



Department  
of Health &  
Social Care

# Update to the NHS Terms and Conditions: January 2018

## Summary of Changes

February 2018

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**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) (January 2018).

Contract Reference	Change
Schedule 1 – Standard Key Provisions – Clause 6.2	An additional clause has been inserted to clarify the documents that are considered part of the Specification and Tender Response Document. This clause also explains the order of precedence of these documents.
Schedule 1 – Optional Key Provisions – Clause 19 Schedule 2 – Clauses 16 and 21 Schedule 3 – Clause 2 Schedule 4	Amended to reflect the requirements of the General Data Protection Regulation (“GDPR”) and the related Data Protection Protocol published by the DHSC (see <a href="https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services">https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services</a> ).  The changes allow for the position when the GDPR comes into force. Updated definitions have also been included in Schedule 4 accordingly.
Schedule 1 – Optional Key Provisions – Clauses 22 and 27.1 Schedule 2 – Clauses 15.4, 15.5, 15.7, 15.8, 23.8	We have provided for termination to be via the issue of a Termination Notice (as defined in Schedule 4). This means that termination can take place on a specified date as opposed to always having to be forthwith, which is likely to be more practical for all concerned.
Schedule 1 – Optional Key Provisions – Clause 23	Amended to refer to the new Pre-Acquisition Questionnaire to be published by the DH. An updated definition has also been included in Schedule 4 accordingly.
Schedule 1 – Optional Key Provisions – Clause 27.1 Schedule 2 – Clause 15.3 Schedule 4 – Related definition of “Breach Notice” and Clause 1.14	Minor changes made to make the provisions easier to read and to reduce disputes about what might constitute a valid Breach Notice. Drafting also included to allow the Party in breach to request further information relating to the breach.
Schedule 1 – Optional Key Provisions – Clause 30 New Schedule 10	A new provision has been included to allow for Expert Determination to be used as an alternative method for dealing with disputes as opposed to the process set out at Schedule 2 – Clause 22. For some public bodies this may be viewed as an attractive alternative method of dispute resolution, as a public body will invariably be minded to act reasonably and to have issues resolved quickly and fairly to minimise any disruption to public services. A related DHSC briefing note can be found at

Contract Reference	Change
	<a href="https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services">https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services</a> .
Schedule 1 – Optional Key Provisions – Clause 31 Schedule 2 – Clause 2.1, Clauses 9.3.2 and 9.3.3 Schedule 4	A new optional clause has been added to allow for situations where stocks of Goods may be provided by the Supplier on consignment. Some minor related changes have been made to Schedule 2 and new definitions added to Schedule 4 to take account of this new optional clause.
Schedule 1 – Extra Key Provisions – Guidance	Updated to include examples of where extra key provisions may be required.
Schedule 2 – Clause 1.1.4	Minor clarification to allow for the fact that quality assurance standards are often set out in the Specification and Tender Response Document.
Schedule 2 – Clause 1.2	This clause has been slightly modified to require the Supplier to comply with any implementation requirements as may be set out in the Specification and Tender Response Document.
Schedule 2 – Clause 5	This clause has been amended to require compliance with any Guidance issued by DHSC relating to schemes to verify the credentials of Supplier representatives that visit NHS premises (to include use of the Lifescience Industry Accredited Credentialing Register).
Schedule 2 – Clause 9.2	Updated to reflect additional illustrative items that may become relevant in the context of the UK's withdrawal from the European Union;
Schedule 2 – Clause 9.8	Minor clarification changes made (to include the addition of an explicit right for the Authority to invoice for service credits / other agreed deductions if they are not automatically credited to the Authority).
Schedule 2 – Clause 9.10	New clause added to provide for an explicit right for the Authority to invoice for any sums due to the Authority under the Contract.
Schedule 2 – Clause 9.11	New clause added to provide for an explicit contractual right to claim interest on late payments in accordance with the Late Payment of Commercial

Contract Reference	Change
	Debts (Interest) Act 1998.
Schedule 2 – Clause 10.1.4	Minor changes added to refer to good warehousing practice and the requirements of Good Industry Practice.
Schedule 2 – Clause 10.1.21	Minor amendment to refer to the new Supplier Code of Conduct, as recently published by the Government Commercial Function. An relevant definition has also been included in Schedule 4 accordingly.
Schedule 2 – Clause 10.1.30	Minor changes made to clarify that the Authority may request information / ask questions (acting reasonably) in relation to all matters relating to the Contract.
Schedule 2 – Clause 15.9 –	Minor clarification changes made (to include an explicit reference to the Dispute Resolution Procedure as the means of resolving any disputes relating a failure to agree an exit plan).
Schedule 2 – Clause 16.2	As well as the GDPR related changes referred to above, this clause has been linked back to the requirement of the Supplier to provide an exit plan (to include in relation to the timescales the Supplier must comply as part of such plan).
Schedule 2 – Clauses 18.2 to 18.4	These clauses have been condensed, but still provide that labelling/packaging must be compliant with “Law” or “Guidance”.
Schedule 2 – Clause 18.5	Minor clarifications.
Schedule 2 – Clause 30.7	Minor clarifications.
Schedule 3 – Clauses 2.4.9 and 2.4.10	In additional to the GDPR related changes referred to above, new sub-clauses have been included to require that the Supplier complies with any specific further requirements as set out in the Specification and Tender Response Document and/or in any updated Guidance or Policies.
Schedule 4 – Definitions	New definitions and related changes have been included to reflect some of the changes referred in relation to Schedules 1 and 2 (as above) and the new Schedule 10 (as below). To also include other minor clarifications and updates.

Contract Reference	Change
Schedule 7 (Part D) – new Clause 1.1	Rather than having references to Sub-contractors throughout Part D we have simplified the wording and inserted new wording so that all the Clauses in Part D are to be read as if they refer, as appropriate, to a Sub-contractor.
Schedule 7 (Part D) – Clause 1.2.1	We have removed the requirement for obtaining a Direction Letter to be a pre-condition to commencement of the Services. This pre-condition was unduly onerous and in practice, most suppliers will find the condition difficult to meet.
Schedule 7 (Part D) – Clause 1.2.2	We have removed the time limit requirement for supplying the Direction letter as, in practice, this time limit will be difficult for most Suppliers to comply with. Instead we have inserted a requirement for the Direction Letter to be provided as soon as reasonably practicable after the Employee Transfer Date.
Schedule 7 (Part D) – Clause 1.2.3	We have simplified the wording so that the Supplier is obligated to comply with the Direction Letter for the duration of the terms stated within the Letter.
Schedule 7 (Part D) – Clause 1.2.5	We have inserted a new provision which requires the Supplier to keep all employee pension data up to date.
Schedule 7 (Part D) – Clause 1.3.1	A requirement for the Supplier to pay employer contributions in accordance with the Direction Letter has been added.
Schedule 7 (Part D) – Clause 1.4	We have removed the wording which required the Authority to consider Fair Deal for Staff Pensions. It is implicit in the requirements for the Authority when exercising its discretion to permit Broadly Comparable benefits to be provided that the Authority will pay regard to Fair Deal policy.
Schedule 7 (Part D) – Clause 1.7	We have removed the provisions relating to contracting-out as these are no longer relevant.
Schedule 7 (Part D) – Clause 1.8.2	We have inserted a provision for the shortfall in assets transferred to be made up by the Supplier.
Schedule 7 (Part D) – Clause 1.10	We have inserted a provision for the Supplier to notify the Authority if there is any breach of the Direction Letter.

<b>Contract Reference</b>	<b>Change</b>
Schedule 10	A new optional schedule has been included which contains an expert determination process. If the optional Clause 30 of the Optional Key Provisions in Schedule 1 has been checked, this schedule will need to be included.

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