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The NHS Terms and Conditions for the Supply of Goods and the Provision of Services

Guidance

September 2022

Developed in partnership with Mills & Reeve.

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Summary of changes

Note: Most of the changes are considered self-explanatory. Where the Department of Health and Social Care (“DHSC”) considers this not to be the case, further detail is provided on the rationale for the change.

In addition to the changes described in the table, a number of other changes have been made for the purposes of ensuring consistent use of defined terms and any changes to cross-referencing.

The Contract references are to the NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version) (August 2022).

Contract reference	Description of change
Schedule 1 – Standard Key Provisions Clause 8. Schedule 4, Definitions and Interpretations.	Additional clause covering Net Zero and Social Value Commitments reflecting the ‘Greener NHS’ programme of NHS England.
Schedule 1 – Optional key provision Clause 20.	Text referring to data processor changed to refer to Data Protection Protocol.
Schedule 1 – Optional provision Clause 33.	Additional clause to be used where COVID-19 related goods and services are supplied during a pandemic, requiring suppliers to ensure continuity of supply through enhanced business continuity plans.
Schedule 2, General T&Cs, Clauses 1.7, 1.8, 5.5.5, and 6.3.	Minor clarifications.
Schedule 2, General T&Cs, Clause 9.3.3.	Additional sentence covering the submission of electronic invoices and standards.
Schedule 2, General T&Cs, Clause 10.1.4, 10.1.13, 10.1.17, 10.1.19, 10.1.2, 10.1.26, 10.2, and 10.2.2.	Minor clarifications.
Schedule 2, General T&Cs, Clauses 10.1.28 and 10.1.29. Schedule 4, Definitions, and Interpretations.	Reference to slavery and human trafficking changed to ‘Net Zero and Social Value Commitments’.
Schedule 2, General T&Cs, Clauses 10.2.1, 10.2.3	Reference to UKCA marking added.
Schedule 2, General T&Cs, Clauses 11.1 and 11.2.	Additional wording which extends the granting of intellectual property by the supplier to the Authority to include any supplier/third party engaged by the Authority.
Schedule 2, General T&Cs, Clause 15.5.6.	Additional reference inserted.

Contract reference	Description of change
Schedule 2, General T&Cs, Clause 15.5.8.	Reference to any termination rights included in the Data Protection Protocol (as applicable).
Schedule 2, General T&Cs, Clause 15.7.3	Clause referring to ECJ deleted as it no longer applies following the UK withdrawal from the EU.
Schedule 2, General T&Cs, Clause 17.13.4	Additional wording to make clear that the clause is intended to include underpaid holiday.
Schedule 2, General T&Cs, Clause 18.1 and 18.6.	Additional clarifications.
Schedule 2, General T&Cs, Clause 19.	'Sustainable development' clause revised to cover 'Modern slavery, social and labour laws' to reflect NHS E/I terminology. Additional clarification regarding the scope of compliance audits.
Schedule 2, General T&Cs, Clause 21.4. Schedule 4, Definitions and Interpretations.	Additional clause which states that the supplier may not increase the contract price as a result of a general change in law or a specific one which was reasonably foreseeable at the commencement of the contract.
Schedule 2, General T&Cs, Clause 23.2.	Reference clarified.
Schedule 2, General T&Cs, Clause 28.4.2.	Additional clarification.
Schedule 3, Information and Data Provisions, Clauses 2.2, 2.3 and 2.4.	Personal data clarified to mean patient related and NHS related.
Schedule 3, Information and Data Provisions, Clauses 2.4.1 and 2.4.2.	Out of date reference to NHS Information governance replaced by Data Security and Protection Toolkit.
Schedule 3, Information and Data Provisions, Clauses 2.4.5.	Reference to Data Protection Protocol inserted.
Schedule 4, Definitions and Interpretations.	
New/updated definitions.	Anti-Slavery Policy, Change in Law, Data Protection Legislation, EU references, Evergreen Supplier Framework, Exit Day, General Change in Law, Net Zero and Social Value Commitments, Slavery Act, Specific Change in Law, UK GDPR.
Clause 1.16.	Additional clarification of 'expenses'.
Clauses 1.17 (i) and 1.17 (ii).	Further clarification of EU References and Exit Day.

1. Introduction

Introduction and overview

1.1 The NHS Terms and Conditions for the Supply of Goods and the Provision of Services

1.1.1 This Guidance is for the following nine contract documents. They make up three sets of contracting terms and conditions for use by NHS bodies when procuring goods and services:

- (i) the NHS Terms and Conditions for the Supply of Goods (Contract Version), the NHS Terms and Conditions for the Provision of Services (Contract Version), and the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version);
- (ii) the NHS Terms and Conditions for the Supply of Goods (Purchase Order Version), the NHS Terms and Conditions for the Provision of Services (Purchase Order Version) and the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Purchase Order Version); and
- (iii) the NHS Framework Agreement for the Supply of Goods, the NHS Framework Agreement for the Provision of Services and the combined NHS Framework Agreement for the Supply of Goods and the Provision of Services.

1.2 Scope of the Guidance and The Future Operating Model For Value Maximising Procurement

1.2.1 This Guidance covers:

- (i) this Section 1, which provides:
 - an introduction and overview of the sets and how they fit together;
 - guidance on when each set should be used;
 - a summary of the background to their development;
- (ii) further sections for each of the sets providing specific guidance on how to use each set; and
- (iii) a final section summarising how the terms and conditions address key areas of risk.

1.2.2 This Guidance is intended to support NHS bodies when preparing terms and conditions for inclusion in tender documents and when drawing together contracts for the purchase of goods and services. It does not describe each

clause of the contract documents and should be read in conjunction with the contract documents.

1.2.3 Following the move of NHS Supply Chain under the shareholding of NHS England in 2021, to drive maximum leverage for the NHS for the procurement of all medical device and clinical consumable categories, Trusts are requested to utilise NHS Supply Chain as the recognised procurement and supply chain specialist in these areas wherever possible.

1.2.4 Before undertaking individual procurements using the NHS Terms and Conditions, NHS bodies should, therefore, actively consider utilising the NHS Supply Chain. Key points to note about the NHS Supply Chain are:

- The NHS is under increasing pressure to generate savings, while simultaneously increasing quality of patient care. The only way to achieve this balance is through utilising resources in a more efficient way, and by ensuring that the goods and services that the NHS uses on a daily basis are procured in a way that delivers best value for money, while retaining a high level of clinical assurance.
- The NHS Supply Chain delivers improved procurement support to the NHS. Working as part of the NHS, the NHS Supply Chain identifies the right quality products that represent the best option to deliver high quality outcomes for patients.
- While Trusts are able to procure directly, by working collaboratively and leveraging the NHS' collective buying power through the NHS Supply Chain they will benefit from better deals for products and reduce price and product variability across the NHS. NHS bodies procuring products directly outside of the NHS Supply Chain will, therefore, be expected to explain to the Department of Health and Social Care ("DHSC") and NHS England upon request why any such direct procurements are considered necessary in the particular circumstances. Savings generated by the NHS Supply Chain are then reinvested by the NHS into frontline services ensuring the clinical body within the NHS is protected and reinforced.
- Benefits of the NHS Supply Chain include:
 - (1) dedicated service providers who understand clinical needs, product usage, customer behaviour, and will drive product range management, enabling Trusts to optimise choice and reduce product variations;
 - (2) market leading supply contracts, underpinned by volume;

- (3) commitments, to deliver products that serve recognised clinical pathways and will generate the standardised, high quality and economically optimal products for the future;
- (4) industrial scale clinical evaluation within all product categories, driven by a robust clinical and product assurance function; and
- (5) an improved account management service that will work with Trusts to identify and realise available savings and offer support in migrating to products that deliver best value;
- (6) simplifying the procurement landscape, allowing Trust procurement teams to focus on other more critical areas of spend such as services and estates; and
- (7) completely transparent pricing, with no margin added to cover the running costs of the FOM from April 2019 which will allow the buy price of goods to be passed on to Trusts as the sell price.

You can find out more about the NHS Supply Chain and view the product catalogue here: <https://www.supplychain.nhs.uk/>

1.3 Overview of NHS Terms and Conditions

- 1.3.1 The NHS Terms and Conditions for the Supply of Goods (Contract Version) and the NHS Terms and Conditions for the Provision of Services (Contract Version) provide the core “DNA” for all other sets.
- 1.3.2 As a result, the wording and clause numbering is the same across all of the sets apart from a small number of set specific changes.
- 1.3.3 This approach gives a high degree of contracting consistency for both NHS bodies and industry regardless of which set is used. This will enable rapid familiarity with the documents and ease of use. It will also ensure their maintenance is streamlined.
- 1.3.4 These sets can be used to procure a wide range of goods and services, as outlined below. However, they must not be used to commission clinical services. In relation to the commissioning of clinical services, the NHS Standard Contract can be found at: <http://www.england.nhs.uk/nhs-standard-contract/>.
- 1.3.5 The aim is that these sets should be used without deviation when procuring such goods and services in order to provide a consistent approach to contracting across the NHS. This supports DHSC/NHS England policies aimed at encouraging small and medium size enterprises and reducing the costs of doing business with the NHS. Where extra or different provisions are exceptionally required, NHS bodies will be expected to explain to NHS England and suppliers upon request why such extra or different provisions are necessary, reasonable and proportionate in the particular circumstances.

1.4 Using the NHS Terms and Conditions for the Supply of Goods (Contract Version), the NHS Terms and Conditions for the Provision of Services (Contract Version) and the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version)

- 1.4.1 You should use these Contracts where a signed contract is required and the commercial schedule, specification and tender response document and all other schedules will be bound together with the legal terms and conditions to form the contract. You should not use these Contracts to commission clinical services as outlined above.
- 1.4.2 You should use the NHS Terms and Conditions for the Supply of Goods (Contract Version) for purchasing all types of goods including medical devices and pharmaceutical products. Optional schedules can be used when installation and commissioning services and/or maintenance services are required in connection with the goods to be purchased.
- 1.4.3 You should use the NHS Terms and Conditions for the Provision of Services (Contract Version) for purchasing all types of services including facilities related services, back-office services and all types of outsourcing. This includes all instances where there will be a transfer of staff at the commencement of the services.
- 1.4.4 NHS England has also published the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version) which can be used to procure goods and services together. Section 2 of this Guidance applies equally to the combined terms and conditions.
- 1.4.5 Exceptionally, it is possible to use these Contracts in circumstances where they will not be signed. For example, as part of an e-tendering process. Where you use the Contracts in this way, the signature boxes will need to be removed. In the absence of the signatures, you will also need to make clear what documents form the final contract, how the contract is entered into and on what date.

1.5 Using the NHS Terms and Conditions for the Supply of Goods (Purchase Order Version), the NHS Terms and Conditions for the Provision of Services (Purchase Order Version) and the NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Purchase Order Version)

- 1.5.1 You should use these terms and conditions where your intention is that a contract incorporating the terms and conditions is formed when you place a purchase order. There will not be a signed contract. **You should not use these terms and conditions to commission clinical services.**
- 1.5.2 You should only use this approach for straightforward projects where a signed contract incorporating the commercial schedule, specification and tender response document and any other schedules into a single document is not required. For these reasons, you should not use these terms and conditions where there will be a transfer of staff at the commencement of the services. The contract versions (as discussed above) that relate to the

provision of services would be the appropriate versions to use in these circumstances.

1.5.3 Where you need to supplement these terms and conditions with bespoke drafting, this indicates that your contract is not straightforward and that the relevant contract version would be the correct document for that procurement.

1.5.4 The combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Purchase Order Version) can be used to procure goods and services together. Section 3 of this Guidance applies equally to the combined terms and conditions.

1.6 Using the NHS Framework Agreement for the Supply of Goods, the NHS Framework Agreement for the Provision of Services and the NHS Framework Agreement for the Supply of Goods and the Provision of Services

1.6.1 You should use these documents respectively to establish framework agreements for the supply of goods, the provision of services or the combined supply of goods and the provision of services. These documents contain the relevant call-off terms and conditions for goods and services as an appendix to each framework agreement. You should not use these terms and conditions to commission clinical services.

1.7 Development process

1.7.1 The DHSC recognised there was a proliferation of activity at NHS Trust level, either updating or developing bespoke sets of terms and conditions and decided to take ownership of developing up-to-date standard terms and conditions that would benefit both the NHS and industry. The aim of this approach was to save time and effort for both parties and to be the first step in the NHS acting as a single customer. NHS England is responsible for developing and maintaining the three sets of contracting terms and conditions stated above.

1.7.2 Mills & Reeve were appointed to work in partnership with the DHSC to develop the new sets of terms and conditions on this basis. A stakeholder workshop was held with over twenty NHS bodies represented and it was agreed that the following principles should underpin the development of the terms and conditions.

- (i) The new sets should be easy to use.
- (ii) They should offer sufficient flexibility for use on a range of projects.
- (iii) They should be easy to maintain.
- (iv) There should be maximum standardisation across the sets.
- (v) It should be possible to have signed contracts for certainty, governance, record keeping and contract management purposes. The terms and conditions should build in an exception to this requirement for less complex contracts commenced through the issue of a purchase order where having signed contracts is not considered proportionate.

(vi) A balanced approach to risk should be adopted that would facilitate industry acceptance and remove the pressure NHS bodies often face to negotiate contract terms. To take this forward, a set of commercial principles were also agreed at the stakeholder workshop covering the approach to key areas of risk.

(vii) The sets should provide contractual structures that fit with the procurement processes used by NHS bodies.

1.7.3 Input was provided by key policy leads within the DHSC in areas such as information governance, sustainability, equality and diversity and GS1 and PEPOL standards.

1.7.4 Further consultation was undertaken with industry and stakeholders to refine the commercial principles agreed at the stakeholder workshop and to develop the related contract terms and conditions.

1.7.5 As a result of this consultation the new sets deliver a standard and balanced approach to risk for the NHS and suppliers. Key aspects of this approach relate to the specification, price and payment provisions, performance management, liability, insurance, intellectual property, termination, and information governance. A summary of the approach to these key areas is set out at Section 5 of this Guidance.

1.7.6 Positive feedback has been received on this development process and the resulting terms and conditions from both industry and stakeholders.

“Industry welcomes the emphasis on ensuring consistency and fairness in the operation of these new NHS terms and conditions.”

Peter Ellingworth, Chief Executive – Association of British Healthcare Industries

“The Health Care Supply Association (HCSA) is the representative and network organisation for all staff involved in NHS procurement. HCSA has strongly supported the initiative to update and refresh the terms and conditions that are so important to us all in delivering effective procurement to the NHS. We have been fortunate over the years to have robust and widely accepted terms and conditions that have enabled buyers and suppliers to work within a strong governance framework. These new versions, representing extensive stakeholder input, will bring both clarity and added value to the vital work we all do in support of healthcare delivery. As Chairman of HCSA, I strongly support the adoption of these new terms and conditions and thank all those who have been involved.”

Simon Walsh, Chairman – Health Care Supply Association and Head of Procurement and E-Commerce at Central Manchester University Hospitals NHS Foundation Trust

2. How to use the Contract Versions

How to use the NHS Terms and Conditions for the Supply of Goods (Contract Version), the NHS Terms and Conditions for the Provision of Services (Contract Version) and the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version)

2.1 Preliminary points

- 2.1.1 When you are running a tender, you must include the relevant template Contract in the tender documentation. The template Contract will not be complete at this stage. For example, it will not have the name of the supplier or include elements such as the tender response and pricing. However, most other aspects should be known and included in the template Contract at the time of issue of the tender documentation.
- 2.1.2 Once an award decision has been made and you are ready to conclude the contract (eg following the end of any required standstill period and any internal approvals), then you can prepare the contract for signature.
- 2.1.3 The template Contracts are drafted on the basis that each contract will be concluded (ie will be formally entered into by the parties and take effect) once signed by both the supplier and you.
- 2.1.4 The combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version) can be used when you are procuring both goods and services.
- 2.1.5 You must not use the NHS Terms and Conditions for the Supply of Goods (Contract Version), the NHS Terms and Conditions for the Provision of Services (Contract Version) or the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version) to commission clinical services.

2.2 Preparing the Contracts for use

- 2.2.1 The following table refers to each part of the Contracts and provides you with instructions for their use at tender stage and on preparing your final contract for execution.
- 2.2.2 You should note that where text has been inserted, you need to remove all square brackets, highlighting, bold and italic font formatting. You do not need to remove the grey guidance notes, as the Contracts already state as part of the definitions and interpretations that these do not form part of the Contracts.

	Preparing the Contract for inclusion in the tender documentation	Preparing the Contract for signature
Front page	<p>Insert the name of your NHS body.</p> <p>Insert a brief description of the type of goods and/or services being purchased.</p> <p>Insert any additional schedules required or delete the highlighted text in the Table of Schedules referring to additional schedules.</p>	<p>Insert the name of the supplier.</p> <p>Check if the contract needs to be signed under seal and the authorised signatories.</p> <p>Arrange for formal execution (ie signature) of the contract.</p> <p>Insert the date of the contract.</p>
Schedule 1 Key provisions	<p>You must complete all project specific details before issuing the contract as part of the tender. They cannot be inserted at a later date in the procurement.</p> <p>The only details that you will not be able to complete now are clauses 3.1.2 and 4.1.2 and the details of the supplier representative at clause 5.1.</p> <p>Embedded guidance notes are included in the body of this Schedule in the template Contracts to help with its completion.</p>	<p>Insert the supplier's details at clauses 3.1.2, 4.1.2, 5.1, 8.3 and 8.6.</p>
Schedule 2 General Terms and Conditions	<p>This Schedule should not require changing, as it contains standard legal and commercial terms.</p>	<p>No changes should be made at this stage of a procurement.</p>
Schedule 3 Information and data provision	<p>For the vast majority of procurements this Schedule should not need amending. However, you should consider if it is proportionate to your procurement. For example, for projects such as records management services you may have more detailed requirements regarding security management and disaster recovery. You will also need to complete an associated Data Protection Protocol, as required for the relevant Contract using the template found on the same web page as the NHS Terms and Conditions.</p>	<p>No changes should be made at this stage of a procurement.</p>

Schedule 4 Definitions and interpretations	<p>These should not be changed. However, if you use new capitalised terms in any Schedule, they must be inserted in this Schedule and given a meaning.</p>	<p>No changes should be made at this stage of a procurement.</p>
Schedule 5 Specification and tender response document	<p>Your specification will be in the tender documents but not in the contract at this stage of the process.</p> <p>It is good practice to issue a specification with the tender documents that provides spaces under each requirement or set of requirements for suppliers to insert their tender responses.</p> <p>The Contract makes a number of references to matters which a contracting authority may want to provide detail on in the Specification and Tender Response in addition to detailing its requirements. The key areas are:</p> <ul style="list-style-type: none"> • key performance indicators; • contract review meetings; • records and information required from the Supplier; • information to be contained in delivery notes (goods only); • premises and locations at which the Services are to be provided and any mechanism for varying these (services only); • key supplier staff, if any, whose redeployment and/or replacement is subject to the Authority's approval (services only); and • any services credits (services only). 	<p>Insert the specification and tender response.</p> <p>Where any elements of this document have been clarified as part of the contract conclusion process, clarification statements should be added to this Schedule (either within the main body of the specification and tender response document or as an annex to it).</p> <p>Ensure any clarifications comply with the procurement rules and when inserting clarifications in the final contract, make sure that there are no conflicting statements between the specification and tender response document or any other part of the contract.</p>

<p>Schedule 6 Commercial Schedule</p>	<p>A completed Schedule will not be in the contract at this stage of the process.</p> <p>It is good practice to issue with the tender documents a template that sets out the pricing mechanism and provides spaces for suppliers to insert the necessary pricing and other commercial details as part of the tender responses.</p> <p>You should note that Clause 9 of Schedule 2 states that the contract price is the entire price throughout the contract term and includes all elements set out in that clause. Also, Clause 9 of Schedule 2 sets out the invoicing arrangements. If the price may change during the term (ie through an indexation mechanism) or invoicing is different, this must be stated in this Schedule or pricing template issued now.</p>	<p>Insert the completed commercial schedule.</p> <p>Where any elements of this document have been clarified as part of the contract conclusion process, clarification statements should be added to this Schedule (either within the main body of the Schedule or as an annex to it).</p> <p>Again care must be taken on compliance with the procurement rules and to avoid any conflicting statements.</p>
<p>Schedule 7 Staff transfer</p> <p>NB this applies to the NHS Terms and Conditions for the Provision of Services (Contract Version) and the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version) only</p>	<p>You must prepare this Schedule before issuing the contract as part of the tender.</p> <p>Embedded guidance notes are included in the body of this Schedule to help with its completion.</p>	<p>List the Transferring Employees.</p>

<p>Schedules 8 Installation and Commissioning Services</p> <p>Schedule 9 Maintenance services</p> <p>NB these apply to the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version) and the NHS Terms and Conditions for the Supply of Goods (Contract Version). These are Schedules 7 and 8 respectively in the NHS Terms for the Supply of Goods (Contract Version)</p>	<p>If one or both of these schedules apply to the Goods, you must check: (Clause 28 and/or Clause 29 of Schedule 1 of the combined Goods and Services (Contract Version)); or Clause 19 and /or clause 20 of Schedule 1 of the Supply of Goods (Contract Version).</p>	<p>No changes should be made at this stage of a procurement.</p>
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<p>Schedule 10 Expert determination</p> <p>This is Schedule 9 and 8 respectively in the NHS Terms and for the Supply of Goods (Contract Version) and the NHS Terms and for the Supply of Goods (Contract Version).</p>	<p>If the box at the optional Expert Determination Clause in Schedule 1 is checked, this Schedule must be included in the Contract.</p>	<p>No changes should be made at this stage of a procurement.</p>
<p>Additional Schedules</p>	<p>Insert any additional Schedules. Additional Schedules will only be required where referred to in any optional or extra Key Provisions in Schedule 1. You may not be able to complete all of them now (eg an Implementation Plan).</p>	<p>If required, complete the additional Schedules.</p>

3. How to use the Purchase Order Versions

How to use the NHS Terms and Conditions for the Supply of Goods (Purchase Order Version), the NHS Terms and Conditions for the Provision of Services (Purchase Order Version) and the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Purchase Order Version)

3.1 Preliminary points

- 3.1.1 When using these terms and conditions, you will **not** have a signed contract. The contract is formed on the issue of a purchase order.
- 3.1.2 The legally binding contract will be made up of the Purchase Order, the specification and tender response, and the relevant terms and conditions referred to in the Purchase Order. Further detail on the use of each of these components is set out in the table below.
- 3.1.3 There is no scope to make amendments to these terms and conditions.
- 3.1.4 You must not use these purchase order versions to commission clinical services.
- 3.1.5 When you are using these terms and conditions, you should refer to them in the tender or quotation documents for the project. Ideally, you should also provide a link to the relevant terms and conditions in such documents.
- 3.1.6 You should also make it clear that the supplier's response or quotation is capable of acceptance by you and that when you issue a Purchase Order this forms a legally binding contract.
- 3.1.7 The terms and conditions make various references to the specification and tender response document. The terms and conditions define this document as including the contracting authority's requirements and the supplier's written confirmation of how it will meet such requirements and its pricing. These need not all be in a single document. You must ensure that this and other relevant information is communicated between you and the suppliers as part of the procurement/quotation process. As there will be no final signed contract it is important that both the supplier and you can identify these documents and there is no scope for dispute as to which parts of communication between you are incorporated into the final contract.
- 3.1.8 The terms and conditions assume that certain information will be confirmed as part of the Purchase Order (see table below). Where suppliers also need this information in order to prepare their tender/quotation (eg information relating to the contract duration), you must also ensure that this information is communicated by you to suppliers as part of the procurement/quotation process in time for them to prepare their tenders/quotations.

3.2 Using these terms and conditions and related documents

3.2.1 The following table refers to the key components that make up the contract as outlined above and provides you with instructions for their use.

	Key components of the contract and how they are used
Specification and tender response	<p>Ensure that the documents setting out what goods and/or services are to be provided by the supplier are clear and both the supplier and you can readily identify these documents.</p> <p>In particular, ensure that the documents are clear as to the following key areas:</p> <ul style="list-style-type: none"> • the description of the goods or services to be provided; • where they are to be provided • when they are to be provided • the prices to be paid and payment profile; • and key performance indicators, performance requirements and standards that will apply; • the contract managers; • contract review meetings; • any information requirements (to include the content of any delivery notes in the case of goods); and • any Authority obligations. <p>In the case of services, the documents should also include the following further key points if relevant to the particular project:</p> <ul style="list-style-type: none"> • any mechanism for varying the premises and/or locations at which the services are to be provided; • any requirements for the Supplier to enter into a lease or licence to use any premises; • details of any key supplier staff, if any, whose redeployment and/or replacement is subject to the Authority's approval; • any requirements for an information and security management plan; • any implementation plan; and • any long-stop date by which services must be implemented.
Terms and Conditions – Front page	<p>This component summarises how the terms and conditions are incorporated to form part of the contract and should not be changed.</p>

Schedule 1 Key Provisions	<p>As these terms and conditions are aimed for use in straightforward projects and are incorporated into the contract by reference without any refinement this Schedule does not require further completion and should not be changed. If extra key provisions are required, the NHS Terms and Conditions for the Supply of Goods (Contract Version) or the NHS Terms and Conditions for the Provision of Services (Contract Version), which allow for further key provisions to be included, should be used.</p>
Schedule 2 General and Conditions	<p>These should not be changed, as they contain standard legal and commercial terms.</p>
Schedule 3 Information governance provisions	<p>These should not be changed. You will, however, need to complete an associated Data Protection Protocol, using the template which can be found on the same webpage as the NHS Terms and Conditions.</p> <p>This must be completed if the Supplier is processing personal data on your behalf and/or the parties are otherwise sharing personal data with each other.</p> <p>If further or amended information governance provisions are required, the contract versions, which allow for such amendment, should be used.</p>
Schedule 4 Definitions and interpretations	<p>These should not be changed.</p>

Purchase Order

Once you have made your award decision and you are ready to conclude the contract (eg following the end of any required standstill period and any internal approvals), then you must issue the Purchase Order making clear the relevant terms and conditions forming part of the contract. For example, by referring to the Department of Health and Social Care's Applicable Contract Terms Policy as below:

“This Purchase Order is placed with your organisation subject to the application of our terms and conditions as referred to in the Department of Health and Social Care's “Applicable Contract Terms Policy”

In the Purchase Order you **must** also set out:

- the duration of the contract;
- the addresses of both parties for notices to be given under the contract;
- any quality standards to the extent these are not set out in the specification and tender response document;
- how the contract price is to be calculated and what it is to include to the extent this is not set out in the specification and tender response document or the terms and conditions;
- if there is to be a monthly payment profile and this is not already set out in the specification and tender response document;
- in the case of goods, any delivery timescales, delivery dates, and delivery instructions (to include delivery location and delivery times) to the extent these are not set out in the specification and tender response document; and
- in the case of services, the timetable for performance and any service credits, if any, to the extent these are not set out in the specification and tender response document.

If there could be any doubt as to the documents forming the specification and tender response then list these in the Purchase Order.

As noted above, extra key provisions should not be added. As suggested above, where extra key provisions are required, this suggests the project is complex and that the relevant contract versions of the NHS terms and conditions should be used instead of these purchase order terms and conditions.

4. How to use the Framework Agreements

How to use the NHS Framework Agreement for the Supply of Goods, the NHS Framework Agreement for the Provision of Services and the combined NHS Framework Agreement for the Supply of Goods and the Provision of Services

4.1 Preliminary points

- 4.1.1 When you are running a tender, you must include the relevant template Framework Agreement in the tender documentation. The template Framework Agreement will not be complete at this stage. For example, it will not have the name of the supplier or include elements such as the tender response and pricing. However, most other aspects should be known and included in the template Framework Agreement at the time of issue of the tender documentation.
- 4.1.2 Once an award decision has been made and you are ready to conclude the framework agreement (eg following the end of any required standstill period and any internal approvals), then you can prepare the framework agreement for signature.
- 4.1.3 The template Framework Agreements are drafted on the basis that each framework agreement will be concluded (ie will be formally entered into by the parties and take effect) once signed by both the supplier and you.
- 4.1.4 The framework agreement will be between the supplier and you, as the contracting authority setting it up. The call-off contracts will be between the contracting authority placing each order and the supplier receiving the order. For some framework agreements this will be the same contracting authority. For others they will be separate NHS bodies.
- 4.1.5 You must not use these framework agreements to commission clinical services.

4.2 Preparing the Framework Agreements for use

- 4.2.1 The following table refers to each part of the Framework Agreements and provides you with instructions for their use at tender stage and on preparing your final framework agreement for execution.
- 4.2.2 You should note that where text has been inserted, you need to remove all square brackets, highlighting, bold and italic font formatting. You do not need to remove the grey guidance notes, as the Framework Agreements already state as part of the definitions and interpretations that these do not form part of the Framework Agreements.

	Preparing the Framework Agreement for inclusion in the tender documentation	Preparing the Framework Agreement for signature
Front page	<p>Insert the name of your NHS body.</p> <p>Insert a brief description of the type of goods and/or services being purchased.</p> <p>Insert any additional schedules required or delete the highlighted text in the Table of Schedules referring to additional schedules.</p>	<p>Insert the name of the supplier.</p> <p>Check you organisation's execution.</p> <p>Arrange for the formal signature of the framework agreement.</p> <p>Insert the date of the framework agreement.</p>
Schedule 1 Key provisions	<p>You must complete all project specific details before issuing the framework agreement as part of the tender. They cannot be inserted at a later date in the procurement.</p> <p>The only details that you will not be able to complete now are clauses 3.1.2 and 4.1.2 and the details of the supplier representative at clause 5.1.</p> <p>Embedded guidance notes are included in the body of this Schedule in the template Framework Agreement to help with completion.</p>	<p>Insert the supplier's details at clauses 3.1.2, 4.1.2, 5.1, 8.3 and 8.6.</p>
Schedule 2 General Terms and Conditions	<p>This Schedule should not require changing, as it contains standard legal and commercial terms for the framework agreements.</p>	<p>No changes should be made at this stage of a procurement.</p>
Schedule 3	<p>For the vast majority of procurements this Schedule should not need amending. You will, however, need to complete an associated Data Protection Protocol, using the template which can be found on the same web page as the NHS Terms and Conditions, in relation to any personal data exchanged between you and the supplier at the framework agreement level.</p>	<p>No changes should be made at this stage of a procurement.</p>
Schedule 4 Definitions and Interpretations	<p>These should not be changed. However, if you use new capitalised terms in any Schedule, they must be inserted in this Schedule and given a meaning.</p>	<p>No changes should be made at this stage of a procurement.</p>

<p>Schedule 5 Specification and Tender Response Document</p>	<p>Your specification will be in the tender documents but not in the framework agreement at this stage of the process.</p> <p>It is good practice to issue a specification with the tender documents that provides spaces under each requirement or set of requirements for suppliers to insert their tender responses.</p> <p>The specification should be clear in terms of the requirements that apply at the framework agreement level (ie to the framework agreement itself), those that apply to call-off Contracts, and those that apply to both.</p> <p>The call-off Contract makes a number of references to matters which a contracting authority may want to provide detail on in the Specification and Tender Response Document in addition to detailing its requirements. The key areas are:</p> <ul style="list-style-type: none"> • key performance indicators; • contract review meetings; • records and information required from the Supplier; • information to be contained in delivery notes (goods only); • premises and locations at which the Services are to be provided and any mechanism for varying these (services only); • key supplier staff, if any, whose redeployment and/or replacement is subject to the Authority's approval (services only); • any service credits (services only); and • any information and security management plan (services only). 	<p>Insert the specification and tender response</p> <p>Where any elements of this document have been clarified as part of the contract conclusion process, clarification statements should be added to this Schedule (either within the main body of the specification and tender response document or as an annex to it).</p> <p>Ensure any clarifications comply with the procurement rules and when inserting clarifications in the final framework agreement, make sure that there are no conflicting statements between the clarifications and the specification and tender response document or any other part of the framework agreement.</p>
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<p>Schedule 6 Commercial schedule</p>	<p>A completed Schedule will not be in the framework agreement at this stage of the process.</p> <p>It is good practice to issue with the tender documents a template that sets out the pricing mechanism and provides spaces for suppliers to insert the necessary pricing and other commercial details as part of their tender responses.</p> <p>You should note that Clause 9 of the call-off terms and conditions at Appendix A states that the contract price is the entire price throughout the contract term and includes all elements set out in that clause. Also, Clause 9 of the call-off terms and conditions sets out the invoicing arrangements. If the price may change during the term (ie through an indexation mechanism) or invoicing is different, this must be stated in this Schedule or pricing template issued now.</p>	<p>Insert the completed commercial schedule.</p> <p>Where any elements of this document have been clarified as part of the contract conclusion process, clarification statements should be added to this Schedule (either within the main body of the Schedule or as an annex to it)..</p> <p>Again care must be taken on compliance with the procurement rules and to avoid any conflicting statements.</p>
<p>Schedule 7</p>	<p>You must complete these project specific details before issuing the framework agreement as part of the tender. They cannot be inserted at a later date in the procurement.</p> <p>Embedded guidance notes are provided within the body of this Schedule to help with its development.</p>	<p>No changes should be made at this stage of a procurement.</p>
<p>Additional Schedules</p>	<p>Insert any additional Schedules. Additional Schedules will only be required where referred to in any optional or extra Key Provisions in Schedule 1. You may not be able to complete all of them now (eg a guarantee may be required and while the draft guarantee should be included at this stage, the executed version will only be available at the Framework Agreement conclusion stage).</p>	<p>If required, complete the additional Schedules.</p>

<p>Appendix A Call-off terms and conditions</p>	<p>These are the terms and conditions that apply to call-off contracts entered into under the Framework Agreement. For the vast majority of procurements these call-off terms and conditions should not need amending, as they are based on the purchase order versions of the NHS terms and conditions (as discussed above) and are suitable for most straightforward requirements that are commonly purchased using framework agreements. You will, however, need to provide (eg as part of the order process) for an associated Data Protection Protocol to be completed for relevant call-off Contracts, using the template which can be found at the same web page as the NHS Terms and Conditions. This must be completed if the Supplier is processing personal data on behalf of the Authority and/or the parties are otherwise sharing personal data with each other.</p>	
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5. Summary

Summary of approach to key risk areas, conclusion and contact details

Summary of approach to key risk areas

- 5.1 As referred to in the introduction and overview section of this Guidance, following the consultation exercise with NHS stakeholders and industry, the new sets of NHS terms and conditions deliver a standard and balanced approach to risk for the NHS and suppliers.
- 5.2 Key elements of this approach relate to the specification of the goods and/or services, price and payment provisions, managing performance, liability, insurance, intellectual property, termination and information governance. The approaches adopted in these important areas are summarised in the table below.

Key area of risk	Summary of approach
<p>Specification and tender response</p> <p>Flexibility is provided to shape requirements to the particular procurement</p>	<p>The detailed requirements for the goods and/or services must be set out in the specification and tender response document including any key performance indicators and the consequences of them not being met. The template terms and conditions address legal and commercial provisions only.</p>
<p>Price and payment</p> <p>The approach is to support pricing transparency and certainty together with the prompt payment of suppliers and their supply chain</p>	<p>The supplier is entitled to charge the contract price. This is a fixed sum offered as part of the tender/quotation.</p> <p>Invoices can be issued by the supplier on a monthly basis where a monthly payment profile is specified. Otherwise, the supplier may invoice immediately following completion of the supply of the goods and/or the provision of the services.</p> <p>The NHS body should validate and pay invoices within 30 days or sooner in line with any government prompt payment targets.</p> <p>Suppliers must offer the same validation and payment terms to their supply-chain members.</p>
<p>Managing performance</p> <p>The terms and conditions provide a clear and collaborative framework for</p>	<p>Performance is reviewed at regular contract management meetings and the supplier is required to provide relevant management information as requested by the NHS body.</p> <p>Project specific key performance indicators and consequences of their not being achieved must be set out as part of the specification.</p>

<p>performance management</p>	<p>A process is included to allow for the agreement of remedial plans aimed at correcting poor performance where this arises.</p>
<p>Liability</p> <p>A standard and balanced approach to liability has been adopted</p>	<p>The supplier indemnifies the NHS purchaser against any losses suffered through the supplier's breach of contract or negligence in respect of:</p> <ul style="list-style-type: none"> • death or personal injury; • damage to property; • late service delivery; and • third party claims such a breach of intellectual property rights. <p>In services contracts, both parties provide indemnities for certain liabilities that could arise in relation to staff who transfer to or from the supplier. obligations (ie liability under the framework agreement itself), the liability cap is set at a fixed £500,000 to reflect the fact that the main liabilities will be at the order level.</p> <p>Liability is uncapped for death or personal injury, fraud and certain third party claims.</p> <p>All other liability is either capped or excluded altogether. Usually the cap will be the greater of £5 million or 125% of the total contract price payable over the term of the contract. To address the issue of proportionality, the cap changes for lower and larger value contracts as detailed in the terms and conditions.</p> <p>The NHS framework agreements take the same approach as above to capping liability for all orders in the call-off terms and conditions. In relation to the general framework level obligations (ie liability under the framework agreement itself), the liability cap is set at a fixed £500,000 to reflect the fact that the main liabilities will be at the order level.</p>
<p>Insurance</p> <p>Default minimum insurance requirements are included with the ability to vary the types and levels in the context of the particular project</p>	<p>The default supplier insurance requirements for employer's liability, public liability, professional indemnity (services only), and product liability (goods only) is a minimum level of cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by law.</p> <p>Provided that the supplier maintains all indemnity arrangements required by law, the supplier may self-insure in order to meet the other requirements.</p> <p>Schedule 1 of the contract versions and the framework agreement versions enable the insurance provisions to be changed on a project by project basis.</p>

<p>Intellectual property</p> <p>The approach reflects the principle that intellectual property ownership should remain with the party best able to exploit it, which in most cases will be the supplier.</p>	<p>The default position in all terms and conditions is that the supplier retains ownership of its intellectual property and appropriate rights to use the intellectual property are granted to the NHS purchaser.</p> <p>Schedule 1 of the relevant contract versions enables this default position to be varied in relation to services to reflect the requirements of individual projects.</p>
<p>Termination</p> <p>Again a balanced and proportionate approach is taken</p>	<p>Either the NHS body or the supplier can terminate if the other party commits:</p> <ul style="list-style-type: none"> • a material breach of the contract not capable of remedy; or • a material breach which, if capable of remedy, is not remedied in accordance with an agreed remedial proposal. <p>The NHS body also has the right to terminate if the supplier commits various contractual breaches including where the supplier:</p> <ul style="list-style-type: none"> • is in financial distress or suffers an insolvency event; • is unable to supply the goods or provide the services due to a prolonged force majeure event; • has a conflict of interest, commits fraud or commits any offence under the Bribery Act 2010; • fails to commence delivery of the services by any specified long stop date; • is in breach of its obligations to the NHS Pension Scheme; or • is in breach of its tax compliance obligations. <p>The NHS body also has the right to terminate the Contract in line with various requirements set out as part of the public procurement rules applicable to NHS bodies.</p> <p>If a contract is novated by the NHS purchaser to a private sector body, the supplier has wider termination rights.</p> <p>There is no default right for the NHS body to terminate the contract without cause. This right can be included in Schedule 1 of the</p>

	<p>contract versions on a project specific basis but should only be considered on an exceptional basis where justified by the circumstances of the particular contract.</p>
<p>Information and data</p> <p>Robust yet proportionate information and data provisions have been included reflecting the latest NHS policy thinking in this area</p>	<p>Confidential information belonging to both parties must be treated in confidence. However, these confidentiality obligations are subject to the NHS body’s overriding obligations under the Freedom of Information Act 2000 and relevant government transparency policies.</p> <p>Where the supplier is processing personal data on behalf of the NHS purchaser (as controller of such data) or the parties are processing personal data on each other’s behalf, a Data Protection Protocol should be completed using the template found at the same web page as the NHS Terms and Conditions.</p> <p>The Parties are required to comply with the terms of such Protocol.</p> <p>The Supplier is also required to comply with the following information security requirements as relevant to the particular terms and conditions:</p> <ul style="list-style-type: none"> • to notify the NHS purchaser of any information security breaches or near misses; • to co-operate with any audits, investigations and any privacy impact assessments; and • where required as part of your specification for the services, to put in place and maintain an information security management plan.

Conclusion

- 5.3 The NHS Terms and Conditions for the Supply of Goods (Contract Version), the NHS Terms and Conditions for the Provision of Services (Contract Version), the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Contract Version), the NHS Terms and Conditions for the Supply of Goods (Purchase Order Version), the NHS Terms and Conditions for the Provision of Services (Purchase Order Version) and the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services (Purchase Order Version) provide up-to-date standard terms and conditions for use when procuring goods and/or services.
- 5.4 NHS England has also published the NHS Framework Agreement for the Supply of Goods, the NHS Framework Agreement for the Provision of Services and the combined NHS Framework Agreement for the Supply of Goods and the Provision of Services for use when establishing framework agreements for goods or services. Both the NHS and industry will now be able to rely on a consistent approach when goods and/or services are being supplied under framework agreements.

5.5 The publication of these sets of terms and conditions is the first step in the NHS acting as a single customer. The use of these terms and conditions provides a balanced approach to risk and will save time and effort for both parties. This benefits both the NHS and industry.

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