

## **SCHEDULE 15**

### **INDEPENDENT TESTER CONTRACT**

This is Schedule 15 comprising the Independent Tester Contract referred to in the Project Agreement for the development of the Site of the New Papworth Hospital

between

Papworth Hospital NHS Foundation Trust

and

NPH Healthcare Limited

**DATED** \_\_\_\_\_ **2015**

(1) **PAPWORTH HOSPITAL NHS FOUNDATION TRUST**

(2) **NPH HEALTHCARE LIMITED**

(3) **MOUCHEL LIMITED**

(4) **KfW IPEX-BANK GmbH**

(5) **SKANSKA CONSTRUCTION UK LIMITED**

---

---

**INDEPENDENT TESTER CONTRACT**

---

---

**THIS DEED** is made 2015

**BETWEEN:**

- (1) **PAPWORTH HOSPITAL NHS FOUNDATION TRUST** (the "Trust") of Papworth Everard, Cambridge, Cambridgeshire, CB23 3RE;
- (2) **NPH HEALTHCARE LIMITED** ("Project Co") (Company number 9310041) whose registered office is at Welken House, 10-11 Charterhouse Square, London EC1M 6EH;
- (3) **MOUCHEL LIMITED** (the "Independent Tester") (Company number 01686040) whose registered office is at Export House, Cawsey Way, Woking, Surrey, GU21 6QX
- (4) **KfW IPEX-BANK GmbH** (Company number HRB 79744) whose registered office is at Palmengartenstrasse 5-9, 60325, Frankfurt am Main, Germany (the "Funder" being one of the Funders); and
- (5) **SKANSKA CONSTRUCTION UK LIMITED** (the "Contractor") (Company number 00191408) whose registered office is at Maple Cross House, Denham Way Maple Cross, Rickmansworth, Hertfordshire WD3 9SW.

**WHEREAS:**

- (A) Project Co and the Trust have entered into an agreement for the financing, design and construction of and the provision of certain services in connection with the development of Papworth Hospital at the Site (the "Project") pursuant to the Government's private finance initiative (the "Project Agreement") under the terms of which they have jointly agreed to appoint an independent tester.
- (B) Project Co has entered into the Construction Contract with the Contractor for the development of Papworth Hospital at the Site.
- (C) Project Co has entered into the Funding Agreements with the Funders.
- (D) The Independent Tester is an independent adviser willing to provide services to Project Co and the Trust and for the benefit of the Funders.
- (E) Project Co and the Trust have jointly agreed to engage the Independent Tester to carry out the duties and obligations ascribed to the Independent Tester in the Project Agreement upon the terms of this Deed.

**IT IS AGREED** as follows:

**1 INTERPRETATION**

- 1.1 Unless the context otherwise requires, words and expressions defined in the Project Agreement have the same meanings in this Deed as in the Project Agreement.
- 1.2 The headings in this Deed do not affect its interpretation.
- 1.3 Unless the context otherwise requires, all references to Clauses and Schedules are references to clauses of and schedules to this Deed.

**2 APPOINTMENT**

- 2.1 Project Co and the Trust jointly appoint the Independent Tester to perform the obligations and tasks which are ascribed to the Independent Tester under the Project Agreement and which are set out in Appendix 1 upon the terms and conditions set out below. The Contractor is a party to this Deed solely to make the commitments on its part as expressly made in this Deed and, for the avoidance of doubt, the Independent Tester shall have no liability to the Contractor.
- 2.2 The Independent Tester shall provide the services under Clause 2.1 above (the "Services") independently, fairly and impartially to and as between Project Co and the Trust in relation to the Project Agreement at such times and at such locations as the parties shall agree from time to time. In performing the Services, the Independent Tester shall have regard to the interest of the Funders. Whilst the Independent Tester may take account of any representations made by Project Co and the Trust and the Contractor (as appropriate) and Faithful + Gould Limited or any other technical adviser appointed by the Finance Parties pursuant to the Common Terms Agreement the Independent Tester shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Tester is required to exercise his professional judgement.
- 2.3 Varied Services
- 2.3.1 The Independent Tester shall carry out and perform any additional and/or varied services required for the implementation of the Project reasonably required by the Trust and Project Co which are not included in, or which are omitted from, the Services (the "Varied Services"), subject to prior agreement by the Trust and Project Co to the costs thereof.
- 2.3.2 If the Independent Tester shall at any time be required to perform Varied Services, it shall give to the Trust and Project Co a written estimate of the cost thereof (taking into account any reduction in work or other expense which might also occur as a result of the circumstances giving rise to the Varied Services).
- 2.3.3 Where a change to the Project occurs pursuant to the terms of the Project Agreement (whether by virtue of a Delay Event, Variation, change to the Programme or otherwise) which may materially impact on the Services or otherwise on the Independent Tester, the Trust and Project Co shall promptly notify the Independent Tester of such change. The Independent Tester shall within five (5) Business Days of receiving such notification, notify the Trust and Project Co of the impact of such change, if any, on the Services, including whether such change gives rise to any Varied Services and the provisions of this Clause 2.3 shall apply accordingly.
- 2.4 The Independent Tester shall promptly and efficiently provide the Services and the Varied Services:
- 2.4.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project; and
- 2.4.2 in accordance with all applicable Law and NHS Requirements.

- 2.5 All instructions to the Independent Tester must be given signed and given jointly by the Trust's Representative and the Project Co's Representative or such other person appointed pursuant to Clause 11 of the Project Agreement (Representatives) and, for the avoidance of doubt, the Independent Tester shall not act in accordance with any instructions given to him by either the Trust or Project Co (or any other person) not given in accordance with the provisions of this Clause 2.5.
- 2.6 The Independent Tester shall comply with all reasonable instructions given to it by Project Co and the Trust pursuant to Clause 2.5 except and to the extent that the Independent Tester reasonably considers that any such instructions vary or might vary the Services or its authority or responsibilities under this Deed or prejudices or might prejudice the exercise by the Independent Tester of its professional judgement in accordance with Clauses 2.2 and 2.4 above. The Independent Tester shall promptly confirm in writing to Project Co and the Trust whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.
- 2.7 The Trust, Project Co and the Contractor agree to co-operate with and provide reasonable assistance to the Independent Tester to familiarise the Independent Tester with all necessary aspects of the Project to enable the Independent Tester to carry out its obligations under this Deed.
- 2.8 The Independent Tester shall be deemed to have full knowledge of the provisions of the Project Agreement, the Construction Contract, the Service Contracts and the such as relates to the Services and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of Project Co and the Trust which are set out in the Project Agreement provided always that true and accurate copies have been delivered to the Independent Tester.
- 2.9 Subject to Clause 2.10, the Independent Tester shall use the following partners, directors or employees: [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] in connection with the performance of the Services and such persons' services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Tester of the Services. Such persons shall have full authority to act on behalf of the Independent Tester for all purposes in connection with the Services.
- 2.10 The Independent Tester may by written notice to the Trust and Project Co replace the staff identified in Clause 2.9 taking account the need for liaison, continuity, level of qualification and availability of personnel in respect of the Project. Such replacement shall be subject to approval in writing by Project Co and the Trust (not to be unreasonably withheld or delayed).

### **3 DURATION**

- 3.1 The Services shall commence on the date of this Deed.
- 3.2 The Parties hereby agree that this Deed governs all of the Services provided by the Independent Tester in relation to the Project whether before or after the date hereof.

### **4 FEE**

4.1



- 4.2 The Independent Tester shall issue an invoice to each of Project Co and the Trust for their respective proportion of the Fee in accordance with the stage payments set out in Appendix 2 Part 1. The date on which the relevant invoice is received by Project Co and the Trust (respectively) shall constitute the due date for Project Co's and the Trust's respective instalment of the Fee. The final date for payment by Project Co and the Trust of their respective instalment of the Fee shall be thirty (30) days after the relevant Independent Tester's invoice is received by Project Co and the Trust (respectively). If Varied Services are provided then they shall be paid for equally by (1) the Trust and (2) Project Co or as otherwise agreed.
- 4.3 Not later than five (5) days after the due date ascertained in accordance with Clause 4.2, either Project Co and/or the Trust may give written notice to the Independent Tester stating the amount which they propose to pay in respect of their respective instalment of the Fee and/or the payment for Varied Services and the basis on which the amount is calculated.
- 4.4 Project Co and/or the Trust (as applicable) shall, subject to any Pay Less Notice which has been given pursuant to Clause 4.5, pay to the Independent Tester not later than the final date for payment (as calculated in accordance with Clause 4.2), the sum specified in the notice issued by Project Co and/or the Trust (as applicable), or where such notice has not been served, the sum specified in the relevant invoice issued by the Independent Tester ("**the Notified Sum**").
- 4.5 If the party with an obligation to make a payment under or in connection with this Deed ("**the Payer**") intends to pass less than the Notified Sum to the receiving party ("**the Payee**") then the Payer shall, not less than five (5) days before the relevant final date for payment, give notice to the Payee ("**a Pay Less Notice**") of the sum that the Payer considers is due to the Payee on the date such Pay Less Notice is served and the basis upon which that sum has been calculated.
- 4.6 Save in respect of any sums validly withheld pursuant to Clause 4.5, if the Payer fails to pay the Payee any sum payable under or in connection with this Deed in respect of their respective proportion of the Fee or the fee for any Varied Services by the final date for payment, the Payer shall pay the Payee simple interest on that sum from the final date for payment until the actual date of payment at the Default Interest Rate.
- 4.7 Subject to Clause 4.7A, if either Project Co or the Trust fails to pay the amounts properly due pursuant to these provisions and no Pay Less Notice has been given pursuant to Clause 4.5, the Independent Tester may suspend performance of any or all of the Services. This right is subject to the Independent Tester first giving Project Co and the Trust not less than seven (7) Business Days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when Project Co and/or the Trust pays the amount properly due. Any period of suspension of the Services in accordance with this Clause 4.7 shall be disregarded in computing any contractual time limit to complete work directly or indirectly affected by the exercise of the rights conferred by this Clause 4.7 or as the case may be, the time for completion of such work shall be extended by a period equal to the period of suspension.

4.7A Notwithstanding any Pay Less Notice which may have been issued (or withdrawn) by Project Co and/or the Trust under this Clause 4, it is hereby agreed that any payments made by Project Co and/or the Trust to the Independent Tester under this Deed shall:

4.7A.1 not be conclusive evidence that the Independent Tester has performed all its obligations in accordance with this Deed; and

4.7A.2 not affect Project Co's and/or the Trust's right and entitlement to later dispute whether any such payments are properly due and payable in accordance with this Deed.

Where it is agreed or determined under this Deed that any payments made to the Independent Tester were not properly due and payable in accordance with this Deed, the Independent Tester agrees to repay such sums to Project Co and/or the Trust (as applicable) within five (5) Business Days of such agreement or determination and adjustments shall be made to any later invoices in order to correct errors or omissions contained in earlier invoices.

4.8 Without prejudice to Clause 2.5, neither the Trust nor Project Co shall issue instructions or do anything which does or is reasonably likely materially to increase the fees payable to the Independent Tester without the prior approval of the other (such approval not to be unreasonably withheld or delayed).

4.9 As soon as the Independent Tester becomes aware of the same and before acting on the same the Independent Tester shall inform the Trust and Project Co of any instructions given to him pursuant to Clause 2.5 which will or could reasonably be expected to increase the fees payable to the Independent Tester under the terms of this Deed. The Independent Tester shall if requested by either Project Co or the Trust provide both the Trust and Project Co with as detailed an estimate as is reasonably practicable of the increase to the fees payable to it if it carries out such instructions. The estimate of increased fees shall be based upon the rates contained in Appendix 2, Part 2.

4.10 The obligations of Project Co and the Trust to pay the Independent Tester for their respective proportion of the Fee and/or any Varied Services shall be several and not joint and neither Project Co nor the Trust shall have any liability to the Independent Tester for the other party's proportion of the Fee and/or payment for any Varied Services and/or any failure by the other party to pay the independent Tester any sums due in accordance with this Deed.

## **5 LIMITATIONS ON AUTHORITY**

The Independent Tester shall not:

5.1 make or purport to make any alteration or addition to or omission from the design of the Facilities (including, without limitation, the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Project; or

5.2 (unless both Project Co and the Trust consent in writing) consent or agree to any waiver or release of any obligation of Project Co or the Trust under the Project Agreement or of any contractor or professional consultant employed or engaged in connection with the Project.

For the avoidance of doubt, the Independent Tester shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this Deed.

## **6 TERMINATION**

- 6.1 Project Co and the Trust may by joint notice in writing (a "Joint Notice") immediately terminate this Deed if the Independent Tester:
  - 6.1.1 is in breach of any of the terms of this Deed which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Tester within 21 days of receipt by the Independent Tester of a Joint Notice specifying the breach and requiring its remedy;
  - 6.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Services and/or the Varied Services and/or its other duties under this Deed;
  - 6.1.3 fails or refuses after written warning to provide the Services and/or the Varied Services and/or its other duties under this Deed reasonably and as properly required of him; or
  - 6.1.4 is subject to an event analogous to any of the events set out in Clause 44.1.1 (Project Co Events of Default – Insolvency) of the Project Agreement.
- 6.2 If the Project Agreement is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, this Deed may be terminated by Joint Notice and with immediate effect.
- 6.3 Following any termination of this Deed, but subject to any set-off or deductions which Project Co or the Trust may be entitled properly to make as a result of any breach of this Deed by the Independent Tester, the Independent Tester shall be entitled to be paid in full and final settlement of any valid claim which the Independent Tester may have in consequence thereof, any fees due under Clause 4 above in respect of the Services carried out in accordance with this Deed prior to the date of termination.
- 6.4 Termination of this Deed shall be without prejudice to any accrued rights and obligations under this Deed as at the date of termination (including the right of Project Co and the Trust to recover damages from the Independent Tester).
- 6.5 If this Deed is terminated in accordance with Clause 6.1, Project Co and the Trust shall use reasonable endeavours to engage an alternative Independent Tester within 30 days, subject to Law and public procurement rules. If within such period Project Co and the Trust are unable to procure the appointment of an alternative Independent Tester on reasonable commercial terms, the Independent Tester shall pay to Project Co and/or the Trust, as the case may be, any reasonable incremental loss, damage or extra costs suffered by each of them.
- 6.6 If either Project Co or the Trust fails to make a payment of any undisputed sum to the Independent Tester within twenty (20) Business Days of the expiry of the final date for payment in respect of such sum, the Independent Tester may issue a



further written notice to the Trust and Project Co specifying that the payment remains outstanding (the "Second Notice") and if payment is not made within twenty (20) Business Days of receipt of the Second Notice the Independent Tester may issue a further written notice terminating this Deed with immediate effect. Failure by Project Co or the Trust to pay, following receipt of the Second Notice pursuant to this Clause 6.6, shall be the Independent Tester's sole ground for terminating this Deed by reason of breach of this Deed by Project Co and/or the Trust.

- 6.7 Termination of this Deed shall not affect the continuing rights and obligations of Project Co, the Trust and the Independent Tester under Clauses 7 (Confidential Information and Copyright), 8 (Professional Indemnity Insurance), 5 (Limitations on Authority), 17 (Dispute Resolution Procedure) and this Clause or under any other Clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## **7 CONFIDENTIAL INFORMATION AND COPYRIGHT**

- 7.1 The Independent Tester shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to Project Co's or the Trust's or the Contractor's (if appropriate) technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of Project Co or the Trust or the Contractor (if appropriate) where the information was received during the period of this Deed except as may be reasonably necessary in the performance of the Services. Upon termination of this Deed for whatever reasons the Independent Tester shall offer to deliver up to Project Co or the Trust (as appropriate) all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant either to this Deed or to any previous obligation owed to Project Co or the Trust provided always that the Independent Tester shall be entitled to retain copies of all such items where such offer is accepted.
- 7.2 The obligation to maintain confidentiality does not apply to any information or material to the extent that the Independent Tester is compelled to disclose any such information or material by law or any regulatory or Government authority.
- 7.3 The copyright in all reports, and other documents produced by the Independent Tester in connection with the Project shall remain vested in the Independent Tester but the Independent Tester grants to Project Co and Trust and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such reports, and other documents and to reproduce the information contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.
- 7.4 The Independent Tester shall not be liable for use by any person of the documents, (including reports, details, plans, specifications, schedules, computer programs, software, consents and any other papers, works, reports and inventions produced by the Independent Tester) for any purpose other than that for which the same were prepared by or on behalf of the Independent Tester.

## **8 PROFESSIONAL INDEMNITY INSURANCE**

- 8.1 Without prejudice to its obligations under this Deed, or otherwise at law, the Independent Tester shall maintain professional indemnity insurance with a limit of indemnity of not less than [REDACTED] for any one claim in respect of any neglect, error or omission on the Independent Tester's part in the performance of its obligations under this Deed for the period commencing on the date of this Deed and [REDACTED]
- 8.1.1 the date of final certification of the Works; or
- 8.1.2 the termination of this Deed,
- whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates.
- 8.2 The Independent Tester shall maintain such insurance with reputable insurers carrying on business in the United Kingdom.
- 8.3 Any increased or additional premium required by insurers by reason of the Independent Tester's own claims record or other acts, omissions, matters or things particular to the Independent Tester shall be deemed to be within commercially reasonable rates.
- 8.4 The Independent Tester shall as soon as reasonably practicable inform Project Co and the Trust if such insurance ceases to be available at commercially reasonable rates in order that the Independent Tester and Project Co and the Trust can discuss means of best protecting the respective positions of Project Co and the Trust and the Independent Tester in respect of the Project in the absence of such insurance.
- 8.5 The Independent Tester shall fully co-operate with any measures reasonably required by Project Co and the Trust including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if Project Co and the Trust undertake in writing to reimburse the Independent Tester in respect of the net cost of such insurance to the Independent Tester above commercially reasonable rates.
- 8.6 The Independent Tester shall, prior to commencing the provision of the Services and as soon as reasonably practicable following renewal dates, produce for inspection by Project Co and the Trust documentary evidence that such insurance is being properly maintained.
- 8.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by Project Co and the Trust.

## **9 LIMITATION OF LIABILITY**

- 9.1 With the exception of liability for death, personal injury, liability for fraud, abandonment, corruption or wilful default and/or any other liability that cannot lawfully be excluded or limited (for which the Independent Tester's liability shall be unlimited), the Independent Tester's maximum aggregate liability to all parties, under or in connection with this Deed, whether in contract or in tort, or for breach of statutory duty is limited to [REDACTED]

- 9.2 No action or proceedings under or in connection with this Deed shall be commenced against the Independent Tester after the expiry of [REDACTED] from the completion of the Services.

## **10 NOTICES**

All notices or other communications required in connection with this Deed shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number set out in the Project Agreement or in the case of the Independent Tester to its registered office for the attention of the company secretary or to such other address or facsimile number as a party to this Deed may notify to another party to this Deed in writing.

## **11 ASSIGNMENT**

- 11.1 The Independent Tester shall not assign or transfer any of its rights or obligations under this Deed or sub-contract the whole or any part of the Services.
- 11.2 Neither Project Co nor the Trust shall be entitled to assign or transfer any of their respective rights or obligations under this Deed save that the parties hereby consent to any such assignment or transfer (i) which is contemporaneous to the assignment or transfer of the Project Agreement and is made to the same assignee or transferee; or (ii) by way of security to the Funder under the Funding Agreements. In the event that the Project Agreement is novated to a third party, the term "Project Agreement" shall include any replacement contract arising from such novation.
- 11.3 The Independent Tester shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.2 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

## **12 CUMULATIVE RIGHTS AND ENFORCEMENT**

- 12.1 Any rights and remedies provided for in this Deed whether in favour of Project Co or the Trust or the Independent Tester are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.
- 12.2 The duties and obligations of the Independent Tester arising under or in connection with this Deed are owed to Project Co and the Trust both jointly and severally and Project Co and the Trust may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.
- 12.3 Project Co and the Trust covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this Deed which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

## **13 WAIVER**

The failure of any party at any one time to enforce any provision of this Deed shall in no way affect its right thereafter to require complete performance by any other party, nor shall

the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

#### **14 SEVERABILITY**

In the event that any term, condition or provision contained in this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this Deed and the rest of this Deed shall stand, without affecting the remaining clauses.

#### **15 COUNTERPARTS**

This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

#### **16 VARIATION**

A variation of this Deed is valid only if it is in writing and signed by or on behalf of each party.

#### **17 DISPUTE RESOLUTION PROCEDURE**

17.1 All disputes shall be resolved in accordance with terms equivalent (*mutatis mutandis*) to the Dispute Resolution Procedure as set out in the Project Agreement (excluding for the avoidance of doubt the Liaison Committee and the Dispute Resolution Procedure).

17.2 Project Co, the Trust and the Independent Tester shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Deed.

#### **18 GOVERNING LAW AND JURISDICTION**

18.1 Subject to Clause 17 above, this Deed shall be governed by and construed in accordance with the laws of England and Wales and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. Subject as aforesaid, the parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales (including in relation to non-contractual disputes or claims).

18.2 No action or proceedings may be commenced against the Independent Tester for any breach of this Deed after the expiry of 12 years following the date of completion of the Services or the termination of this Deed, whichever is the earlier.

#### **18A PROCESS AGENT**

The Funder irrevocably appoints KfW IPEX-Bank GmbH - London Branch of 4th Floor, 60 Fenchurch Street, London EC3M 4AD and fax number 0203 140 9835 as its process agent to receive on its behalf in England or Wales service of any proceedings under Clause 18 (Governing Law and Jurisdiction) above. Such service shall be deemed completed on delivery to such process agent (whether or not it is forwarded to and received by KfW IPEX-BANK GmbH's registered office in Germany) and shall be valid until such time as the other parties to this Agreement have received prior written notice from the KfW IPEX-BANK GmbH that such process agent has ceased to act as agent. If for any reason such

process agent ceases to be able to act as process agent or no longer has an address in England or Wales, KFW IPEX-BANK GmbH shall forthwith (and in any event within 5 Business Days of such event taking place) appoint a substitute acceptable to the other parties to this Agreement and deliver to the other parties to this Agreement the new agent's name, address and fax number within England and Wales.

**19 DELIVERY**

This Deed is delivered on the date written at the start of this Deed.

**20 THIRD PARTY RIGHTS**

Save as expressly set out herein, no provision of this Deed is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party against any party to this Deed.

**IN WITNESS WHEREOF** the Parties have executed and delivered this Deed on the date first written above.

## **Appendix 1**

### **Part 1**

#### **Scope of Services - Independent Tester Contract**

The Independent Tester shall perform the role of Independent Tester as referred to in Clauses 20, 22 and 23 (including complying with any time limits specified in such Clauses) and Schedules 8, 9, 10, 12 and 22 of the Project Agreement, by providing the following scope of Services:

#### **1 MONTHLY REPORT AND COMPLETION CERTIFICATION**

The Independent Tester shall:

- 1.1 During the Works, provide the Trust and Project Co with a monthly report on the activities carried out by the Independent Tester.
- 1.2 Undertake regular inspections during the Works, as necessary, in accordance with the periods set out in the Completion Criteria and the tender specification. Report on the completion status of the Project, identifying any work that is not compliant with the Trust's Construction Requirements, Project Co's Proposals, the Approved Reviewable Design Data (Approved RDD) and/or the Completion Criteria.
- 1.3 Undertake the certification services in relation to Beneficial Access as required under Schedule 12, paragraph 4.
- 1.4 Certify the Actual Completion Date and issue a Certificate of Practical Completion in accordance with the Project Agreement.
- 1.5 Within five (5) Business Days of issue of the Certificate of Practical Completion, issue a Snagging Notice specifying any Snagging Matters. Monitor and review rectification of such Snagging Matters in accordance with the Project Agreement.
- 1.6 Review the programme for the rectification of all Snagging Matters to be carried out and advise Project Co and the Trust as appropriate
  - 1.6.1 technical commissioning has been satisfactorily completed;
  - 1.6.2 confirm any defects;
  - 1.6.3 confirm any outstanding works;
  - 1.6.4 to discuss arrangements for Post Completion Commissioning.

And in order to enable the Independent Tester to discharge these primary functions which are to be performed independently, fairly and impartially to and as between Project Co and the Trust and having regard to the interests of Funders, the Independent Tester shall discharge the further duties described below.

#### **1A WLAN AND WIRELESS COMMUNICATION SYSTEMS COMPLETION**

The Independent Tester shall:

- 1A.1 no earlier than the date that falls three (3) calendar months and two weeks following the Actual Completion Date carry out the WLAN and Wireless Communications Systems Post-Completion Tests so they have been completed by no later than the WLAN and Wireless Communication Systems Post-Completion Tests Completion Date;
- 1A.2 within five (5) Business Days of any inspection made pursuant to paragraph 1A.1 above notify Project Co and the Trust of any outstanding matters required to be attended to before the WLAN and Wireless Communication Systems Post-Completion Tests can be considered to be completed;
- 1A.3 determine whether the WLAN and Wireless Communication Systems are finished or complete in accordance with the WLAN and Wireless Communication Systems Post Completion-Criteria and advise Project Co and the Trust of the need for any re-testing which may be necessary to demonstrate whether the WLAN and Wireless Communication Systems are finished or complete;
- 1A.4 certify the WLAN and Wireless Communication Systems Actual Completion Date and issue a Certificate of WLAN and Wireless Communication Systems Post-Completion Completion,

and in order to enable the Independent Tester to discharge these primary functions which are to be performed independently, fairly and impartially to and as between Project Co and the Trust and having regard to the interests of Funders, the Independent Tester shall discharge the further duties described below.

## **2 GENERAL**

The Independent Tester shall:

- 2.1 Familiarise itself with the Project Agreement (including the Design Data, the Design Quality Plan, the Construction Quality Plan and any Variations issued from time to time and any other relevant documentation or information referred to in the Project Agreement, relevant Service Level Specifications and Method Statements and the Construction Contract to the extent necessary to be in a position to carry out the Services in accordance with the terms of the Project Agreement and this Deed.
- 2.2 Following notification by Project Co, pursuant to Clauses 22.8 and 22.10 of the Project Agreement, inspect and comment as required on the Works as required by the Completion Criteria.

## **3 DESIGN REVIEW**

- 3.1 For the avoidance of doubt, nothing in this paragraph 3 or elsewhere in this Deed shall impose any design liability on the Independent Tester, and any design liability shall remain with the parties responsible for such design under the Project Agreement. The Services required under this paragraph 3 shall be supervisory in nature and shall not require the Independent Tester to approve (or otherwise) the suitability of the design under the Project Agreement.
- 3.2 The Independent Tester shall:
  - 3.2.1 Monitor and report upon the implementation of the Design Quality Plan for the construction, structural and engineering services design for the Project.

- 3.2.2 Monitor the detailed working drawings and specifications for a sample number and type of rooms which in his professional judgment is appropriate to be selected by the Independent Tester to verify that they comply with the Approved RDD as described in the Project Agreement. The Independent Tester has indicated that in normal circumstances fifty (50%) of rooms should be sampled. If in the professional judgment of the Independent Tester, because of the results of its sample or other circumstances a different sampling percentage is appropriate, he shall provide a detailed report in respect of that and, if so agreed (or determined as between Project Co and the Trust by the Dispute Resolution Procedure) any change in the percentage sampling resulting in a change in fees will be borne by Project Co and the Trust as they shall agree or as determined by the Dispute Resolution Procedure.
- 3.2.3 Review the detailed design information for any approved design or specification variations for compliance with the performance and quality standards of the Project Agreement, Generic Equipment Output Specifications and ERM and quality standards as set out in Schedule 13 and the Contractor's Quality Plan.

#### **4 PROCEDURE REVIEW**

The Independent Tester shall:

- 4.1 Monitor the operation of the quality assurance procedures of the Contractor at regular intervals (maximum three (3) months) during the execution of the Works.
- 4.2 The Independent Tester shall familiarise itself with the proposed procedures and programmes for the testing and commissioning of the Mechanical and Electrical engineering services prior to the Trust's occupation.
- 4.3 Monitor the procedures for the identification, approval and recording of agreed Variations to the Works in accordance with the Project Agreement.
- 4.4 Review any samples or mock ups as required by Schedule 8 Part 10 and check that they have been approved in accordance with the Project Agreement.

#### **5 CONSTRUCTION REVIEW**

The Independent Tester shall:

- 5.1 Visit the Site and monitor the Works for their compliance with the Trust's Construction Requirements, Project Co's Proposals and the Approved RDD. The frequency and timing of the Independent Tester's visits are dependent on the progress of construction on Site. The Contractor shall agree a programme with the Independent Tester for the inspection of key construction processes and the completed Works and shall give the Independent Tester advance notice of these Works being carried out on Site. The Independent Tester shall identify any aspect of the Works which needs to be inspected before being covered over by subsequent activity so that he may satisfy himself that these have been constructed in accordance with the Contractor's Quality Plan without the need for opening up.
- 5.2 Randomly check that the Works are being undertaken in accordance with the Construction Quality Plan that has been agreed by the Trust and Project Co.



5.3 Review 100% of the written Mechanical, Electrical and other services testing and commissioning procedures and review 100% of all test records. Undertake selective witnessing of the Mechanical, Electrical and other services testing and commissioning by physical inspection on site (for the avoidance this shall entail watching the tests being performed rather than only reviewing the results and related paperwork). The requirement is that the on site physical sampling proportions shall include:

5.3.1 100% of all life critical installations (i.e. medical gas systems, generator systems, controls associated with essential services and generators, UPS, IPS, theatre ventilation and the like);

5.3.2 100% of all major plant and distribution systems, i.e. incoming service connections, boilers, air handling plant, lifts, main distribution risers, main electrical distribution boards, HV equipment; and

5.3.3 25% of all other services.

Review by actual physical inspection 50% of all rooms for compliance with the Trust's Construction Requirements, Project Co's Proposals and the Approved RDD.

If in the professional judgment of the Independent Tester, because of the results of witnessing (or because of other circumstances) a different sampling percentage is appropriate he shall provide a detailed report in respect of that and any change in the percentage sampling resulting in a change of fees will be borne by Project Co, the Trust or the Contractor as they shall agree, failing such agreement, as determined by the Dispute Resolution Procedure.

5.4 Inspect rectification works which have previously prevented the Independent Tester from certifying the Project as complete. Concurrent with the issue of the Certificate of Practical Completion, agree a list of Snagging Matters with Project Co together with its programme for implementation and issue a Snagging Notice in accordance with Clause 22.

5.5 Check the production of the relevant operating manuals, relevant approvals, test results, inspection records and as built drawings and monitor the timely handover of this documentation.

## **6 PARTICIPATION IN DISPUTE RESOLUTION**

As and when required by the Trust or Project Co, the Independent Tester shall participate in the Dispute Resolution Procedure of the Project Agreement (as such term is defined in the Project Agreement) to the extent that issues under the Project Agreement which have been referred to the said Dispute Resolution Procedure relate to the Independent Tester's other obligations and tasks as set out in this Appendix 1 and this Deed.


## Appendix 1

### Part 2

#### Schedule of Completion Services

Item	Completion Services	Methodology proposed by Independent Certifier	Resource allocation
1	Become familiar with the Project Agreement, the Project Documents, the Quality Plans and the Design Data and any Variations issued from time to time (and any other relevant documentation or information referred to in such documents), to the extent necessary to carry out the obligations of the Independent Tester under this Agreement	<p>At the outset the Independent Tester will request the Project bible detailing all relevant FC Contract documentation, and access to all relevant project documentation through the project web based file sharing platform (e.g. Skandocs or 4P).</p> <p>The focus will be to:</p> <ul style="list-style-type: none"> <li>• use their experience of areas that have proven to be a challenge on similar projects and understand how Project Co proposes to manage these;</li> <li>• assess the information for suitability, consistency and quality; for example do the detailed designs and specifications marry with the design intent, the ARs and CPs;</li> <li>• identify any unusual solutions and assess if these are compliant with standards pertinent to the project.</li> </ul> <p>The Independent Tester will undertake a systematic review of the Project Agreement, Authority's Requirements, the Project Co Proposals, the Outline Commissioning Programme and other project documentation, to familiarise himself with the project deliverables and to confirm the baseline against which design development will continue and Project variations will be assessed.</p> <p>The Independent Tester will monitor the process for Variations in accordance our obligations</p>	<p>This will be undertaken by all members of the team reviewing their specialist areas.</p>

		<p>under Appendix 1 Part 1 Clause 3.2.3 and Clause 4.3 of the Independent Tester Contract, assessing Variations as and when they are issued and confirm either 'no impact' or 'impact' accompanied by our associated assessment. The next monthly report will summarise this review; further reports will record and track any 'impact items'.</p>	
2	<p>Review and comment on the Final Commissioning Programme</p>	<p>The Final Commissioning Programme must ultimately be logical in terms of sequencing, durations and contingencies. The witness testing associated with the Final Commissioning Programme relies upon the satisfactory conclusion of extensive pre-testing from component level up to individual system commissioning. To support the satisfactory conclusion of these activities the Independent Tester shall liaise closely with the Commissioning Manager (or other dedicated individual / team) and sub-contractors to interrogate the test methodology and sequence for all activities from preliminary programme preparation onwards, including participation in commissioning workshops. The Independent Tester will undertake a detailed review to ascertain the programme logic; confirm the adequacy of time allowed (including contingency headroom for re-testing); and validate the sequencing of the processes to facilitate compliant operation for Contract Completion.</p> <p>In particular, the Independent Tester will emphasise the robustness of testing required, the impact of one service on another, and identify the soft spots / interfaces where multiple trade inputs are required to complete an integrated testing process. On this project the bio-diesel CHP and the ground source heating are pivotal to the operation of the facility and the Independent Tester will stress these through similar scenarios to the black start situation.</p> <p>For Fire Alarm, Black Start and IST activities the Independent Tester will work with the Commissioning Manager and the team specialists to understand the site wide infrastructure, the design of the individual systems, and to confirm how resilience requirements are to be met. Through this process the Independent Tester will review the contractors schedules which itemise every system interface at a detailed level; capturing all associated signal / data transfer requirements; determining its required response; and documenting required test protocols.</p>	 / 
	<p>Inspect each room and area for compliance with the Design</p>	<p>The Independent Tester acknowledges that 50% (plus 100% of identified key clinical areas) of</p>	 / 

	Data	rooms are to be validated for compliance; we assess this to be some 700 – 800 rooms.	
4	Witness and comment on Project Co.'s Pre-Completion Commissioning	<p>During Inspection activities the Independent Tester will sample pre-check representative room types at various stages of the build to gain confidence that the construction and fit out is in accordance with project specifications, RDD requirements and the standard agreed within the sample rooms.</p> <p>As soon as rooms are considered to be complete in all respects and offered to us for inspection the Independent Tester shall commence the Room Check activity. Having first agreed all documents against which the rooms are to be validated and their structure of precedence we will perform a detailed check of the finished space against our pro-forma room checklist. This activity encompasses reconciliation against the 1:50 loaded drawings and Room Data Sheets (RDS), including check of fixed furniture and equipment (FF&amp;E), and quantum and operability of services. The Independent Tester will identify and report any variances to the approved documentation and once these matters are reported as resolved we will then validate these resolutions against a further sample of rooms.</p> <p>Early commencement of Room Checks is vital, both because of the intensive resource requirement and also because of the potential programme implications if any issues are identified.</p> <p>The Independent Tester has a strong and well-resourced team and understand that the Contractor will benefit from early information and the Independent Tester will informally tell the contractor when an issue arises on the project and formally record this in our reports to maintain the audit trail of our certification services.</p> <p>The Independent Tester will witness installed Building Services systems, and agree at</p>	Whole Team

	<p>Appointment an appropriate programme of activity. In the delivery of our services we will not:</p> <ul style="list-style-type: none"> <li>• Base our decisions on subjective observations and 'here say'.</li> <li>• Compromise on specific agreed outputs and statutory obligations.</li> <li>• Rely on being verbally told elements are complete; obtaining documentary evidence and witnessing will be our methodology.</li> <li>• End load our testing activities; we will target the first of each process to facilitate meaningful benchmarking of quality and outcomes.</li> </ul> <p>We actively support the Contractor and Project Co in facilitating a 'no surprises' environment where the Trade Contractors have a clear understanding of expectations. Our IT team will work closely with the Commissioning Manager to review each of the written mechanical and electrical engineering services testing and commissioning procedures for the various equipment and services. In conducting this review we welcome direct interface with the trade contractors so that we achieve a common understanding of expectations, and we typically underpin this with 'Role of the IT' presentations to the trade contractors.</p> <p>For site installed systems and equipment, activities shall be confined to general inspection of the works (having first understood the technical details of that part) until elements are tested and offered for witness. Upon receipt of invitations to witness the Independent Tester will review the sub-contractor's QA documentation, including 100% of the test results, and if satisfactory we will witness the testing of a percentage of the offered results. We note and will comply with the witness percentages defined within The Independent Tester Contract:</p>	
--	---	--

### Appendix 1 Part 1 Section 5.3.

The Independent Tester will commence witnessing at component level with items such as pipework pressure tests, fire dampers (e.g. support and operation), electrical cabling dead tests and fire alarm sander tests. As complete areas or sub-systems become available we will progress to witnessing of items such as pipework ventilation system flow rates and balance, switchboard testing, and zonal testing of alarm systems. This testing regime helps eliminate defects and build confidence in the works prior to progression onto whole system testing for each service, and finally Integrated Service Testing.

#### Areas of Focus:

In addition to the specific project criteria we will focus our efforts on two frequently overlapping areas:

1. Construction Contractor (and sub-contractor) development of method statements for the more project specific or technically challenging commissioning activities. These will typically include, but not be limited to:
  - Integrated Fire Alarm Cause & Effect testing
  - Black Start Scenario Testing
  - Full Integrated Systems Testing
  - Site wide telecoms and data infrastructure
  - Specialised laboratory services inc' Aseptic suites
  - Ultra Clean and other Operating Theatre facilities
  - Resilience testing of data systems

For these elements the Independent Tester will participate in discussion and planning meetings, to confirm that an understanding of the key issues and constraints, and will review method statements to validate that they will fully demonstrate a compliant system.

		<p>2. 'Soft Spots': These are the interfaces between elements delivered by different sub-Contractors which require a collaborative approach to satisfying our Compliance checking. Examples of this include:</p> <ul style="list-style-type: none"> <li>▪ Surgeons' panels</li> <li>▪ BMS system interface with third party equipment such as chiller plant</li> <li>▪ Fire alarm interface with third party equipment such as Lifts</li> <li>▪ Fire damper interfaces with the wider fire compartmentation strategy</li> <li>▪ Proving of Pressure regimes</li> </ul>	
5	<p>Witness the Group 1 (fixed) Equipment, building and building services commissioning for compliance with the Design Data and specified standards</p>	<p>The Independent Tester will seek to validate that Project Co have accommodated the requirements of the equipment into their detailed design and commissioning processes. This will include space, fixing, services, environmental, security, and any other requirements from the manufacturer. Where equipment has implications on the technical commissioning of an area, we will validate that the technical commissioning is structured to accommodate and allow for the impact of the equipment, so that the performance of the area is maintained. For example that laboratory benching will not generate dead spots with low air circulation.</p> <p>The Independent Tester will establish the criteria to be applied and convert these into meaningful data, such as critical dimensions, services, environmental conditions and orientation. During our room checks we will validate against loaded 1:50 plans and schedules that the correct equipment has been installed; is correctly located; and that powered equipment has appropriate utilities connected and is operable.</p>	Whole Team
6	<p>Witness the tests for completion to be performed in accordance with the Final Commissioning Programme. These tests follow on from the individual system commissioning and will include a generator "black start" and</p>	<p>The Final Commissioning tests will comprise full integrated systems testing and culminate in Black Start scenario testing to prove the performance of the systems across the whole facility to be demonstrated in as close to operational state as is reasonably practicable (including a number of system fail and recovery situations). The earlier participation in the development of the Final Commissioning Programme and Test Methodologies will have confirmed the adequacy of the completion tests to satisfactorily demonstrate that the systems meet the requirements</p>	<p>██████████ will lead on this activity supported by ██████████</p>

<p>associated assessment of building reaction/performance. Within the bid, the tenderer will identify the anticipated level of tests they have allowed to be witnessed</p>	<p>of the Project Agreement.</p> <p>Prior to commencement the Independent Tester will have systematically tested individual systems, validated Group 1 equipment installation, and confirmed that construction close out has diminished to snagging works which will not compromise the tested systems.</p>
	<p>The Final Commissioning Tests are:</p> <ul style="list-style-type: none"> <li>• Integrated Fire Alarm (FA) Cause &amp; Effect (C&amp;E) testing</li> </ul> <p>This testing will provide final confirmation that the Fire Alarm is correctly interfaced to all other items of build as defined within the C&amp;E matrix, and that each interfaced item responds correctly. Sound levels will also be validated. The Independent Tester will systematically work through each line of the C&amp;E matrix to validate that each Effect correctly occurs for each Cause. This will require a low activity building with a team of witnessing staff distributed across locations including individual rooms, FA Head End, BMS, Plant Rooms, Lifts, Smoke Damper panel, fire doors and fire shutters.</p> <ul style="list-style-type: none"> <li>• Black Start Scenario Testing</li> </ul> <p>The final Black Start test will be the culmination of a number of pre-Tests which will have validated the correct response and recovery of power supplies across the facility. As noted in Item 2 of this table we will have fully challenged the proposed test methodology and we will participate fully in elemental pre-Testing of automatic change over panels, UPS systems, and generator response. We would require a sequence of defect free demonstrations of the site wide electrical system encompassing each identified power failure scenario. The witnessing of these activities will require out of hours working. <li>• Full Integrated Systems Testing (IST)</li> <p>Full IST will follow satisfactory conclusion of Black Start testing. The Independent Tester anticipates that elemental IST will have been conducted by failing power supplies and by proving individual systems interfaces during pre-commissioning and will then continue in parallel with the Black Start pre-Tests. As with Fire Alarm testing, this will require a systematic approach within a low activity building with a team of witnessing staff distributed across locations to capture the response of all items identified within</p> </p>



		the test plan. We anticipate that three clean final IST's will adequately demonstrate completion of this crucial testing.	
7	Confirm that all necessary consents required under the Final Commissioning Programme have been received	<p>The Independent Tester will list out all consents required plus the documentation and processes that come together to validate these.</p> <p>The Independent Tester will work closely with all of the contract parties, and draw upon experience / records from other major healthcare projects, to develop a comprehensive schedule of Consents, Certification, and other documentation which will be required prior to achieving Practical Completion. This will be translated into a Completion Tracker with a RAG rating for each item of documentary evidence listed. During the latter months of the project this Completion Tracker will be appended to our monthly report for review at the monthly Project Liaison Meeting.</p> <p>To increase focus upon these requirements we encourage a dry run of the Certification process with all stakeholders approximately three months prior to the actual date; this enables all parties to better understand the required deliverables and the process and instils a no surprises culture.</p> <p>Typical requirements will include, but not be limited to, the items scheduled within Schedule 12 Appendix 3 and any additional items included below:</p> <ul style="list-style-type: none"> <li>• Planning Discharge</li> <li>• Building Control Certification</li> <li>• Environment Agency Approval</li> <li>• Health and Safety Validations</li> <li>• RPA approval</li> <li>• AP approval for Medical gasses</li> </ul>	<div></div> /

		<ul style="list-style-type: none"> <li>• Fire Officer approval</li> <li>• Statutory Utilities approvals</li> <li>• Confirmation of BREEAM Excellent</li> <li>• CDMc acceptance of Health &amp; Safety File (noting that this will be superseded by the lead designer on this project)</li> <li>• FM acceptance of Operation &amp; Maintenance Manuals (typically at an advanced draft status)</li> <li>• Designers Certification</li> <li>• Compliance Certification for installed systems, including Electrical and Gas system</li> <li>• Equipment Supplier Certification</li> <li>• Secure by design</li> <li>• BIM Execution requirements and sign-off</li> <li>• Landlord requirements (fully serviced plot)</li> <li>• Close out of Independent Tester observations log.</li> <li>• Close out of Contractors NCR log.</li> </ul> <p>To support this process the Independent Tester will liaise at an early stage of the project with the Construction Contractor's Quality Manager to gain a thorough understanding of their QA system and to confirm that it is appropriately established, implemented and maintained.</p> <p>The Independent Tester expects the Construction Contractor's Quality Plan to indicate how the</p>	
--	--	--	--

	<p>quality process is to be managed and that it will include procedures for 'signing off' completed work, through the use of Inspection and Test Plans, together with the expected timing of these inspections in relation to the proposed offering up of completed works for the Independent Tester's inspection and review.</p> <p>During construction the Independent Tester will monitor compliance with the QA plan by checking the collation of test results, inspection records, and relevant approvals which will form a substantial element of the documentation required to demonstrate Practical Completion. The Independent Tester will record documents that have been reviewed in our reports.</p> <p>The Independent Tester promotes early development of an agreed structure and format for the Operation and Maintenance manuals so that the Contractor can feed information in on a progressive basis rather than as the project runs in to completion. This allows for an orderly review process to build confidence that the end result will meet maintenance requirements going forward.</p>	
8	<p>Inspect the Works on a regular basis for compliance with the documents listed under items 1 &amp; 2 of this schedule of Completion Services and notify any outstanding matters</p> <p>Throughout the project, from foundation works to integrated systems testing, the Independent Tester shall accumulate a 'Body of Evidence' to support the issue of the Independent Tester's Completion certificate. While the approach to inspections is coordinated and frequently discussed with the Construction Contractor, the regular presence on site enables random, unannounced, checks to be undertaken throughout the construction period.</p> <p>The site based inspection activity will commence at site preparation stage and continue through to Completion. As Construction progresses our focus will increasingly move towards detailed accommodation checks and witness testing of building services and equipment. The objectives of our inspections are principally:</p> <ul style="list-style-type: none"> <li>• Assessment of the progress of the works against programme;</li> <li>• Gain confidence in the quality of the workmanship;</li> <li>• Validate that the installed works are being constructed in accordance with the design, specifications and relevant standards;</li> </ul>	Whole Team

	<ul style="list-style-type: none"> <li>• Validate compliance with applicable project standards and statutory requirements.</li> </ul> <p>The inspections will be conducted on a regular basis and by a mix of disciplines, commencing with focus upon Civil and Structural and then Architectural with progressively increasing attendance by Mechanical, Electrical, IM&amp;T and finally finishes / equipment.</p> <p>The Project Manager will be the day to day contact on behalf of Mouchel and will liaise with a key contact on the contractor's team. He will analyse the detailed construction programme to identify main activities and plan our visits accordingly. This is not only important for commissioning activities but also for the commencement of the elements of the building structure and fabric.</p> <p>The Independent Tester will be visiting site regularly from the commencement of site activities, reviewing build quality and monitoring compliance with the relevant project documentation. There will be a limited degree of technical testing and a large proportion of our time will be spent on QA and the auditing of test results, e.g. concrete cube, foundation integrity, tolerances, etc. As the building services installation and finishes trades ramp up, we will increase the frequency of site visits with an increasing focus on validating contractors QA processes by selective witnessing of component level testing progressively building towards full witnessing of systems and integrated systems. Our resource programme anticipates we will be on site full time during peak activity.</p> <p>The Independent Tester will, by arrangement, attend Factory Acceptance Tests (FAT's), typically encompassing activities such as:</p> <ul style="list-style-type: none"> <li>• Steel fabrication or structural precast concrete;</li> <li>• Modular construction e.g. M&amp;E primary infrastructure;</li> <li>• Generators;</li> <li>• Electrical packaged substations &amp; main distribution boards;</li> </ul>	
--	---	--

		<ul style="list-style-type: none"> <li>• Chiller units;</li> <li>• CHP plant</li> <li>• Air handling units;</li> <li>• Integrated ICT systems;</li> <li>• Specialist integrated production equipment such as refrigeration, robotics, etc.</li> </ul> <p>The inspection and witnessing will give rise to Observations which may include works defects, non-compliance issues or maintainability matters. The Independent Tester will adopt a three stage approach to the resolution of such observations:</p> <ol style="list-style-type: none"> <li>1. Firstly the Independent Tester will discuss the matter openly with the Construction Contractor and seek further explanation or information that closes our enquiry.</li> <li>2. The second stage is to record the issue more formally through the use of an Observation Log. The Observation Log is a 'live' document which not only records the issue raised but also tracks the remedial action taken.</li> <li>3. The third stage is to formally raise a Notice of Non-Compliance if it appears that an issue is not being resolved in a satisfactory and timely manner. Such notices will not be issued lightly or without prior warning, and the satisfactory close out of such notices will be a requirement for the issue of the Independent Tester's Certificate of Completion.</li> </ol> <p>However, where the Independent Tester is satisfied that the Contractor's reporting systems are appropriate and robust, with the agreement of all parties, the Independent Tester will adopt the recording and tracking of 'works defect' type Observations to a common reporting system owned and managed by the Construction Contractor. This keeps the recording of</p>	
--	--	---	--

	defects and tracking of the closeout process close to the team charged with resolving them.  Independent Tester Observation Log is then used to record and report more 'macro' type Observations which may be, for example, design related or non-Compliance issues - matters which we would adjudge may require higher level or multi-party input to resolve, or may require Derogation.	
9	<p>Liaise with the Trust, Project Co, Project Co.'s Representative, the Contractor, the Service Provider and the Funder's Technical Adviser, and request and obtain information from the same</p> <p>the primary point of contact will be the Project Manager, [REDACTED]</p> <p>We anticipate similar key contacts being available for both the Project Co and the Trust with whom [REDACTED] will regularly liaise. We also consider that key communication leads will be identified for the contractor and FM provider. Key communication levels will include:</p> <p>Mouchel</p> <ol style="list-style-type: none"> <li>1. will communicate with all stakeholders, with the pinnacle of this being our communication with the Project Co and the Trust. [REDACTED] (or nominated deputy when absent) will attend a monthly meeting with Project Co, The Trust and Lenders Technical Advisor and confirm the key activities undertaken in the previous month and highlight activity for the month ahead. We suggest that the Contractor and FM provider are also party to this meeting.</li> <li>2. The intention is to regularly meet with our clients and we suggest that we will contact them at least weekly to confirm general status and activities on the project.</li> <li>3. the meeting is extended quarterly, to incorporate quality reviews; [REDACTED] will lead on this issue. A thorough review of the contract programme and associated Independent Tester activities will be undertaken at this meeting.</li> <li>4. [REDACTED] will also regularly communicate at a Director level with Project Co and the Trust, to confirm our service delivery and discuss any high level strategic issues or risks related to the project. We understand the need to confirm any service or project issues</li> </ol>	<p>Whilst our project manager will liaise with all parties, [REDACTED] as our Director will maintain an account management role and will be available to discuss the project throughout the commission.</p>

	<p>to both Project Co and the Trust in line with our joint obligations.</p> <p>5. There will be a number of other stakeholders on the project, such as the CDMC / Lead Designer, contractor supply chain partners, design team, building control, specialist equipment suppliers, etc... We will agree these communication structures with the contractor communications lead and record all such contacts, actions and outcomes in our monthly reports.</p> <p>6. The Independent Tester will comply with the communications governance arrangements and inform and escalate any issues relating to variance from these with Project Co and the Trust.</p> <p>A key element in communicating with our joint Clients will be the preparation of a written monthly report, which will be discussed on a monthly basis and of itself will form an auditable record of the Independent Tester's work on the project.</p> <p>In addition, an informal comments / observations list will be maintained, (this provides a consolidated single record of noted issues and their resolution) which will also give either a potential compliance or snagging designation. This observation log will be shared with the Contractor's Compliance Manager (which may be the resource also overseeing quality assurance), as a means of succinctly confirming raised issues and to act as an informal management tool for tracking the resolution of them. This observation log will also be issued to our joint clients, to act as a mean of informing on issues raised and their resolution.</p> <p>Verbal feedback will be provided where relevant to the Contractor's Representative following an inspection</p>	

<p>10</p> <p>Review the Contractor's non-compliance system and confirm all relevant matters are sufficiently closed out</p>	<p>One of the keys to the successful delivery of the Independent Tester role is to have an open and honest relationship with the Construction Contractor. This encompasses both formal and informal communications and we would expect that through regular site visits and interface with the construction team we would maintain common knowledge of non-compliance matters, and proposed corrective works, as they arise.</p> <p>Prior to issue of both our Certificate of Practical Completion and our Certificate of Commissioning Completion all non-compliance matters shall be resolved to the satisfaction of all parties.</p> <p>The Independent Tester will liaise at an early stage of the project with the Construction Contractor's Quality Manager to gain a thorough understanding of their QA systems and to confirm that it is appropriately set up and implemented. We expect the Construction Contractor's Quality Plan to indicate how the quality process is to be managed; procedures for 'signing off' completed work through the use of Inspection and Test Plans; and capture, reporting and resolution of non-compliance matters.</p> <p>The on-going review of this process to monitor satisfactory progress to completion will have two levels:</p> <p>Monthly: The Independent Tester will review the status of items recorded within the Contractor's QA system, specifically log any non-compliance matters within our documentation, and report on the close out status within the monthly report.</p> <p>Quarterly: The Independent Tester will review the non-compliance system as part of our quarterly monitoring of the Contractor's Quality Assurance (QA) system. Where appropriate this review is extended to encompass principal sub-contractors' QA systems.</p> <p>█ leads the quarterly reviews of the contractor's QA system, quality plan and records. In addition to her experience in Independent Testing, █ carries out retained technical advisor services on a number of PPP commissions and has an in-depth understanding of the resilience of data, quality assurance measures and documentation required.</p>
---	--



11	Review comments raised by the Trust's Representatives	<p>A key element to the successful delivery of our Independent Tester service will be open communication with all parties to our appointment. In addition to liaison with Trust Management we typically maintain engagement with Trust technical specialists including Fire Officer, Radiation Protection Advisor, Medical Gas AP (if not ProjectCo), IT department, and MM equipment specialists.</p> <p>At all times the Independent Tester will deliver our service independently, fairly and impartially as required within Clause 2.2 of the Independent Tester Contract.</p> <p>Any comments raised by the Trust's Representatives will be logged, reviewed impartially, and responded to by our highly experienced team, taking due cognisance of the project documentation, quality procedures, technical standards, contract programme et al as dictated by the nature of the comment.</p> <p>The Independent Tester will consult with other parties and our response would be communicated to both Project Co and The Trust.</p> <p>In the event that a matter raised becomes contentious between Project Co and The Trust the note our obligations under Appendix 2 Part 1 Paragraph 6 of the IT Contract. Independent Tester</p>
----	---	--

Carry out any other activities, including attendance at regular progress and technical meetings



The proposed team who have considerable experience of Independent Tester Services on large acute healthcare PFI projects will use our local offices (including Cambridge) as administrative and support bases. There will be a regular presence on site and in addition to attendance at the monthly project liaison meetings (PLM's) the Independent Tester will welcome the opportunity to participate in technical and progress meetings.

team as required

Meeting	Estimated Frequency	Who with	
PLM's	Monthly	Trust, Project Co, Contractor, FM Co	
Ad Hoc Trust & Project Co update discussions	Weekly or as required	Trust, Project Co	
QA audit	Quarterly	Contractor	
Completion Commissioning planning mtgs	We note that these are monthly and anticipate that our attendance may be requested on an ad hoc basis.	Joint Commissioning Steering Group	
Role of the IT presentations	Ad Hoc, est 2/3	Sub-Contractors	
Design review	Quarterly	Contractor	
Variations	Ad Hoc	Project Co, Trust,	
Obs log review	Monthly	Contractor	
Testing Method statements	Ad Hoc	Contractor & SubCons	

		<p>The Project Director and / or Manager will attend the Project Liaison Meetings (PLM's). In addition to presenting the monthly report we view these meetings as an essential forum to understand the wider project considerations and issues of concern for our joint Clients, share our extensive technical knowledge and experience from other projects; and to promote a focus upon timely 'completion by parts' to avoid compression of the completion, commissioning and handover activities at the back end of the programme.</p>	
13	Produce a monthly report	<p>The monthly report will be presented in the monthly project liaison meeting, typically attended by the Authority, Project Co, the Contractor, the Lenders TA, and the FM provider. It will record our ongoing activities and will place particular emphasis on items which require stakeholder intervention or present a risk to the completion programme. As we operate an open policy of discussing any issues with the relevant party as they arise, our report should contain no surprises for the parties.</p> <p>The Report contents will include:</p> <ul style="list-style-type: none"> <li>• Executive Summary – highlighting the key activities, milestones, summary look ahead and key risks on the project;</li> <li>• Construction Progress – a general review of construction and associated validation processes, including quality of the asset, documentation and processes and certification required to be provided by the Contractor;</li> <li>• Contractor non-conformance reports and any remedial proposals arising from these;</li> <li>• Site Observations / Auditing – highlighting observations, non-compliances, trends and confirmation of successes (this includes benchmarking standards to agree acceptable standards for defined elements);</li> <li>• Observation Log and Tracker – a log that records all identified issues (including non-compliances) and a record of their close out, including a RAAG rating status.</li> </ul>	

		<ul style="list-style-type: none"> <li>• Progress during the month – a summary of confirmed activities and any planned activities that were not achieved and why;</li> <li>• Programme – the general view of adherence to the programme, with consideration to interdependence of activities and their potential impact to the overall programme; this is particularly important where there has been re-sequencing of works;</li> <li>• Change Control – assessment of changes and comment on their significance in terms of compliance and the associated validation processes;</li> <li>• O&amp;M manuals – on many projects these are developed and offered late in the programme; We find that early development of O&amp;M's saves time in the long term, increases FM buy-in and provides the Authority with the reassurance that the O&amp;M documentation is project specific (rather than a collection of generic manufacturer documentation);</li> <li>• Planning / Building Control – any other statutory licenses and other certification and approvals, e.g. the CDMC approval of the health and safety file;</li> <li>• Contract matters – where there is a clear contract requirement for a deliverable to be met, the status of this and risks associated with delivery will be confirmed;</li> <li>• Quality Assurance – QA audit activities will be reported and comment upon any non-compliances identified;</li> <li>• Design Development –a checking matrix will be developed against the RDD and apply this to the sample design selection. Where a design results in a change of standard or applicable validation aspect, we will raise this and suggest if the proposal requires a change in the completion standard to be applied,</li> <li>• Risk summary – a statement of identified risks and our view on their</li> </ul>	
--	--	--	--

		potential impact in relation to the completion process.	
14	Issue a Certificate of Practical Completion	<p>The Independent Tester's Certificate of Practical Completion is the culmination of a detailed monitoring exercise where compliance with the contract will be progressively tested against the Schedule of Criteria defined within Table D1.2.</p> <p>Prior to issuance of the Certificate all requisite documentation must have been provided in time for our review. We fully recognise the importance of the run-in to construction completion, and the need to plan this phase of the project carefully to avoid any shortfalls. A dry run of this process will be undertaken with all stakeholders approximately three months prior to the actual date; this enables all parties to better understand the process and instils a no surprises culture.</p> <p>The Independent Tester will issue the certificate in line with the contract pro forma and this will be accompanied by a comprehensive snagging list, which we will have validated from the information collated by the contractor. Any areas to be carved out or derogated must be signed off by both the Authority and Project Co and this will be clearly referenced as such in any completion certificate.</p> <p>To mitigate the risk of all areas being 98% complete and none at 100% complete for our final inspections and testing, we strongly encourage, where appropriate, sectional completions supported by a 'clear as you go' approach with zones being fully completed and closed out by dedicated teams and then locked down pending final inspection and integrated system and full site cause and effect testing.</p>	
15	Issue a Snagging Notice(s) specifying the Snagging Matters. This assumes that the Snagging matters are derived from the Independent Tester's inspection activities	<p><b>Within 5 days of Practical Completion the Independent Tester will issue a list of outstanding snagging items, the quantum, nature and resolution of which should be achievable within the 20 day contractual period and will not prevent the Client from bringing the facility into operation.</b></p> <p>The Independent Tester advocates that the Contractor maintains the master snag list and takes primary responsibility for populating it from their own inspections. Additional items noted by</p>	

ourselves, Project Co or The Authority should be fed into this process so that one list and one closeout process exists for the Project.

On other projects we have found that having access to the Contractor's computer based record system, such as Skanska's BIM 360 Site, or other systems such as Snagr used by Vinci, is of great benefit in maintaining accurate up to date snagging records that are easily identifiable by location, originator, and rectification status. The system capability to access relevant drawings and specification documents whilst on site for a specific room or installation assists our efficiency and all parties benefit from having one list against which progress can be monitored.



We consider that the Schedule 8 requirement for eleven mock up facilities will be invaluable in establishing benchmark quality standards between the Contractor, Authority and Project Co, and between the Contractor and sub-Contractor tradesmen. We will capture the agreed quality standards and reference them when conducting our Room Checks and validating the accuracy of the Contractors snagging list.

Our objective will be to confirm and agree with all parties what constitutes a snagging item and also appropriate rectification, thus facilitating consistency and understanding of the process.

**An example of typical debate on this is where paint is touched up, but due to batching the repair is visibly obvious; this is obviously unacceptable and we would expect a whole wall to be re-painted to a suitable and defined cut-in point.**

The objective of our early review of the snagging processes will be to reach a position prior to the issue of our Certificate of Completion where the nature and quantum of the outstanding snagging is both known and of manageable proportion. We will also assess where such snagging may cause re-testing – e.g. if pipework has to be altered or replaced to the extent where re-chlorination is necessary, then we will confirm the likely impact to the programme.

At appropriate points within the Construction (for example prior to void closures), and in particular as rooms are offered as complete, we will be monitoring the standard of finish being achieved in order to validate the Construction Contractor's snagging processes by (1) checking that the snagging items are being identified and recorded to an appropriate level of detail and (2) that identified snags are being rectified appropriately. Our randomly selected room checking

		<p>process is the final stage in our inspections to confirm that the snagging process is resilient.</p> <p>Based upon this process the Independent Tester will issue the Snagging list, which will have been validated from the information supplied by the contractor, and monitor close out of residual items within the time frames defined within the Contract, and correspondingly issue a Snagging Matters Completion Certificate to the Authority and Project Co.</p>	
16	<p>Issue a Commissioning Completion Certificate. This assumes that Project Co and the Trust will provide separate verification to the Independent Tester that their respective Commissioning has been satisfactorily completed</p>	<p>The supplied programme that Post Completion Commissioning is scheduled as a 35 day activity and that Commissioning Completion will trigger the relocation of The Trust from existing Papworth followed 10 days later by Commencement of Use.</p> <p>The understanding is therefore that the Independent Tester is not required to witness any of the Post Completion Commissioning activities but that will be required to issue a Commissioning Completion Certificate as a documentary record that both The Trust and Project Co have separately verified completion of their respective activities.</p> <p>The Independent Tester can provide this service and that will liaise as required with each party for receipt of the required verifications.</p> <p>A joint party walk will occur of the project leading up to this to provide reasonable comfort that the feel and general intent of the facility is being delivered. This will also be a valuable time to seek reassurance that systems and spaces have continued to function as expected.</p>	
17	<p>Certify the Access Conditions have been met in accordance with the Project Agreement.</p>	<p>The certification will be required for those areas defined within the Project Programme under 'Trust Pre-Completion Commissioning'.</p>	

TRUST PRE COMPLETION COMMISSIONING			
31	TRUST ENVIRONMENTAL SAMPLING (10d AS CCP)	13/03/2017	15/09/2017
32	ADVANCED TRUST BENEFICIAL ACCESS CATH LAB / HYBRID THEATRE ACCESS AREA	21/03/2017	04/09/2017
33	TRUST GENERAL ACCESS TO REMAINING ACCESS AREAS	13/03/2017	15/09/2017
34	MR SUITE - MR MACHINE (GFL)	10/07/2017	14/09/2017
35	MR SUITE - MR MACHINE (GFL)	10/07/2017	14/09/2017
36	NUCLEAR MEDICINE SUITE - GAMMA / CT MACHINE (GFL)	10/07/2017	25/09/2017
37	NUCLEAR MEDICINE SUITE - PET / CT MACHINE (GFL)	10/07/2017	15/09/2017
38	CT SUITE - CT MACHINE	10/07/2017	20/07/2017
39	X - RAY (GENERAL) MACHINE (GFL)	10/07/2017	04/09/2017
40	MASTER BONE DENSITOMETRY (GFL)	10/07/2017	20/07/2017
41	BRONCHOSCOPY / FLUOROSCOPY SUITE (X - RAY MACHINE (GFL))	10/07/2017	20/07/2017

For each area we the Beneficial Access Completion Certificate will be issued within 2 days of the date at which we are satisfied that the Access Conditions defined within the Project Agreement (Schedule 12, Appendix 12, Part 2) have been met. It is noted that within Schedule 12 the requirement and conditions under which the issue of a Beneficial Access Termination Certificate are set out.

In conducting the assessment of each facility the Independent Tester will engage with ProjectCo and the Trust and will be seeking to agree with all parties the quantum and nature of outstanding snags or incomplete works on the part of the Contractor and also confirm that there are agreed method statements, safe systems of work and safety protocols to protect all parties.

Mouchel welcome the opportunity which Beneficial Access Certification brings in introducing elements of phased completion, which can provide early indicators of areas for focus across the wider works.

Noting that many of the Beneficial Access periods scheduled above expire prior to Practical Completion we will, if required, also certify the conclusion of Beneficial Access with appropriate



		<p>reference to any requirements of the P.A.</p> <p>While recognising the requirement for appropriate security / management arrangements we note that during Commissioning Completion testing a level of trade access will be required to all areas of the hospital.</p>	
--	--	--	--

**Appendix 1**  
**Part 3**  
**Additional Duties**  
**Not Used**