

NHS Standard Contract

Guidance on the variation process (full length or shorter form)

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(please do not send variation agreements to this email address)

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1 Introduction

This guidance is relevant to all commissioners and providers who are parties to commissioning contracts based on the NHS Standard Contract (full length and shorter-form).

It applies to both Variations proposed by one of the parties to a contract (locally-initiated Variations) 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.

2 Process

GC13 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 GC13.2 and the [Contract Technical Guidance](#)).

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 locally-initiated Variation Agreement).

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

The locally-initiated Variation Agreement template is available on the NHS Standard Contract [webpage](#).

3 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.

4 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 refer to [regulation 72 of the Public Contract Regulations 2015](#) and seek their own legal advice before proceeding with any Variation.

5 Variations step-by-step

5.1 For a locally-initiated Variation proposed by a Commissioner or a Provider

Note that under GC13.2, a Variation (unless it is a National Variation) may 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.

Please refer to the [NHS Standard Contract Technical Guidance](#) for more information on the Variable Elements of the Contract.

The steps and contract references below relate to the full length NHS Standard Contract.

The process for effecting a variation is not spelt out in detail in the shorter-form NHS Standard Contract, but parties should generally follow the process set out below in any event, and at a minimum comply with the steps shown in red below.

Step	Contract ref	Activity
1	GC13.4	<p>The Co-ordinating Commissioner or the Provider (Proposer) serves a draft locally-initiated Variation Agreement on the other party (Recipient) as follows:</p> <p>Contract/Variation Reference: insert local contract and variation reference.</p> <p>Proposed by: to read “Co-ordinating Commissioner on behalf of the Commissioners” or “Provider”, as appropriate.</p> <p>Date of Variation Agreement: date to be inserted once the Variation Agreement has been agreed and signed by the parties.</p>

Step	Contract ref	Activity
	GC13.3	In the text box under item 1 in the draft Variation Agreement, insert a summary of the proposed Variation OR, if revised Particulars and/or Service Conditions and/or incorporated documents are NOT to be attached to the Variation Agreement, a full and complete description of the agreed changes to be made to those documents.
	GC13.3	In the former case, 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. The revised versions of the Particulars and / or the Service Conditions may be produced by the <u>eContract system</u> (please refer to 6.3 below).
	GC13.7	Under item 3 , insert the date on which the Variation is to take effect. Subject to following any governance processes set out on the relevant Collaborative Commissioning Agreement, the Co-ordinating Commissioner may sign the locally-agreed Variation Agreement on behalf of all Commissioners. If this is the case, under item 4 , remove the square brackets. If this is not the case, delete item 4.
	GC36	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.
2	GC13.8	The Recipient must issue the Recipient's Response within 10 Operational Days.
	GC36	This must be done in accordance with the procedure for service of notices set out in GC36.
3	GC13.9	If necessary, the parties must meet to discuss the draft Variation Agreement and the Recipient's Response within 10 Operational Days.

Step	Contract ref	Activity
		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.
4	GC13.10	The Recipient serves written notice accepting or refusing the Variation Agreement.
	GC36	This must be done in accordance with the procedure for service of notices set out in GC36.
5	NA	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.
6	GC13.3	The Proposer 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>Authorised signatories for each of the parties (the Provider and the Co-ordinating Commissioner, or all Commissioners, as appropriate – see below) must sign a copy of the Variation Agreement. Authority must be granted to an individual to sign on behalf of the relevant party in accordance with the governance procedures for that party. Note that the authorised signatory for the Variation Agreement need not necessarily be the same person that signed the original contract or any previous Variation Agreement.</p> <p>Subject to following any governance processes set out on the relevant Collaborative Commissioning Agreement, the Co-ordinating Commissioner may sign the locally-agreed Variation Agreement on behalf of all Commissioners. In all other circumstances, all Commissioners must sign the Variation Agreement.</p> <p>The parties should not sign the revised Particulars – this is not a new contract, but a variation to the existing contract, so what needs to be signed is the Variation Agreement, not the Particulars attached to it.</p>

Step	Contract ref	Activity
		Date of Variation Agreement: Once signed by the authorised signatory of each party, the Variation Agreement must be dated here.
8	NA	The agreed variations will now take effect from the date agreed locally and set out in paragraph 3 of the Variation Agreement. The contract as varied will apply from that date onwards. (Note that the parties may agree that the date on which the variation takes effect should be at some point after the date on which it is signed. Where the parties are agreeing updated schedules to apply for the second or subsequent Contract Year of a multi-year contract, for instance, they will normally wish the variation to take effect from 1 April of the relevant year, even if it is signed well in advance of that.)

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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5.2 For a National Variation mandated by NHS England

Step	Contract ref	Activity
1	GC36.5/GC13.13 (GC13.4 in the shorter form)	<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 NHS Standard Contract webpage 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 locally-initiated Variation. as set out in 1) above.</p>

5.3 Use of eContract system

The revised versions of the Particulars and / or the Service Conditions (full length or shorter-form) if required for the process outlined in s6.1 above may be produced by using the eContract system. The eContract system offers the following benefits to system users:

- easy to use, intuitive and robust system;
- allows the contract content to be easily tailored to reflect the different services being provided (thus producing shorter, more relevant contracts – a particular benefit to small providers);
- makes the contract production process more efficient; and
- gives assurance that the correct form of contract is used and that Contract tailoring is being applied correctly.

Using the eContract platform, users can:

- create a tailored version of the Service Conditions (in pdf format) to save to their local drive
- create a partially completed and tailored version of the Particulars (in Word format) to save to their local drive for later population.

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

Equality and diversity are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have given due regard to the need to:

- reduce health inequalities in access and outcomes of healthcare services integrate services where this might reduce health inequalities
- eliminate discrimination, harassment and victimisation
- advance equality of opportunity and foster good relations between people who share a relevant protected characteristic (as cited in under the Equality Act 2010) and those who do not share it.

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