

**Schedule 9**

**Review Procedure**

## 1 Review Procedure

1.1 The provisions of this Schedule 9 shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed in accordance with the Review Procedure.

1.2 Subject to any express provision of this Agreement, the manner, form and timing of any submission to be made by the Service Provider to the Authority Representative for review under the Review Procedure shall be a matter for the Service Provider to determine. Each submission under the Review Procedure shall be accompanied by a copy of the proposed document to be reviewed (including, where applicable, any Reviewable Design Data) or a statement of the proposed course of action (the entire contents of a submission being referred to in this Schedule as a **Submitted Item**):

(a) as soon as possible and, if the Submitted Item comprises:

(i) an item of Reviewable Design Data;

(ii) a revised Programme submitted pursuant to clause 18.3 (*Change to Programme*) of this Agreement; or

(iii) a document or proposed course of action submitted in the case of (an emergency),

within ♦ Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Authority Representative (or such other period as the parties may agree), the Authority Representative shall return one copy of the relevant Submitted Item to the Service Provider endorsed "*no comment*" or (subject to and in accordance with paragraph 3 (*Grounds for Objection*)) "*comments*" as appropriate; and

(b) subject to paragraph 1.4, if the Authority Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with paragraph 1.3(a), within ♦ Business Days (or within such other period as the parties may agree in writing) of the date of its submission to the Authority Representative, then the Authority Representative shall be deemed to have returned the Submitted Item to the Service Provider endorsed "*no comment*" (and, in the case of Reviewable Design Data, endorsed "*Level A - no comment*"); and

(c) in relation to finishes:

(i) the Service Provider shall within ♦ Business Days of the Commencement Date propose to the Authority Representative a range or selection of aspects of finishes (the **Range of Finishes**) listed in Table 1 below in accordance with the Authority Construction Requirements and the Service Provider

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Proposals that are available as at the date of this Agreement for selection by the Authority in accordance with paragraph 3(d) of this Schedule 9 and within the relevant selection period listed in Table A below (the **Selection Period**);

- (ii) the Authority Representative shall within ♦ Business Days from receipt of the Range of Finishes listed in Table 1 below notify the Service Provider of its selection within the Selection Period for each of the Finishes; and

**Table 1<sup>1</sup>**

<b>Finishes</b>	<b>Aspects</b>	<b>Normal lead time for supply of item</b>	<b>Selection Period</b>
external finishes (roof, windows and external elevations)	colour and material		
wall finishes	Colour		
floor finishes	colour and type		
ironmongery	style and colour		
tapware	style and content		
bed head arrangement	layout and content		
nurses station	colour, content, style and material		
main public light fittings	specification and style		
external signage	size, style, colour and location		
internal signage	size, style, colour and location		
light switches and sockets	style and colour		
light fittings in clinical areas	style and colour		
hard landscaping	colour and material		

- (iii) if no selection of a Finish has been made by the Authority Representative and notified to the Service Provider in accordance with paragraph 1.2(c)(ii) by the end of the relevant Selection Period, the Service Provider shall be

<sup>1</sup> Project specific. This table is intended to be for guidance only.

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entitled to make a selection of the particular Finish. After the end of the relevant Selection Period, should the Authority wish to vary any selection previously made by the Service Provider or by the Authority, such change shall be effected as a Change in accordance with the Change Protocol.

- 1.3 If the Authority Representative raises comments on any Submitted Item in accordance with paragraph 3 (*Grounds for Objection*) he shall state the ground upon which such comments are based and the evidence or other information necessary to substantiate that ground. To the extent that the Authority Representative comments on a Submitted Item other than on the basis set out in this Schedule 9, or fails to comply with the provisions of this paragraph 1, the Service Provider may, in its discretion, either:
- (a) request written clarification of the basis for such comments and, if clarification is not received within ♦ Business Days of such request by the Service Provider, refer the matter for determination in accordance with the Dispute Resolution Procedure; or
  - (b) at its own risk, and without prejudice to clause 15 (*Design, Construction and Commissioning Process*), proceed with further design or construction disregarding such comments.
- 1.4 In the case of any Submitted Item of the type referred to in paragraph [3]<sup>2</sup>, a failure by the Authority Representative to endorse and return such Submitted Item within the period specified in paragraph 1.2(b) shall be deemed to constitute an objection by the Authority Representative to such Submitted Item. If the parties fail to agree the form and content of such Submitted Item, within ♦ Business Days following the expiry of the period specified in paragraph 1.2(b), the matter shall be determined in accordance with the Dispute Resolution Procedure.

## 2 Further Information

The Service Provider shall submit any further or other information, data and documents that the Authority Representative reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with this Schedule. If the Service Provider does not submit any such information, data and documents, the Authority Representative shall be entitled to:

- (a) comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
- (b) object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Authority Representative to determine whether he has a legitimate basis for commenting or objecting in accordance with this Schedule.

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<sup>2</sup> Authority to refer to any other items which are relevant on a project specific basis.

### 3 Grounds of Objection<sup>3</sup>

The expression **raise comments** in this paragraph shall be construed to mean **raise comments or make objections** unless the contrary appears from the context. The Authority Representative may raise comments in relation to any Submitted Item on the grounds set out in paragraph 2 or on the ground that the Submitted Item would (on the balance of probabilities) breach any Legislation but otherwise may raise comments in relation to a Submitted Item only as follows:

- (a) in relation to any Submitted Item if:
  - (i) the Service Provider's ability to perform its obligations under this Agreement would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
  - (ii) the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Authority under this Agreement or its ability to enforce any such right;
- (b) in relation to any Submitted Item submitted pursuant to clause 3.2 (*Changes to Project Documents*) if:
  - (i) the Authority's ability to perform its obligations under the Agreement would be adversely affected by the proposed course of action;
  - (ii) the Authority's ability to provide the [Care Services] or to carry out any of its statutory functions would (on the balance of probabilities) be adversely affected by the proposed course of action;
  - (iii) the proposed course of action would be likely to result in an increase to the Authority's liabilities or potential or contingent liabilities under the Agreement;
  - (iv) the proposed course of action would adversely affect any right of the Authority under the Agreement or its ability to enforce any such right; or
  - (v) the Service Provider's ability to perform its obligations under the Agreement would be materially adversely affected by the proposed course of action;
- (c) in relation to Reviewable Design Data submitted pursuant to clause 15.5(a) (*Reviewable Design Data*):
  - (i) which does not comprise 1:50 scale Room Layout Drawings the Authority Representative may raise comments, subject to and in accordance with

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<sup>3</sup> This drafting has been included as a framework for guidance and should be amended as appropriate on a project specific basis, including, in particular, to take account of how commissioning of the Facilities is to be carried out and any other matters that are to be left to be agreed pursuant to the Review Procedure (such as proposals for self-monitoring systems etc).

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paragraph 4 (*Effect of Review*) on the ground that the Submitted Item is not in accordance with:

- (A) the Authority Construction Requirements; and/or
  - (B) the Service Provider Proposals;
- (ii) which comprises a 1:50 scale Room Layout Drawing in respect of which there is a corresponding generic 1:50 scale Room Layout Drawing for the relevant room type (which has previously been reviewed and commented upon by the Authority Representative in accordance with this Schedule 9), the Authority Representative may raise comments, subject to and in accordance with paragraph 4 (*Effect of Review*), on the ground that the Submitted Item does not conform to the generic 1:50 scale Room Layout Drawing; and
- (iii) which comprises a 1:50 scale Room Layout Drawing in respect of which there is no corresponding generic 1:50 scale Room Layout Drawing for the relevant room type (which has previously been reviewed and commented upon by the Authority Representative in accordance with this Schedule 9), the Authority Representative may raise comments, subject to and in accordance with paragraph 4 (*Effect of Review*), on the grounds that the Submitted Item:
- (A) Is not in accordance with the Authority Construction Requirements and/or the Service Provider Proposals; or
  - (B) is inconsistent with any Guidance or Authority Policy which is applicable to a room of that function provided that such guidance has not been superseded by and is not inconsistent with any other provisions of the Authority Construction Requirements (including any existing Approved RDD Item);
- (d) in relation to Finishes:
- (i) which have the effect of making a selection from the Range of Finishes (or any alternative range or selection of Finishes submitted by the Service Provider to the Authority Representative) pursuant to clause 15.5(a) (*Reviewable Design Data*); or
  - (ii) where the Submitted Item does not comply with the relevant provisions of the Authority Construction Requirements and/or the Service Provider Proposals;
- (e) In relation to the submission of any revised Programme pursuant to clause 18 (*Programme and Dates for Completion*) on the ground that the revised Programme would not (on the balance of probabilities) enable the Works to be completed by the Planned Completion Date;

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- (f) in relation to the submission of any Quality Plan or part of a Quality Plan or any changes to any Quality Plan pursuant to clause 23.4 (*Compliance with Quality Plans*) or clause 23.7 (*Quality Assurance*) or any quality manual or procedure in accordance with clause 23.10 (*Quality Monitoring*), on the grounds that such Quality Plans, or parts of or changes to such Quality Plans, quality manuals or procedures, or the quality management systems which they reflect, would not comply with:
- (i) in the case of the Design and Construction Quality Plan, the requirements referred to in paragraph ♦ of Schedule 13 (*Services Quality Plans*) of Part 2 of Schedule 5<sup>4</sup> (*Construction Matters*); and
  - (ii) in the case of the Services Quality Plan, the requirements referred to in paragraph ♦ of Schedule 13 (*Services Quality Plans*);
- (g) In relation to the submission of any proposed revision or substitution for the Service Delivery Plans or any part of any Service Delivery Plan (as the case may be) pursuant to clause 24.3 (*Changes to the Service Delivery Plan*) of this Agreement, on the grounds that:
- (iii) the proposed revision or substitution is not in accordance with Good Industry Practice;
  - (iv) the performance of the Service in accordance with the proposed revision or substitution would (on the balance of probabilities):
    - (A) be materially different from the performance of the Service in accordance with the Service Delivery Plan prior to such proposed revision or substitution; or
    - (B) be less likely to achieve compliance with that part of the Services Specification relevant to that Service; or
    - (C) have an adverse effect on the provision by the Authority of the [Care Services] or on the safety of any Service Users; or
  - (v) the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the relevant Service to the standard of performance in accordance with the Service Delivery Plan prior to such proposed revision or substitution; and
- (h) in relation to the submission of any Schedule of Programmed Maintenance, any revision to any Schedule of Programmed Maintenance pursuant to clause 25.1 (*Programmed and Unprogrammed Maintenance*) of this Agreement or in the case of the 5 year Maintenance Plan, clause 25.6 (*5 Year Maintenance Plan*) of this Agreement on the grounds that:

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<sup>4</sup> The reference should be to any core requirements of the Quality Plans forming part of the Agreement at Financial Close.

- (i) carrying out the Programmed Maintenance in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the Authority and such interference could be avoided or mitigated by the Service Provider rescheduling the Programmed Maintenance; or
- (ii) the proposed hours for carrying out the Programmed Maintenance are not consistent with the principles set out in Appendix 2 to this Schedule 9; or
- (iii) the proposed method of performance of the Programmed Maintenance would not be in accordance with Part B of the Services Specification<sup>5</sup>; or
- (iv) the safety of Service Users would (on the balance of probabilities) be adversely affected; or
- (v) the period for carrying out the Programmed Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant works.

#### 4 Effect of Review

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the Authority Representative endorsed "*no comment*" (and in the case of Reviewable Design Data, endorsed "*Level A - no comment*") shall be complied with or implemented (as the case may be) by the Service Provider.
- 4.2 In the case of any Submitted Item other than Reviewable Design Data, if the Authority Representative returns the Submitted Item to the Service Provider endorsed "*comments*", the Service Provider shall comply with such Submitted Item after amendment in accordance with the comments unless the Service Provider disputes that any such comment is on grounds permitted by this Agreement, in which case the Service Provider or the Authority Representative may refer the matter for determination in accordance with the Dispute Resolution Procedure and the Service Provider shall not act on the Submitted Item until such matter is so determined or otherwise agreed.
- 4.3 In the case of a Submitted Item comprising Reviewable Design Data, if the Authority Representative returns the Submitted Item endorsed other than "*Level A - no comment*", the Service Provider shall:
  - (a) where the Authority Representative has endorsed the Submitted Item "*Level B - proceed subject to amendment as noted*", either proceed to construct or proceed to the next level of design of the part of the Works to which the Submitted Item relates but take into account any amendments required by the Authority Representative in his comments;

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<sup>5</sup> Authority's need to consider (as a technical matter) the extent to which the terms of the Services Specification is sufficient to ensure that the Facilities will be maintained sensibly (for example, that material maintenance work is not being back-ended, with items of plant and equipment being made to operate beyond the design/programmed life expectancy).

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- (b) where the Authority Representative has endorsed the Submitted Item "*Level C - subject to amendment as noted*" not act upon the Submitted Item, amend the Submitted Item in accordance with the Authority Representative's comments and re-submit the same to the Authority Representative in accordance with paragraph 4.4; and
- (c) where the Authority Representative has endorsed the Submitted Item "*Level D - rejected*" not act upon the Submitted Item, amend the Submitted Item and re-submit the Submitted Item to the Authority Representative in accordance with paragraph 4.4,

unless the Service Provider disputes that any such comment or proposed amendment is on grounds permitted by this Agreement, in which case the Service Provider or the Authority Representative may refer the matter for determination in accordance with the Dispute Resolution Procedure and subject to the provisions of clause 15.5(a) (*Reviewable Design Data*) of this Agreement the Service Provider shall not act on the Submitted Item until such matter is so determined or otherwise agreed.

- 4.4 Within ♦ Business Days of receiving the comments of the Authority Representative on any Submitted Item comprising Reviewable Design Data, the Service Provider shall (except in the case contemplated in paragraph 4.3(a) (Level B)) send a copy of the Submitted Item as amended to the Authority Representative pursuant to paragraph 4.3 and the provisions of paragraphs 1.2(a) (*Response to Submitted Item*), 4.1 and 4.3 shall apply (changed according to context) to such re-submission.
- 4.5 The return or deemed return of any Submitted Item endorsed "*no comment*" (or in the case of Reviewable Design Data endorsed "*Level A - no comment*" or otherwise endorsed in accordance with paragraph 4.3(a) or paragraph 4.3(b)) shall mean that the relevant Submitted Item may be used or implemented for the purposes for which it is intended but, save to the extent expressly stated in this Agreement including, without limitation, as specified in Appendix 1 to this Schedule 9, such return or deemed return of any Submitted Item shall not otherwise relieve the Service Provider of its obligations under this Agreement nor is it an acknowledgement by the Authority that the Service Provider has complied with such obligations.

### 5 Documentation Management<sup>6</sup>

- 5.1 The Service Provider shall issue ♦ copies of all Submitted Items to the Authority and compile and maintain a register of the date and contents of the submission of all Submitted Items.
- 5.2 The Service Provider shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Authority Representative.

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<sup>6</sup> This paragraph is intended as a framework only and should be developed in a project specific basis.

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- 5.3 Save to the extent set out in Appendix 1 to this Schedule 9 or elsewhere in this Schedule 9, no review, comment or approval by the Authority shall operate to exclude or limit the Service Provider's obligations or liabilities under the Agreement (or the Authority's rights under the Agreement).

### **6 Changes**

- 6.1 No approval or comment or any failure to give or make an approval or comment under this Schedule shall constitute a Change save to the extent provided in this Schedule 9.
- 6.2 If, having received comments from the Authority Representative, the Service Provider considers that compliance with those comments would amount to a Change, the Service Provider shall, before complying with the comments, notify the Authority of the same and, if it is agreed by the parties or determined pursuant to the Dispute Resolution Procedure<sup>7</sup> that a Change would arise if the comments were complied with, the Authority may, if it wishes, implement the Change and it shall be dealt with in accordance with the Change Protocol. Any failure by the Service Provider to notify the Authority that it considers compliance with any comments of the Authority Representative would amount to a Change shall constitute an irrevocable acceptance by the Service Provider that any compliance with the Authority's comments shall be without cost to the Authority and without any extension of time.
- 6.3 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design shall be construed or regarded as a Change.

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<sup>7</sup> Consider whether disputes of this nature should go to the Fast Track Dispute Resolution Procedure.

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## Appendix 1

Approved RDD Item (by category)	Scale	Meaning of "Level A - no comment" and "Level B - proceed subject to amendment as noted" endorsement of Reviewable Design Data under Schedule 10 (Review Procedure) (including both the actual and deemed endorsement).
Zone Data Sheets	n/a	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any room data sheet means that the Service Provider may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied that the design and other information in the relevant room data sheet satisfies Care Functionality.
Drawings -Development Control Plan	1:1250	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any 1:1250 scale development control plan means that the Service Provider may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied that the design and other information contained in the relevant drawing satisfies Care Functionality.
Drawings -Site Plan	1:500	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any 1:500 scale site plan means that the Service Provider may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied that the design and other information contained in the relevant drawing satisfies Care Functionality.
Drawings -Floor Plans	1:200	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any 1:200 scale floor plan means that the Service Provider may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied that the design and other information contained in the relevant drawing satisfies the Care Functionality.
Drawings -Room Layouts (including room elevations) &Reflected ceiling plans	1:50	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any 1:50 scale room layout and/or reflected ceiling drawing means that the Service Provider may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied (to the extent of the design and other information contained in the relevant drawing) that the design and other information in the relevant drawing satisfies Care Functionality.

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Approved RDD Item (by category)	Scale	Meaning of "Level A - no comment" and "Level B - proceed subject to amendment as noted" endorsement of Reviewable Design Data under Schedule 10 (Review Procedure) (including both the actual and deemed endorsement).
Drawings -Departmental plans	1:50	A "Level A - no comment" endorsement or a "Level B - proceed subject to amendment as noted" endorsement of any 1:50 scale departmental plan means that the Service Provider may proceed to construct in accordance with the Submitted Item and that the Authority is satisfied (to the extent of the design and other information contained in the relevant drawing) that the design and other information in the relevant drawing satisfies Care Functionality.

## Appendix 2

### Normal Working Hours

- 1 Subject to paragraphs 3 to 5 of this Appendix 2, the Service Provider shall carry out Programmed Maintenance at the Facilities during the Access Hours<sup>8</sup>.
- 2 The Service Provider may, with the consent of the Authority (which consent shall not be unreasonably withheld) carry out Maintenance Works outside the Access Hours provided always that it shall take into account:
  - (a) the likely disturbance to the Authority and Service Users within the immediate area where the Maintenance Works are to be undertaken;
  - (b) the likely disturbance to adjacent areas, the Authority and Service Users in those adjacent areas that may be affected by the Maintenance Works to be undertaken in the area(s) identified in paragraph 2(a); and
  - (c) compliance with Legislation and Guidance.
- 3 The Authority may request the Service Provider to carry out Programmed Maintenance outside the Access Hours in the event that the carrying out of such Programmed Maintenance during Access Hours would adversely affect the operational function of the department or area.

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<sup>8</sup> These should be defined in the Services Specification on a project specific basis.

**Appendix 3**

**Reviewable Design Data**

**[to be listed on a project specific basis]**