

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 2024

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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**; and
- when the parties wish to **update a local multi-year contract which extends beyond 31 March 2024 for the 2024/25 contract year**.

Both situations require use of the *Variation Agreement template (full length or shorter-form Contract)*.

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 *Variation Agreement template* 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 GC13.3 and Section 47 of the [Contract Technical Guidance](#)).

The table in Section 6 below explains the steps which must be taken to effect the variation, and how to use the *Variation Agreement template*. The process is the same for a variation enacted to update to update a contract for 2024/25, or to update a contract at any point during the contract year.

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

The *Variation Agreement template* (once populated) is a 'Variation Agreement', as defined in the Contract, and is available on the NHS Standard Contract [webpage](#).

3 National Variations

The 2022/23 National Variation was the last National Variation which NHS England plans to publish. For 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.

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 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

No proposed Variation should be considered in isolation and, each should instead be considered in the context of the contract as a whole, the wider 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 provider selection process, thereby raising the risk of a challenge. The parties should refer to [regulations 13 and 14 of the Health Care Services \(Provider Selection Regime\) Regulations 2023](#) and the [Provider Selection Regime Statutory Guidance](#) and seek their own legal advice before proceeding with any Variation. These regulations govern all Variations effected on or after 1 January 2024, regardless of when the contract being varied was entered into and regardless of when the Variations were first proposed.

6 Variations step-by-step

Note that under GC13.3, 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 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	GC13.5	The Co-ordinating Commissioner or the Provider (Proposer) serves a draft Variation Agreement on the other party (Recipient) as follows:
2a	GC13.4	Use the <i>Variation Agreement template (full length or shorter-form Contract)</i> for updating contracts in-year and complete it 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 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.

Step	Contract ref	Activity
		<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, insert a summary of the proposed Variation in the text box at paragraph 1 of the <i>Variation Agreement template</i>, and attach the updated Particulars and incorporated documents (referencing the Schedule they apply to), and/or the updated Schedules, accordingly;</p> <p>Or</p>
2b	GC13.4	<p>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 the text box at paragraph 1 of the <i>Variation Agreement template</i>.</p>
		<p>In both cases (that is, 2a and 2b above), complete/delete the text at paragraph 1 above the text box and at paragraph 2 below the text box accordingly.</p>
3	GC13.7	<p>Under item 3, 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, remove the square brackets. If this is not the case, delete item 4 (as appropriate).</p>
4	GC13.5	<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 (<i>Notices</i>).</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 (<i>Notices</i>).</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>

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 incorporated documents already issued and/or the issue and development of the appropriate drafts.
7	GC13.10	The Recipient serves written notice accepting or refusing the Variation Agreement in accordance with the procedure for service of notices set out in GC36 (<i>Notices</i>).
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	GC13.4	The Proposer issues the final Variation Agreement for signature, with agreed revised Particulars and/or incorporated document(s) (as appropriate) attached.
10	GC13.4	<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	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.

Step	Contract ref	Activity
		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.

OR

Step	Contract ref	Activity
8	GC13.13 – 13.15	If the draft Variation Agreement is not agreed, the Proposer must withdraw the draft Variation Agreement. The process in GC13.13 and GC13.14 may apply.

7 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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