



NHS Standard Contract

Guidance on the Variations Process

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Additional Circulation List	
Description	Guidance on effecting variations to contracts based on the 2015/16 NHS Standard Contract, both to new 2015/16 contracts and to earlier contracts which have adopted the 2015/16 NHS Standard Contract terms in accordance with the Guidance on National Variations. It applies both to variations initiated by a party to the Contract and to variations mandated by NHS England.
Cross Reference	NHS Standard Contract 2015/16
Superseded Docs (if applicable)	NHS Standard Contract 2014/15 Guidance on the Variations Process and associated documents
Action Required	This guidance must be followed when enacting an in-year variation (local or national)
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Document Status

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1 Executive summary

This document contains guidance on the process to effect variations to contracts based on the 2015/16 NHS Standard Contract. It applies both to new 2015/16 contracts and to earlier contracts which have adopted the 2015/16 NHS Standard Contract terms in accordance with the [Guidance on National Variations](#).

It applies both to variations initiated by a party to the Contract (referred to in this guidance as Local Variations – not to be confused with Local Variations in respect of National Prices) and to variations mandated by NHS England (National Variations).

2 Introduction

This guidance is relevant to all commissioners and providers who are parties to commissioning contracts based on the 2015/16 NHS Standard Contract. It applies both to new 2015/16 contracts and to earlier contracts which have adopted the 2015/16 NHS Standard Contract terms in accordance with the [Guidance on National Variations](#).

It applies to both Variations proposed by one of the parties to a contract and to National Variations which may be mandated by NHS England, but in the case of the latter further guidance will be issued as and when necessary.

This guidance supplements, and should be read in conjunction with, [General Condition 13 \(Variations\)](#) of the NHS Standard Contract.

3 Process

General Condition 13 sets out the process with which the parties to a contract must comply if any one of them wishes to vary the terms of that contract, or if NHS England mandates a National Variation.

This guidance, and the template document issued with it, do not in any way alter that process nor do they extend the scope of permissible variations (on which please refer to General Condition 13.2).

The table below explains the steps which must be taken, and how to use the template Variation Agreement.

Whenever a contract is being varied, the parties must ensure that they use as the starting point for that Variation the latest version of that contract (which may be the original contract or the contract as most recently updated by a signed and dated National or Local Variation Agreement).

The tables at Section 6 below describe the process in detail, and you will need to follow the steps described carefully.

The **Template Variation Agreement** is available on the NHS Standard Contract [webpage](#).

4 Competing Variations

It is vital that, at every stage, the parties to a contract know exactly what the terms of that contract are. Equally, when considering, discussing or finalising a proposed Variation, it is vital that the parties know exactly the terms of the contract they are looking to vary. For that reason, parties to a contract should not progress Variations (National Variations or locally-initiated Variations) in parallel or in competition with

each other – doing so is likely to result in confusion and, potentially, dispute as to the terms of each proposed Variation and of the contract itself.

5 Varying a contract: legal considerations

Any proposed Variation should be considered in the context of the contract as a whole, and in the context of wider procurement, competition and other issues, and not in isolation. Note in particular that a Variation may constitute a “material change” to the Contract, thereby raising the risk of a challenge for breach of procurement rules. The parties should seek their own legal advice before proceeding with any Variation.

6 Variations step-by-step

6.1 For a Local Variation proposed by a Commissioner or a Provider

Note that under GC13.2, a Variation can (unless it is a National Variation) involve only changes to:

(a) the Particulars, and/or

(b) the Service Conditions (but only to which Service Conditions apply to the contract – for example if the applicable Service Categories are varied – NOT TO THE WORDING OF ANY SERVICE CONDITION), and/or

(c) one or more of the documents incorporated into the contract (eg a spreadsheet or a policy or protocol), or the incorporation of an additional document.

Step	Contract ref	Activity
1	GC13.4	Co-ordinating Commissioner or Provider (Proposer) serves a draft Variation Agreement on the other party (Recipient) as follows: Contract/Variation Reference: insert local contract and variation reference. Proposed by: to read “Co-ordinating Commissioner on behalf of the Commissioners” or “Provider”, as appropriate. Date of Variation Agreement: date to be inserted once Variation Agreement has been agreed and signed by the parties.
	GC17.3	In the text box under item 1 in the draft Variation Agreement, insert a summary of the proposed Variation.
	GC17.3	Attach revised versions of the Particulars, the Service Conditions or any incorporated documents, and complete the text under item 2 below the text box accordingly.

	GC13.7	<p>The revised versions of the Particulars and / or the Service Conditions may be produced by the eContract system available at https://2015.econtract.england.nhs.uk/ (please refer to 6.3 below).</p> <p>Under item 3, insert the date on which the Variation is to take effect.</p> <p>Under item 4, remove the square brackets if the Contract being varied is in the form of the NHS Standard Contract 2014/15 or later (and all Commissioners have agreed, via their Collaborative Commissioning Agreement or otherwise, that the Co-ordinating Commissioner may sign the Variation Agreement on their behalf). If this is not the case, delete item 4.</p>
	GC36	<p>The draft Variation Agreement (and any attached documents) must be served on the Recipient in accordance with the procedure for service of notices set out in GC36.</p>
2	GC13.8	<p>The Recipient must issue Recipient's Response within 10 Operational Days.</p>
	GC36	<p>This must be done in accordance with the procedure for service of notices set out in GC36.</p>
3	GC13.9	<p>If necessary, the parties must meet to discuss the draft Variation Agreement and the Recipient's Response within 10 Operational Days.</p> <p>This may result in changes needing to be made to the draft Variation Agreement and/or any revised Particulars and/or Service Conditions and/or incorporated documents already issued and/or the issue and development of the appropriate drafts.</p>
4	GC13.10	<p>The Recipient serves written notice accepting or refusing Variation Agreement.</p>
	GC36	<p>This must be done in accordance with the procedure for service of notices set out in GC36.</p>
5	NA	<p>If the draft Variation Agreement is accepted, the parties finalise the details of the Variation. The draft revised Particulars and/or Service Conditions and/or incorporated document(s) (as appropriate) must be finalised to reflect the terms agreed between the parties.</p>

6	GC13.3	The Recipient issues the final Variation Agreement for signature, with agreed revised Particulars and/or Service Conditions and/or incorporated document(s) (as appropriate) attached.
7	GC13.3	<p><u>All</u> parties (the Provider and the Co-ordinating Commissioner, or all Commissioners, as appropriate) must sign a copy of the Variation Agreement.</p> <p>The parties should <u>not</u> sign the revised Particulars.</p> <p>Date of Variation Agreement: Once signed by the authorised signatory of each party, the Variation Agreement must be dated here.</p>
8	NA	The previous version of the Contract has now been superseded by the version attached to and/or referred to in the Variation Agreement.

OR

5	GC13.14 – 13.16	If the draft Variation Agreement is not agreed , the Proposer must withdraw the draft Variation Agreement. The process in GC13.14 and GC13.15 may apply.
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6.2 For a National Variation mandated by NHS England

Step	Contract ref	Activity
1	GC36.5 GC13.13	<p>A National Variation mandated by NHS England may involve updates to the Particulars and/or the Service Conditions and/or the General Conditions.</p> <p>Publication of any updates will be notified via the eContract platform and CCG bulletins. The new version(s) will be published on the NHS Standard Contract webpage.</p> <p>Guidance will be issued to explain the process for effecting any National Variation, and its implications for local contracts, as and when that National Variation is mandated. The precise details of this process will depend on the nature and scope of the specific National Variation, but will broadly follow that for a Local Variation. as set out in 1) above.</p>

6.3 Use of eContract system

The 2015/16 eContract system is essentially a contract generation system, rather than a system which stores and issues contracts. Using the eContract platform users can:

- create a tailored version of the 2015/16 Service Conditions (in pdf format) to save to their local drive
- create a tailored version of the 2015/16 Particulars (in Word format) to save to their local drive

A user guide for the 2015/16 eContract portal is available at <https://2015.econtract.england.nhs.uk/>. Queries on the 2015/16 eContract system may be emailed to england.econtract@nhs.net.

