

NHS Standard Contract (full length or shorter-form Contract)

Guidance on the in-year variation process and on updating contracts which extend beyond 31 March 2023

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

1 Introduction

This guidance is relevant to all commissioners and providers who are parties to commissioning contracts based on the NHS Standard Contract. It applies to both the full length and shorter-form Contracts, and should be followed in the following circumstances:

- when one of the parties wishes to **propose a Variation to the Particulars of their local contract during the contract term**. This process requires use of the *Variation Agreement template (full length or shorter-form Contract) for updating contracts in-year*; and
- when the parties wish to **update a local multi-year contract which extends beyond 31 March 2023 for the 2023/24 contract year to align it properly with the 2023/24 NHS Standard Contract**. This process requires use of the *Variation Agreement template (full length or shorter-form Contract) for updating contracts which extend beyond 31 March 2023*, and is described in Sections 3-4 below.

This guidance supplements, and should be read in conjunction with, General Condition 13 (*Variations*) of the NHS Standard Contract and Section 47 of the [Contract Technical Guidance](#).

2 Variations process

GC13 sets out the process with which the parties to a contract must comply if any one of them wishes to propose a variation to the terms of that contract.

This guidance, and the two *Variation Agreement templates* 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 in Section 7 below explains the steps which must be taken to effect the variations, and how to use the *Variation Agreement templates*.

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

The table in Section 7 below describe the process in detail, and you will need to follow the steps described carefully.

The *Variation Agreement templates* are available on the NHS Standard Contract [webpage](#). These are both 'Variation Agreements', as defined in the Contract.

3 National Variations

The 2022/23 National Variation was the last National Variation which NHS England plans to publish. From 2022/23 and subsequent iterations of the NHS Standard Contract, we have made a set of changes so that the General Conditions (GCs) and Service Conditions (SCs) of the Contract no longer need to be exchanged between the parties as part of their local agreement. Rather, the GCs and SCs will exist solely in their up-to-date online form, as published by NHS England from time to time; they will be incorporated into, and will apply automatically as part of, each local contract by reference only. Please see Section 33 of the [Contract Technical Guidance](#) for more information.

However, for 2023/24, we recommend that the **Particulars of every multi-year contract which extends beyond 31 March 2023 should be updated to align it properly with the 2023/24 NHS Standard Contract**. This is because we have made changes to the numbering of Schedules 3 (Payment) and 6 (Contract Management, Reporting and Information Requirements) of the Particulars of the 2023/24 Contract. In the vast majority of contracts Schedule 3 (Payment) will need to be updated in any event, particularly due to the changes to the NHS Payment Scheme for 2023/24. For this reason, we recommend that commissioners use the *Variation Agreement template (full length or shorter-form Contract) for updating contracts which extend beyond 31 March 2023* and follow the process outlined in Section 4 below.

4 Updating contracts which extend beyond 31 March 2023 (to bring contracts in line with the 2023/24 NHS Standard Contract)

There are two ways in which multi-year contracts can be updated for 2023/24, and both use the *Variation Agreement template (full length or shorter-form Contract) for updating contracts which extend beyond 31 March 2023*:

- Use **Option 1** if you wish to update Schedule 3 (Payment), the numbering of Schedule 6 (Contract Management, Reporting and Information Requirements), and a significant amount of other local content of the Particulars; or
- Use **Option 2** if you only wish to update Schedule 3 (Payment) and the numbering of Schedule 6 (Contract Management, Reporting and Information Requirements), and – perhaps – a few other Schedules, but do not need to update a lot of other local content of the Particulars.

Wherever possible, the parties should complete the process by 31 March 2023.

Option 1

The commissioner updates the Particulars of each contract by re-populating the Particulars with local information, and re-issues them to the provider using the *Variation agreement template (full length or shorter-form Contract) for updating contracts which extend beyond 31 March 2023*. This will update any local information and the numbering of Schedules 3 (Payment) and 6 (Contract Management, Reporting and Information Requirements) in the Particulars, and will ensure that they read across to the SCs and GCs accurately.

This process is set out in step 2c in Section 7 below. Commissioners should use this option where they are updating a lot of local information in the Particulars (for example, several schedules and incorporated documents).

Option 2

The commissioner may instead populate Schedule 3 in the Annex to the *Variation Agreement template (full length or shorter-form Contract) for updating contracts which extend beyond 31 March 2023*, and add other updated schedules and incorporated documents as necessary, rather than re-populating and reissuing the Particulars as a whole.

This Option 2 will update Schedule 3 (Payment), and those other schedules and incorporated documents added to the Annex, and the numbering of Schedule 6 (Contract Management, Reporting and Information Requirements).

This process is set out in step 2d in Section 7 below.

5 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 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.

6 Varying a contract: legal considerations

Any proposed Variation should not be considered in isolation and, instead, should be considered in the context of the contract as a whole, the wider procurement/provider selection regime, competition and any other relevant issues. Note in particular that a Variation may constitute a change or modification to the contract beyond what is permissible without undergoing a new procurement/provider selection process,

thereby raising the risk of a challenge. The parties should refer to [regulation 72 of the Public Contract Regulations 2015](#) and the [NHS Provider Selection Regime](#) (when in place – date to be confirmed) and seek their own legal advice before proceeding with any Variation.

We will review this section of this guidance when the Provider Selection Regime is published.

7 Variations step-by-step

Note that under GC13.2, a Variation may only be used to make changes to:

- (a) the Particulars, and/or
- (b) one or more of the documents incorporated into the contract (e.g. a spreadsheet or a policy or protocol), or the incorporation of an additional document.

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 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. This is the date of latest signature, not the date from which the Variation takes effect.</p>
2a	GC13.3	<p>To vary a contract during the contract term, use the <i>Variation Agreement template (full length or shorter-form Contract)</i> for updating contracts <i>in-year</i> and complete it as follows:</p> <p>If a revised set of Particulars and/or incorporated documents, or a number of updated Schedules, are to be attached to the Variation Agreement, in the text box at paragraph 1 of the Variation Agreement template</p>

Step	Contract ref	Activity
		<i>(full length or shorter-form Contract) for updating contracts in-year, insert a summary of the proposed Variation, and attach the updated Particulars and incorporated documents (referencing the Schedule they apply to), and/or the updated Schedules, accordingly;</i> <i>or</i>
2b	GC13.3	If a revised set of Particulars and/or incorporated documents are NOT to be attached to the Variation Agreement, insert a full and complete description of the agreed changes to be made to those documents.
		In both cases (that is, 2a and 2b above), complete/delete the text at paragraph 2 below the text box accordingly.
2c and 2d	GC13.3	To update a contract which extends beyond 31 March 2023 (to align it properly with the 2023/24 NHS Standard Contract), use the <i>Variation Agreement template (full length or shorter-form Contract) for updating contracts which extend beyond 31 March</i> and complete it as follows:
2c	GC13.3	If a revised set of Particulars and/or incorporated documents are to be attached to the Variation Agreement, insert a summary of the proposed Variation in the text box under item 1 in the draft <i>Variation Agreement template (full length or shorter-form Contract) for updating contracts which extend beyond 31 March</i> , and attach the updated Particulars and incorporated documents accordingly to the Variation Agreement; Complete/delete the text under item 2 below the text box accordingly; Delete item 3 and replace with 'not used'; and Delete the Annex to the <i>Variation Agreement template</i> ; <i>or</i>
2d	GC13.3	If revised Particulars and/or incorporated documents are NOT to be attached to the draft <i>Variation Agreement template (full length or shorter-form Contract) for updating contracts which extend beyond 31 March</i> , insert a full and complete description of the agreed changes to be made to those documents; Complete/delete the text at item 2 ;

Step	Contract ref	Activity
		<p>Retain and complete item 3;</p> <p>Complete the Annex to the Agreement, as appropriate, to record the payment arrangements for 2023/24 in a manner compliant with the NHS Payment Scheme;</p> <p>Add any other schedules and / or incorporated documents as necessary.</p>
3	GC13.7	<p>Under item 3 or 4 (as appropriate, depending on which template you are using), insert the date on which the Variation is to take effect.</p> <p>Subject to following any governance processes set out on the relevant Collaborative Commissioning Agreement, the Co-ordinating Commissioner may sign the Variation Agreement on behalf of all Commissioners. If this is the case, under item 4 or 5 (as appropriate, depending on which template you are using), remove the square brackets. If this is not the case, delete item 4 or 5 (as appropriate).</p>
4	GC13.4	<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>
5	GC13.8	<p>The Recipient must issue the Recipient's response within 10 Operational Days in accordance with the procedure for service of notices set out in GC36.</p>
6	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 incorporated documents already issued and/or the issue and development of the appropriate drafts.</p>
7	GC13.10	<p>The Recipient serves written notice accepting or refusing the Variation Agreement in accordance with the procedure for service of notices set out in GC36.</p>

Step	Contract ref	Activity
8	NA	If the draft Variation Agreement is accepted, the parties finalise the details of the Variation. The draft revised Particulars and/or incorporated document(s) (as appropriate) must be finalised to reflect the terms agreed between the parties.
9	GC13.3	The Proposer issues the final Variation Agreement for signature, with agreed revised Particulars and/or incorporated document(s) (as appropriate) attached.
10	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 Variation Agreement on behalf of all Commissioners. In all other circumstances, all Commissioners must sign the Variation Agreement.</p> <p>The parties should <u>not</u> 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, rather than the Particulars attached to it.</p> <p>Date of Variation Agreement: Once signed by the authorised signatory of each party, the Variation Agreement must be dated here.</p>
11	NA	<p>The agreed variations will now take effect from the date agreed locally and set out in paragraph 3 or 4 of the Variation Agreement. The contract as varied will apply from that date onwards.</p> <p>Note 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.</p>

OR

Step	Contract ref	Activity
8	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.

8 Further information

Queries on the NHS Standard Contract and this Variation Guidance may be sent to england.contracts-help@nhs.net.

If you would like to be added to the NHS Standard Contract stakeholder list, please send your contact details to england.contracts-engagement@nhs.net.

We have published slides and recordings from our webinars in the [NHS Standard Contract FutureNHS workspace](#).

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This publication can be made available in a number of alternative formats on request

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