (i) must deliver up to the Client Representative and the Operator all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Verifier relating to the Obligations; and
 - (ii) acknowledges and agrees that the State and the Operator have the right to use the documents referred to in clause 13.4(a)(i) for the purposes of the Project and any other related project, but subject to any qualifications, limitations and assumptions which may be placed upon or included within such books, records, drawings, specifications and other documents by the Independent Verifier that are provided to the State and the Operator under this clause.
- (b) Where a notice is given under clause 13.1 of the termination of the appointment of the Independent Verifier, or this document is terminated under clause 13.2, the Independent Verifier must provide full assistance to the Client Representative and the Operator, and any successor to the Independent Verifier appointed in order to enable such successor to be in a position to perform the Obligations under this document with effect from the appointment of such successor.
- (c) Nothing in this clause 13.4 will prevent the Independent Verifier from retaining for its records one copy of the books, records, drawings, specifications and other documents referred to in clause 13.4(a)(i), provided however that nothing contained in this clause 13.4 will relieve the Independent Verifier of its obligations under clause 16.5.

13.5 Compensation

Where the appointment of the Independent Verifier is terminated under clause 13.1(a)(iv) or this document is terminated under clause 13.2, the Independent Verifier is only entitled to be paid by the State and the Operator the proportion of the Fee for Obligations performed up to the date of the termination and the Independent Verifier agrees that its only right against the Operator and/or the State arising from such a termination is to claim for payment under this clause 13.5.

13.6 Termination without prejudice

Termination of the appointment of the Independent Verifier will be without prejudice to any Claim which the State or the Operator may have in respect of any breach of the terms of this document which occurred prior to the date of termination.

13.7 Novation

- (a) The Independent Verifier agrees with the State and the Operator that upon:
- (i) the termination of the Project Deed; and
 - (ii) the State giving to the Independent Verifier written notice stating that the State has exercised its rights under the Project Deed to transfer responsibility for the Project to a replacement Operator,
- then, subject to clause 13.7(b), as from the date of service of that notice:
- (iii) this document between the parties will be at an end;
 - (iv) a new contract will be deemed to have been entered into, on the same terms as this document, except that the Operator will be replaced by the replacement Operator under the new contract;
 - (v) the terms of the new contract will be in the form of this document subject only to such amendments reasonably required for the purpose of ensuring that the new contract is on terms consistent with this document and the fact of novation;
 - (vi) the new contract will thereafter be known as this document; and
 - (vii) the replacement Operator shall be responsible for the payment of 50% of the Fee, and the State shall be responsible for the payment of 50% of the Fee, from the date of novation.
- (b) The parties undertake that upon request from any receiver, receiver and manager or attorney of the Operator that they will promptly enter into documentation with the replacement Operator to give effect to this clause 13.7.
- (c) Nothing in this document will affect the rights and obligations of the parties prior to the novation under clause 13.7(a).
- (d) The parties agree that novation under this clause 13.7 has no effect and shall not have occurred until the form of novation has been agreed by all parties that are required to enter into novation.

14. Expenses, Stamp Duties and GST

14.1 Expenses

Each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this document.

14.2 Stamp duties

The Operator must pay all stamp duty (apart from financial institutions duties or bank account debit taxes which will lie between the parties as they fall) and any related fines and penalties in respect of this document, the performance of this document and each transaction effected by or made under or pursuant to this document.

14.3 GST

(a) **(Interpretation):**

- (i) Except where the context suggests otherwise, terms used in this clause 14.3 have the meanings given to those terms by the GST Law (as amended from time to time).
- (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.3.
- (iii) Unless otherwise expressly stated, all consideration to be provided under this document (other than under this clause 14.3) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 14.3.
- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (v) For the purposes of this clause 14.3:
 - (A) references to the 'State' means the Health Administration Corporation ('HAC') or Northern Sydney Local Health District ('NSLHD') as the case may be; and
 - (B) to the extent HAC or NSLHD makes a supply or acquisition on behalf of the other in accordance with this document, it is authorised to do so as agent of the other and may issue or obtain a tax invoice in that capacity.

(b) **(Reimbursements)** Any payment or reimbursement required to be made under this document that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

(c) **(Additional amount of GST payable)** Subject to the remainder of this clause 14.3, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this document (except where it is expressly stated to be inclusive of GST):

- (i) any party (**Recipient**) that is required to provide consideration for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (ii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 14.3(c)(i).

- (d) **(Variation of GST):**
 - (i) If the GST Amount recovered by the Supplier from the Recipient under clause 14.3(c) for a supply varies from the amount of GST paid or payable by the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this document within seven days after the Supplier becomes aware of the adjustment event.
- (e) **(Exclusion of GST from calculations)** If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of that other amount or revenue stream net of GST.
- (f) **(No merger)** This clause will not merge on completion or termination of this document.

15. Dispute Resolution

15.1 Procedure for resolving disputes

- (a) The parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 15.
- (b) It is a condition precedent to the referral of a dispute to litigation that a party first exhausts the procedures referred to in clause 15.2.

15.2 Negotiation

- (a) If a dispute arises, then a party may give notice to the other parties to the dispute, requesting that the dispute be referred for resolution to the respective chief executive officers of those parties.
- (b) A notice under clause 15.2(a) must:
 - (i) be in writing;
 - (ii) state that it is a notice under this clause 15.2; and
 - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 15.2(a) (**Dispute Representatives**), then the Dispute Representatives (or the persons for the time being acting in those positions) must meet and use reasonable endeavours acting in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 15.2(a) is received. The joint decisions (if any) of the Dispute Representatives must be reduced to writing within the 10 Business Days referred to in this clause 15.2(c) and will be contractually binding on the parties to the dispute.
- (d) The 10 Business Days referred to in clause 15.2(c) may be extended by agreement of the parties in writing.

15.3 Continue to perform

Notwithstanding the existence of a dispute, the Independent Verifier must continue to perform the Obligations.

15.4 Final and binding

The State and the Operator agree that, in the absence of manifest error or fraud, the State and the Operator can not overturn any decision of the Independent Verifier in respect of any of the Services referred to in Schedule 1 which are expressed to be final and binding in nature.

16. Information and Confidentiality

16.1 Keep confidential

Subject to clause 16.2, the Independent Verifier must keep confidential all matters relating to this document and must use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matters relating to this document.

16.2 Permitted Disclosure

Clause 16.1 will not apply to:

- (a) [not used]
- (b) any disclosure of information that is reasonably required by persons engaged in the performance of the obligations of a party to this document;
- (c) any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of breach of clause 16.1;
- (d) any disclosure which is required by any Law (including any order of a court of competent jurisdiction) or in accordance with clause 15;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) [not used]
- (g) [not used]
- (h) [not used]
- (i) [not used]
- (j) [not used]
- (k) any disclosure of information required by a stock exchange or a New South Wales or Commonwealth regulator.

16.3 Obligations preserved

Where disclosure is permitted under clause 16.2, other than clauses 16.2(c), 16.2(d) or 16.2(k), the party providing the disclosure must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this document.

16.4 Disclosure by the State

- (a) Notwithstanding the other provisions of this clause 16, the parties acknowledge that:
 - (i) the Project Documents will be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (ii) information concerning the Project Documents will be tabled in Parliament by or on behalf of the State and will be published in accordance with the Guidelines;
 - (iii) information concerning the Project Documents will be published on the State's contracts register in accordance with the GIPA Act; and

- (iv) the State and the Client Representative may make the Project Documents (other than the Subcontracts) or any of them available to any person.
- (b) The parties acknowledge that:
 - (i) by entering into this document, the State has consulted with the Operator and the Independent Verifier in relation to the disclosure of all information concerning the Project Documents that is required to be disclosed by the State pursuant to Division 5 of Part 3 of the GIPA Act and that is not Commercially Sensitive Information;
 - (ii) the State will notify the Operator and the Independent Verifier of any proposed disclosure of Commercially Sensitive Information by the State under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (iii) following notification by the State in accordance with clause 16.4(b)(ii), the State will take reasonable steps to consult with the Operator and the Independent Verifier before disclosing Commercially Sensitive Information, including under the GIPA Act;
 - (iv) if, following:
 - (A) notification by the State in accordance with clause 16.4(b)(ii); or
 - (B) consultation between the State, the Operator and the Independent Verifier in accordance with clause 16.4(a)(iii),

the Operator or the Independent Verifier objects to disclosure of some or all of the Commercially Sensitive Information, the Operator and the Independent Verifier (as relevant) must provide details of any such objection within 5 Business Days of the date the Operator and the Independent Verifier received notification from the State or the date on which the consultation process concluded (as relevant);
 - (v) the State may take into account any objection received from the Operator or the Independent Verifier pursuant to clause 16.4(b)(iv) in determining whether the Commercially Sensitive Information identified by the Operator or the Independent Verifier should be disclosed; and
 - (vi) nothing in this clause 16.4 will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.

16.5 Exploitation of information

Except with the written consent of the Client Representative, the Independent Verifier must not make use of this document or any information issued or provided by or on behalf of the State in connection with this document otherwise than for the purposes of this document.

16.6 Expiry

On or before the expiration or earlier termination of this document the Independent Verifier must ensure that all documents or computer records in its possession, custody or control are delivered up to the Client Representative.

17. General

17.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this document:

- (a) must be in writing;

- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

The State

Name: Northern Sydney Local Health District

Address: PO Box 4007 Royal North Shore Hospital LPO

St Leonards NSW 2065

Fax No: (02) 9463 1029

For the attention of: Adjunct Associate Professor Vicki Taylor

The Operator

Name: NBH Operator Co Pty Ltd

Address: Level 1, 312 St Kilda Road

Melbourne VIC 3004

Fax No: 61 3 9926 7553

For the attention of: General Counsel

The Independent Verifier

Name: Davis Langdon Australia Pty Ltd

Address: Level 21, 420 George Street

Sydney NSW 2000

Fax No: 61 2 8934 0001

For the attention of: Gary Train

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17.1(b); and
- (e) is taken to be received by the addressee:
- (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day, or after 5:00pm, it is taken to be received at 9:00am on the next Business Day.

17.2 The State as a Public Authority

- (a) This document will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the State to exercise any of its functions and powers pursuant to any Law.
- (b) The Operator and the Independent Verifier acknowledge and agree that, without limiting clause 17.2(a), anything which the State does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the State under this document and will not entitle the Operator or the Independent Verifier to make any Claim against the State.
- (c) The parties agree that clauses 17.2(a) and 17.2(b) are taken not to limit any liability which the State would have had to the Operator or the Independent Verifier under this document as a result of a breach by the State of a term of this document but for clauses 17.2(a) and 17.2(b) of this document.

17.3 Certification

For the purposes of this document, a copy of a document will be regarded as duly certified by a party if it is certified as a true copy by a director, secretary or general manager of that party.

17.4 Cost of performing obligations

Each party must perform its obligations under this document at its own cost, unless expressly provided otherwise.

17.5 Governing Law

This document is governed by and must be construed according to the Law applying in New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts.

17.6 Amendments

This document may only be varied by a deed executed by or on behalf of each party.

17.7 Taxes

Subject to clause 97 (Taxes) of the Project Deed and clause 14.3 of this document, the Operator:

- (a) must pay all taxes in respect of this document, the performance of this document and each transaction effected by or made under this document;
- (b) indemnifies each other party against liability arising from failure to comply with clause 17.7(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of any taxes paid under this clause 17.7.

17.8 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this document by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this document.
- (b) A waiver or consent given by a party under this document is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this document operates as a waiver of another breach of that term or of a breach of any other term of this document.

17.9 Survival of certain provisions; no merger

- (a) Without limiting clause 17.18:
 - (i) clauses 5, 7, 12.1, 12.3, 15, 16, 17.1, 17.5 and 17.18, any indemnities given under this document and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this document; and
 - (ii) if this document is rescinded or terminated, no party will be liable to any other party except:
 - (A) under the Surviving Clauses; or
 - (B) in respect of any breach of this document occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this document. All rights and obligations under this document survive the execution and delivery of any transfer or other document which implements any transaction under this document.

17.10 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this document.

17.11 Consents

A consent required under this document from the State, a State Related Party, the Client Representative or the Operator may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this document expressly provides otherwise.

17.12 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document.
- (b) Each party acknowledges and confirms that it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this document.

17.13 Reading down

If a word, phrase, sentence, clause or other provision of this document would otherwise be unenforceable, illegal or invalid the effect of that provision will so far as possible be limited and read down so that it is not unenforceable, illegal or invalid.

17.14 Severance

Any provision of this document which is illegal or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this document or affecting the validity or unenforceability of such provision in any other jurisdiction.

17.15 Remedies cumulative

The rights and remedies provided in this document are cumulative and are not exclusive of any rights or remedies provided by Law or any other agreement, except to the extent expressly provided in this document.

17.16 Moratorium legislation

Unless application is mandatory by Law, any present or future Law will not apply to this document so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the State or the Operator.

17.17 Entire agreement

This document contains the entire agreement of the parties with respect to the transactions contemplated by it. There are no understanding, agreements, warranties or representations (express or implied) with respect to the transactions contemplated by this document except for those referred to in it.

17.18 Indemnities

- (a) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.
- (c) A party must pay on demand any amount it must pay under an indemnity in this document.
- (d) Where a party gives any indemnity or release to the State under this document, it gives an equivalent indemnity and release to the NSW Government. The State holds for itself and on trust for the NSW Government the benefit of each such indemnity and release in this document.

17.19 Counterparts

This document may be executed in any number of counterparts and by the parties on separate counterparts. All such counterparts taken together will be deemed to constitute one and the same instrument.

17.20 Attorneys

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney and that he or she has, at the time of executing this document, no notice of the revocation of the power of attorney under which he or she executes this document.

17.21 Order of precedence

To the extent of any inconsistency between this document and the Project Deed, the Project Deed will prevail.

17.22 Set off

Notwithstanding any other provision of this document, the parties may set off or deduct from any moneys payable by the parties to the Independent Verifier, under this document, any amounts:

- (a) for which the Independent Verifier must reimburse the other parties;
- (b) which the parties pay on the Independent Verifier's behalf; or
- (c) which are then due and payable by the Independent Verifier to the other parties (whether or not such amounts are expressed to be a debt due from the Independent Verifier to the other parties), under or in connection with this document or arising out of or in respect of or in connection with the Services.

17.23 Not evidence

The payment of moneys to the Independent Verifier by the other parties is not evidence of the value of the Obligations provided, an admission of liability or evidence that the Obligations were executed properly but are paid on account only.

Schedule 1 – Services

No	Ref	Clause	Description
1	NBH Project Deed: Hospital Licensing	4.1(b)	The Independent Verifier must receive notice from the Operator of the successful procurement of the Approval in Principle (or any extension thereof) and the Hospital Licence.
2	NBH Project Deed: Copies of Consent	10.2	The Independent Verifier must receive a copy of every Consent obtained in relation to the Project and any amendments to or notices relating to such Consents during the Development Phase.
4	NBH Project Deed: Design	19.2 - 19.9 & 19.11	<p>The Independent Verifier must:</p> <ul style="list-style-type: none"> a) receive, review, consult, provide its comments (including detailed particulars of any non-compliance) to the Operator in relation to and monitor the design performance of the Operator and the Design Documentation throughout the Design Development Process to ensure the Design Documentation complies with the Project Deed; <ul style="list-style-type: none"> a. compliance with the Design Parameters and Licensing Authority Approval in Principle b. a logical development of the RFP Design c. and addressees relevant stakeholder input b) attend design presentation workshops and request any further information (including change documentation and documentation trail required to conduct an audit to ensure material variations to Design Documentation from requirements under the Project Documents have been agreed in writing by the State) in relation to the Design Documentation required to discharge its functions under the Project Deed; c) notify the Operator of any non-compliances, giving reasons why the Design Documentation does not comply with the requirements of this document (including detailed particulars of the alleged non-compliance). d) receive a certificate from the Parent Company as being acceptable to it (from an operational perspective) to enable it to perform the Services; and e) provide certification of the Construction Documentation Report if it complies with the Project Deed, based on documentation provided to the Independent Verifier.
5	NBH Project Deed: Private Patient Portion Design Documentation	19.11(c)	The Independent Verifier may (including having regard to any comments by the Client Representative) review and provide comments to the Operator in respect of the Private Patient Portion Design Documentation.

No	Ref	Clause	Description
6	NBH Project Deed: Private Patient Portion Works	20.2	The Independent Verifier must review any revisions, modifications or updated versions of the Certified Construction Documentation due to changes to the nature or status of the Private Patient Portion Works and ensure that works will not in any way affect or interfere with the provision of Services. The Independent Verifier will conduct an audit of documentation to ensure any changes to the Certified Construction Documentation have been agreed in writing by the State.
7	NBH Project Deed: Proceed at Risk	20.3	The Independent Verifier must receive any Proceed at Risk Notices issued by the Operator and request a clear and auditable documentation trail to review and verify the Project Works constructed by the Operator pursuant to the Proceed at Risk Notice have been amended, rectified, changed or modified to resolve any issues identified by the Independent Verifier during its review.
8	NBH Project Deed: Time for delivery	23.2, 23.3, 23.4	The Independent Verifier must, if requested to do so by the Client Representative, review the progress of the Project Works to determine whether the status and progress of the Project Works is likely to have a material adverse effect on the Operator's ability to achieve Technical Completion by the Date for Technical Completion, Operational Readiness by the Date for Operational Readiness or the Sunset Date, or Final Completion by the Date for Final Completion, and issue a certificate of the Independent Verifier's determination to the Client Representative and the Operator. The Client Representative and the Operator agree to pay the Independent Verifier its hourly professional fees (as set out in Schedule 2) in conducting a review in accordance with this paragraph as requested by the Client Representative. The Independent Verifier must review any notice issued by the Operator in respect of a delay or likely delay to Technical Completion, Operational Readiness, Transfer Completion or Final Completion.
9	NBH Project Deed: Overview of Completion	24	The Independent Verifier is responsible for the issue or refusal of certification confirming the Operator's achievement of each stage of completion: <ul style="list-style-type: none"> i. Technical Completion; ii. Operational Readiness; iii. Transfer Completion; and iv. Final Completion, based on documentation provided to the Independent Verifier.
10	NBH Project Deed: Additional Technical Completion Tests	26.2	The Independent Verifier must determine whether any Additional Technical Completion Tests are required to be carried out by the Operator based on documentation provided to the Independent

No	Ref	Clause	Description
			Verifier and notify the Operator of any such Additional Technical Completion Tests.
11	NBH Project Deed: Conducting Technical Completion Tests	26.3	<p>The Independent Verifier must:</p> <ul style="list-style-type: none"> a) request and receive from the Operator all documentation in connection with each Technical Completion Test but is not required to undertake any investigations as to the validity of the results from the Technical Completion Tests; b) direct the Operator in relation to the conduct of the Technical Completion Tests but only where the Independent Verifier is of the opinion that the Operators proposed testing mechanism will not provide the substantiation required by the Independent Verifier to make its determination; c) request and receive from the Operator a copy of calibrations showing the degree of accuracy of each testing instrument used by the Operator; and d) receive notice from the Operator of any failed Technical Completion Test.
12	NBH Project Deed: Unsuccessful Completion Test	26.4	If each Technical Completion Test has not been successfully completed or if the Independent Verifier has not received all documentation required to be provided by the Operator, the Independent Verifier must refuse to issue the Technical Completion Certificate or identify unsuccessful Technical Completion Tests as Outstanding Items.
13	NBH Project Deed: Submission of draft Technical Completion Report	27.2	The Independent Verifier must receive and review drafts of the Technical Completion Report with respect to compliance with Schedule 7 of the Project Deed.
14	NBH Project Deed: Meeting concerning draft Technical Completion Report	27.3	<p>The Independent Verifier must:</p> <ul style="list-style-type: none"> a) attend meetings with the Operator and the Client Representative to discuss the draft Technical Completion Report, preparation for Technical Completion and the anticipated timing for achieving Technical Completion; b) provide feedback to the Operator in relation to the draft Technical Completion Report; c) give directions to the Operator in relation to its preparations for Technical Completion; d) form a view on whether the Operator is likely to achieve Technical Completion by the anticipated date for Technical Completion and provide written notice of its determination to the Operator.
15	NBH Project Deed: Notice of Technical Completion	28.1	The Independent Verifier must receive and review the Notice of Technical Completion and final Technical Completion Report with respect to compliance with Schedule 7 of the Project Deed.

No	Ref	Clause	Description
16	NBH Project Deed: Technical Completion	28.3, 28.4,28.5,28.6	<p>The Independent Verifier must form a view as to whether the Technical Completion Criteria have been satisfied and whether the Operator has achieved Technical Completion and:</p> <ul style="list-style-type: none"> a) if the Independent Verifier forms a view that the Operator has achieved Technical Completion, the Independent Verifier must: <ul style="list-style-type: none"> i. notify the Operator accordingly and issue the Technical Completion Certificate and the attached list of Outstanding Items (if any) to the Operator; and ii. receive and review the Operator's written program for the completion of any Outstanding Items; b) if the Independent Verifier is not satisfied that the Operator has achieved Technical Completion, the Independent Verifier must issue the Operator and the Client Representative with a notice containing details of the outstanding Technical Completion Criteria to be satisfied as a condition precedent to achieving Technical Completion or direct the Operator to continue with the execution of the Project Works. c) The Independent Verifier must review the written program issued by the Operator for the completion of any Technical Completion Outstanding Items in accordance with the Independent Verifier's requirements.
17	NBH Project Deed: Conduct of Operational Readiness Tests	30.2, 30.4	<p>The Independent Verifier must:</p> <ul style="list-style-type: none"> a) determine whether any Additional Operational Readiness Tests are required to be carried out by the Operator to demonstrate that the Services are able to be provided, in accordance with the Project Deed, or in satisfaction of the FFP Warranty; b) direct the Operator in relation to the conduct of any Additional Operational Readiness Tests; and c) if the Operator fails to successfully complete an Operational Readiness Test, refuse to issue the Operational Readiness Certificate, based on documentation provided to the Independent Verifier.
18	NBH Operational Readiness Report	Clause 31.2, 31.3	<p>The Independent Verifier must:</p> <ul style="list-style-type: none"> a) receive, review and its provide comments on the draft Operational Readiness Report with respect to compliance with Schedule 7 of the Project Deed; b) attend meetings with the Operator and the Client Representative to provide feedback and direction to the Operator in relation to the contents of the draft Operational Readiness Report and the anticipated timing for satisfaction of the Operational Readiness Criteria; and c) form a view on whether the Operator is likely to achieve Operational Readiness by the

No	Ref	Clause	Description
			anticipated date and provide written notice of its determination to the Operator.
19	NBH Project Deed: Operational Readiness	32.1, 32.2	<p>The Independent Verifier:</p> <ul style="list-style-type: none"> a) must receive and review the notice that the Operator has reasonably formed the view that it has achieved Operational Readiness and the final Operational Readiness Report and, based on documentation provided by the Operator and consultation with the Client Representative, form a view as to whether the Operator has achieved Operational Readiness, and: <ul style="list-style-type: none"> i. if the Independent Verifier (after consultation with the Client Representative) is satisfied that the Operator has achieved Operational Readiness in accordance with Schedule 7 of the Project Deed, issue the Operational Readiness Certificate stating the date on which the Operator achieved Operational Readiness; or ii. if the Independent Verifier (after consultation with the Client Representative) is not satisfied that the Operator has satisfied the Operational Readiness Criteria, direct the Operator in writing to continue with the execution of the Project Works, the Project Program, the Operational Readiness Plan and each other Transition Plan in order to achieve Operational Readiness and provide written reasons why it was not satisfied that the Operator had achieved Operational Readiness; b) may issue the Operational Readiness Certificate if Operational Readiness has been achieved, notwithstanding that the Operator has not issued the Independent Verifier with a notice that the Operator has reasonably formed the view that it has achieved Operational Readiness.
20	NBH Project Deed: Draft Transition Report	41.2, 41.3	<p>The Independent Verifier must</p> <ul style="list-style-type: none"> a) receive and review a draft Transition Report for compliance with the Project Documents; b) attend meetings with the Operator and the Client Representative to discuss the contents of the draft Transition Report, the preparation for Transfer Completion and Final Completion generally and the anticipated timing for achieving Transfer Completion and Final Completion.
21	NBH Project Deed: Transfer Completion	42.1, 42.3	<p>The Independent Verifier:</p> <ul style="list-style-type: none"> a) must receive and review the notice that the Operator has reasonably formed the view that it has achieved Transfer Completion and the updated Transition Report and form a view as to whether the Operator has achieved Transfer Completion in accordance with Schedule 7 of the Project Deed; and b) must, if it is satisfied that the Operator has achieved Transfer Completion, issue to the Operator and the Client Representative a notice and a Transfer Completion Certificate stating

No	Ref	Clause	Description
			the date on which the Operator achieved Transfer Completion.
22	NBH Project Deed: Final Completion	44.1, 44.3	The Independent Verifier: <ul style="list-style-type: none"> a) must receive and review the notice that the Operator has reasonably formed the view that it has achieved Final Completion and final Transition Report and form a view as to whether the Operator has achieved Final Completion in compliance with the Project Documents; and b) must, if it is satisfied that the Operator has achieved Final Completion, issue to the Operator and the Client Representative a notice and a Final Completion Certificate stating the date on which the Operator achieved Final Completion.
23	NBH Project Deed: Schedule 33 – Independent Verifier Deed: Reporting	3.7	The Independent Verifier must submit a monthly written update to the Client Representative and the Operator at scheduled monthly meetings.
24	NBH Project Deed: Schedule 33 – Independent Verifier Deed: Notifications	4	The Independent Verifier must promptly notify the State and the Operator if it becomes aware, in the course of performing its obligations, of any incorrect Project Documents or any materials that may adversely affect the Operators ability to achieve specified completion dates.
25	NBH Project Deed: Schedule 33 – Independent Verifier Deed: IV to be independent	6	The Independent Verifier must act independently of both the State and the Operator.
26	NBH Project Deed: Schedule 7 – Completion Criteria	1.1(b)	The Independent Verifier must certify the achievement of Technical Completion in accordance with Schedule 7, based on documentation provided to the Independent Verifier.
27	NBH Project Deed: Schedule 7 – Completion Criteria	4.1(a)	The Independent Verifier must certify the achievement of Operational Readiness in accordance with the Project Documents, based on documentation provided to the Independent Verifier.
28	NBH Project Deed: Schedule 7 – Completion Criteria	4.2(a)	The Independent Verifier must issue a certificate under Schedule 7 certifying that Technical Completion has been achieved, based on documentation provided to the Independent Verifier.

No	Ref	Clause	Description
29	NBH Project Deed: Schedule 7 – Completion Criteria	6.1(a)	The Independent Verifier must certify the achievement of Transfer Completion in accordance with the Project Documents, based on documentation provided to the Independent Verifier.
30	NBH Project Deed: Schedule 7 – Completion Criteria	6.2(a)	The Independent Verifier must issue a notice certifying that the Operational Readiness Criteria have been satisfied, based on documentation provided to the Independent Verifier.
31	NBH Project Deed: Schedule 7 – Completion Criteria	7.1(a)	The Independent Verifier must certify the achievement of Final Completion in accordance with Schedule 7, based on documentation provided to the Independent Verifier.
32	NBH Project Deed: Schedule 7 – Completion Criteria	7.2(a)	The Independent Verifier must issue a notice certifying that Transfer Completion has been achieved, based on documentation provided to the Independent Verifier.

Schedule 2 – Payment schedule

1. Payment claim

The Independent Verifier must submit to each of the Operator and the State an account for payment on account of 50% of the Fee each:

- (a) for the Obligations performed in accordance with this document during a month at the end of that month; and
- (b) calculated in accordance with this Payment Schedule.

2. Payment and notification of disputed amounts

Within 30 Business Days after receipt of the Independent Verifier's account for the month, the Operator and the State must pay the Independent Verifier any amount included in the account which is not disputed and must notify the Independent Verifier in writing of the reasons for any amount which is disputed.

3. The Fee

4. Disbursements

The Independent Verifier will:

- (a) only be entitled to reimbursement of disbursements incurred in the course of carrying out the Obligations for which the Independent Verifier is to be paid on a schedule of rates basis under this document if those disbursements:
 - (i) have been reasonably and properly incurred for the sole purpose of performing the part of the Obligations for which the Independent Verifier is to be paid on a schedule of rates basis in accordance with this document;
 - (ii) where they exceed or are likely to exceed \$1,000, have the prior written approval of the Operator and the Client Representative; and
 - (iii) are supported by documentation provided to the Client Representative and the Operator which is satisfactory to the Client Representative and the Operator; and
- (b) not be entitled to make any Claim against the State or the Operator arising out of or in connection with disbursements or other costs incurred in connection with the performance of the Obligations other than in accordance with paragraph (a).

5. GST

All lump sums, rates and amounts in this Payment Schedule do not include GST.

Schedule 3 – Commercially sensitive information

Signing page

EXECUTED as a deed.

Executed by the Secretary of the Ministry of Health for and on behalf of Health Administration Corporation pursuant to *section 50 of the Interpretation Act 1987* (NSW)

Signature of witness



Secretary of the Ministry of Health



Name of witness (print)

Executed by the Chief Executive of the Northern Sydney Local Health District for and on behalf of Northern Sydney Local Health District pursuant to *section 50 of the Interpretation Act 1987* (NSW)

Signature of witness



Chief Executive of the Northern Sydney Local Health District



Name of witness (print)

**Executed by NBH Operator Co Pty Ltd
(ACN 169 029 181) in its capacity as
trustee of the NBH Operating Trust** in
accordance with Section 127 of the
Corporations Act 2001

Signature of director

Name of director (print)

← _____ ←
Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

**Executed by NBH Operator B Pty Ltd
(ACN 602 943 911)** in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary (print)

**Executed by Davis Langdon Australia Pty
Ltd (ACN 008 657 289)** in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)



Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

