



Department
of Health

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

Guidance

March 2015

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

Guidance

Developed in partnership with MILLS & REEVE

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Introduction

1 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 seven 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 \(Purchase Order Version\)](#) and the [NHS Terms and Conditions for the Provision of Services \(Purchase Order Version\)](#); and
- (iii) the [NHS Framework Agreement for the Supply of Goods](#) and the [NHS Framework Agreement for the Provision of Services](#).

1.2 Scope of the Guidance

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.

1.3 Overview

- 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 Department of Health (“DH”) 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 the DH 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 In March 2015, the DH published a combined version of the [NHS Terms and Conditions for the Supply of Goods \(Contract Version\)](#) and the [NHS Terms and Conditions for the Provision of Services \(Contract Version\)](#). This document is called the [NHS Terms and Conditions for the Supply of Goods and the Provision of Services \(Contract Version\)](#) and can be used to procure goods and services together. Section 2 of this Guidance applies equally to the combined document.

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 \(Purchase Order Version\)](#) and the [NHS Terms and Conditions for 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 [NHS Contract the Provision of Services \(Contract Version\)](#) would be the appropriate document 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 [NHS Terms and Conditions for the Supply of Goods \(Contract Version\)](#) or the [NHS Terms and Conditions for the Provision of Services \(Contract Version\)](#) would be the correct document for that procurement.

1.6 Using the [NHS Framework Agreement for the Supply of Goods](#) and the [NHS Framework Agreement for the Provision of Services](#)

1.6.1 You should use these documents to establish framework agreements for the supply of goods or 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 DH is responsible for the many sets of NHS terms and conditions that have been drafted over the years, with many now being obsolete and out of

date. In addition, there was a proliferation of activity at NHS Trust level, either updating or developing bespoke sets of terms and conditions.

- 1.7.2 The DH recognised the need for 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.
- 1.7.3 Mills & Reeve were appointed to work in partnership with the DH 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.
- 1.7.4 Input was provided by key policy leads within the DH in areas such as information governance, sustainability, equality and diversity and GS1.
- 1.7.5 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.
- 1.7.6 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 4 of this Guidance.
- 1.7.7 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

How to use the Contract Versions

2 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 (e.g. 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 (i.e. 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 remember 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 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 (i.e. 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 and 5.1.</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 Governance Provisions	<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.</p>	<p>No changes should be made at this stage of a procurement.</p>
Schedule 4 Definitions and	<p>These should not be changed. However, if you use new</p>	<p>No changes should be made</p>

Interpretations	capitalised terms in any Schedule, they must be inserted in this Schedule and given a meaning.	at this stage of a procurement.
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 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 	<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 clarifications and the specification and tender response document or any other part of the contract.</p>

	management plan (services only).	
Schedule 6 Commercial Schedule	<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 their 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 (i.e. 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>
Schedule 7 Staff Transfer <i>NB this applies to the NHS Terms and Conditions for the Provision of Services (Contract Version) only</i>	<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>	List the Transferring Employees.
Schedules 7 Installation and Commissioning Services); and Schedule 8 Maintenance Services <i>NB these apply to the NHS Terms and</i>	If one or both of these schedules apply to the Goods, you must check Clause 19 and/or Clause 20 of Schedule 1 (Clauses 27 and 28 respectively in the combined document).	No changes should be made at this stage of a procurement.

<p>Conditions for the Supply of Goods (Contract Version) only and are Schedules 8 and 9 respectively in the combined NHS Terms and Conditions for the Supply of Goods and the Provision of Services.</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 (e.g. an Implementation Plan).</p>	<p>If required, complete the additional Schedules.</p>

How to use the Purchase Order Versions

3 How to use the [NHS Terms and Conditions for the Supply of Goods \(Purchase Order Version\)](#) and the [NHS Terms and Conditions for 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 the [NHS Terms and Conditions for the Supply of Goods \(Purchase Order Version\)](#) or the [NHS Terms and Conditions for the Provision of Services \(Purchase Order Version\)](#) 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 (e.g. 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 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; • any 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 <p>any long-stop date by which the services must be implemented.</p>

Terms and conditions – Front page	This component summarises how the terms and conditions are incorporated to form part of the contract and should not be changed.
Terms and conditions – Schedule 1 Key Provisions	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.
Terms and conditions – Schedule 2 General Terms and Conditions	These should not be changed, as they contain standard legal and commercial terms.
Terms and conditions – Schedule 3 Information Governance Provisions	These should not be changed. If further or amended information governance 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 such amendment, should be used.
Terms and conditions – Schedule 4 Definitions and Interpretations	These should not be changed.
Purchase Order	Once you have made your award decision and you are ready to conclude the contract (e.g. 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'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’s “Applicable Contract Terms Policy”:
<https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services>”

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 [NHS Terms and Conditions for the Supply of Goods \(Contract Version\)](#) or the [NHS Terms and Conditions for the Provision of Services \(Contract Version\)](#) should be used instead of these terms and conditions.

How to use the Framework Agreements

4 How to use the **NHS Framework Agreement for the Supply of Goods** and the **NHS Framework Agreement for 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 (e.g. 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 (i.e. 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 the **NHS Framework Agreement for the Supply of Goods** or the **NHS Framework Agreement for the Provision of Services** 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 remember 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 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 your organisations required method of execution.</p> <p>Arrange for 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 Agreements to help with its completion.</p>	<p>Insert the supplier's details at clauses 3.1.2, 4.1.2 and 5.1.</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 Information Governance Provisions	<p>For the vast majority of procurements this Schedule should not need amending. You should though consider if it is proportionate to your project and the sort of information to be 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>

<p>Schedule 4 Definitions and Interpretations</p>	<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 (i.e. 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 	<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>

	<p>these (services only);</p> <ul style="list-style-type: none"> • 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>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 (i.e. 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 Ordering Procedure, Award Criteria and Template Order Form</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</p>	<p>No changes should be made at this stage of a procurement.</p>

	development.	
Additional Schedules	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 (e.g. a guarantee may be required and whilst the draft guarantee should be included at this stage, the executed version will only be available at the Framework Agreement conclusion stage).	If required, complete the additional Schedules.
Appendix A Call-off terms and conditions	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 NHS Terms and Conditions for the Supply of Goods (Purchase Order Version) and the NHS Terms and Conditions for the Provision of Services (Purchase Order Version) and are suitable for most straightforward requirements that are commonly purchased using framework agreements.	No changes should be made at this stage of a procurement.

Summary

5 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 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
Specification and tender response <i>Flexibility is provided to shape requirements to the particular procurement</i>	<p>The detailed requirements for the goods 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>
Price and payment <i>The approach is to support pricing transparency and certainty together with the prompt payment of suppliers and their supply chain</i>	<p>The supplier is entitled to charge the contract price. This is a fixed sum offered as part of the tender/quotation process subject to any price review/indexation mechanism confirmed as part of that process.</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 or the provision of the services.</p> <p>The NHS body should pay invoices within 30 days or sooner in line with any government prompt payment targets.</p> <p>Suppliers must offer the same payment terms to their supply-chain members.</p>
Managing performance <i>The terms and conditions provide a</i>	<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><i>clear and collaborative framework for performance management</i></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>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><i>A standard and balanced approach to liability has been adopted</i></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.</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 Agreement for the Supply of Goods and the NHS Framework Agreement for the Provision of Services 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 (i.e. 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><i>Default minimum insurance requirements are included with the ability to vary the types and levels in the</i></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</p>

<p>context of the particular project</p>	<p>arrangements required by law, the supplier may self insure in order to meet the other requirements.</p> <p>Schedule 1 of 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) enables the insurance provisions to be changed on a project by project basis.</p>
<p>Intellectual property</p> <p><i>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</i></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 NHS Terms and Conditions for the Provision of Services (Contract Version) enables this default position to be varied to reflect the requirements of individual projects.</p>
<p>Termination</p> <p><i>Again a balanced and proportionate approach is taken</i></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; • a material breach which, if capable of remedy, is not remedied in accordance with an agreed remedial proposal; or • at least three material breaches in any 12 month period (regardless of whether they are remedied). <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

	<ul style="list-style-type: none"> • is in breach of its tax compliance obligations. <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 NHS Terms and Conditions for the Supply of Goods (Contract Version) and the NHS Terms and Conditions for the Provision of Services (Contract Version) 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 governance</p> <p><i>Robust yet proportionate information governance requirements have been included reflecting the latest NHS policy thinking in this area</i></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>The supplier must comply with the Data Protection Act 1998 and other data protection legislation. The supplier is liable for any loss or damage caused as a result of its unlawful or unauthorised handling of personal data.</p> <p>Where, as part of providing services, the supplier is processing personal data controlled by the NHS purchaser relating to patients and/or service users it is required to publish an annual information governance assessment using the NHS information governance toolkit and to achieve a minimum level 2 performance.</p> <p>The supplier is also required to comply with the following information security requirements:</p> <ul style="list-style-type: none"> • to notify the NHS purchaser of any information security breaches or near misses; • to cooperate 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) and the [NHS Terms and Conditions for the Provision of Services \(Purchase Order Version\)](#) provide up-to-date standard terms and conditions for use when procuring goods and services.

- 5.4 The DH has also published the [NHS Framework Agreement for the Supply of Goods](#) and the [NHS Framework Agreement for 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 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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