

Contract Basics



Introduction to the NHS Standard Contract

October 2021

BAILEY & MOORE

Housekeeping

- The presentation usually lasts 60 minutes, including plenty of time for questions
- But we are happy to stay online as long as you want us to 😊
- Ask questions as we go, using the chat box or raise your ‘hand’
- All slides will be on our web site – link at the end
- If you’re using someone else's invite, send us your email address if you would like a copy of the slides or to be sent details of further courses

What we will cover...

- Background to the NHS Standard Contract
- Why use the Standard Contract?
- Who has to use the Standard Contract?
- What is in the Standard Contract – General Conditions, Service Conditions & Particulars
- Other types of contract
- Key supporting guidance to be aware of
- What are the most important bits... 😊

Introduction to the NHS Standard Contract

CONTRACT

Contract title:

Contract ref:

This Contract records the agreement between the Commissioners and the Provider and comprises

1. these Particulars;
2. the Service Conditions (Full Length);
3. the General Conditions (Full Length),

as completed and agreed by the Parties and as varied from time to time in accordance with GC13 (Variations).

IN WITNESS OF WHICH the Parties have signed this Contract on the date(s) shown below

SIGNED by
Signature
[INSERT AUTHORISED SIGNATORY'S NAME] for
and on behalf of [INSERT COMMISSIONER NAME] Title
Date

[INSERT AS ABOVE FOR EACH COMMISSIONER]

SIGNED by
Signature
[INSERT AUTHORISED SIGNATORY'S NAME] for
and on behalf of [INSERT PROVIDER NAME] Title
Date

Background

- NHS England took over development of a standard contract for commissioning NHS patient services in April 2013
- Previously Department of Health had made attempts to standardise terms and conditions nationally by sector but no unified version existed
- Idea was to have a single set of national terms and conditions that all providers of NHS commissioned services would follow...
- But with flexibility to add/delete sections as required...
- And to add local detail specific to each health system's priorities

Why use the Standard Contract?

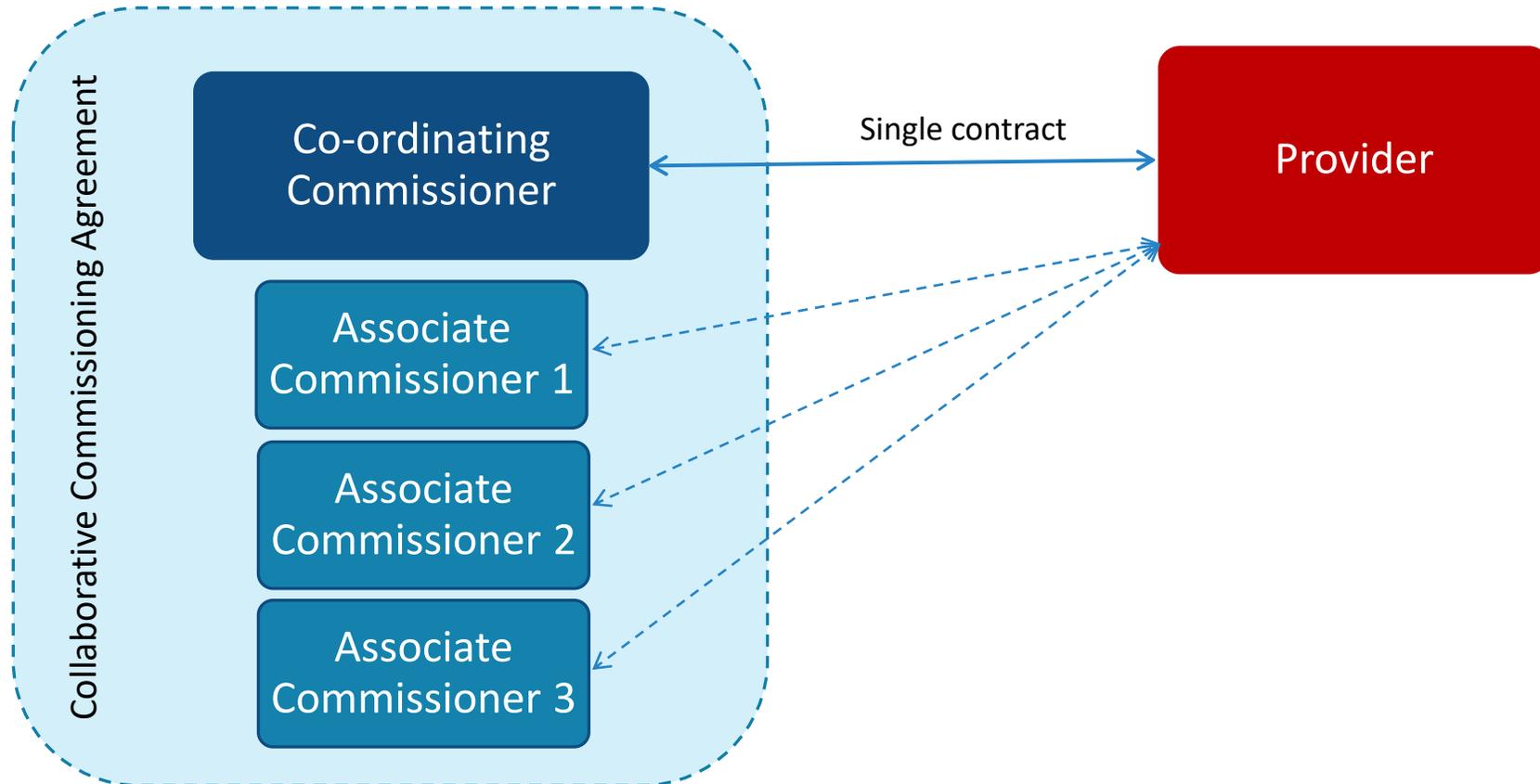
- The benefits of a standard national approach are:
 - one core national set of rules which everyone understands, which reflects national policy direction of the NHS Mandate and the law
 - a level playing field for all types of provider (NHS, private, voluntary) from every sector (acute, community, MH, ambulance)
 - economies of scale in producing documentation, so individual health systems don't waste time and money reinventing the wheel

<https://www.england.nhs.uk/nhs-standard-contract/>

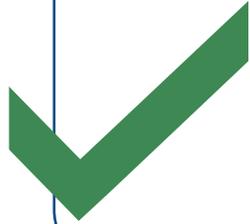
Who has to use the Standard Contract?

- Using the Standard Contract is **mandatory** whenever health services are being commissioned by a NHS commissioning body
- The only exceptions are:
 - Core Primary Care services – governed by different legislation – but any non-core services such as LES must use Standard Contract
 - Provider-provider contracts – model sub-contract recommended
 - Financial contributions in respect of NHS-funded nursing home care
 - Grant agreements with third sector – model agreement recommended
 - When the commissioner is non-NHS (usually local govt) and NHS commissioners are not party to the contract

Collaborative Contracting using the Standard Contract

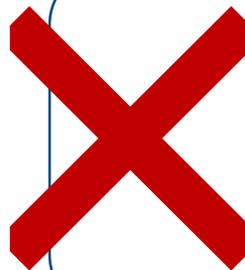


Collaborative/Alliance Contracting



Multiple commissioners to a single contract

- Contract designed to be a single contract with a 'co-ordinating' commissioner and 'associate' commissioners
- Can include NHS and non-NHS commissioners
- Formalised in Collaborative Commissioning Agreement & contract schedule 5C



Multiple providers to a single contract

- Primary & secondary care can be integrated using schedule 2L, but limited to APMS contracts only
- Provider Collaboratives can only be achieved using a contract with a single 'lead/prime' provider who then sub-contracts other providers

Format of the NHS Standard Contract



Format of the Standard Contract



General
Conditions (GC)



Service
Conditions (SC)



Particulars (P)

Format of the Standard Contract

- National terms dealing with contract management
- Can't be amended or overridden in any way
- Examples are:
 - Contract reviews
 - Variations
 - Terminations
 - Disputes

General Conditions



- National terms governing service delivery
- Text can't be amended but some will apply only to specific provider types, e.g. ambulance
- Examples are:
 - Service standards
 - Payment
 - Activity management

Service Conditions



- Names and addresses of the parties
- Signatures
- Contract term
- Named leads
- Plus everything else that has been agreed... spread over 9 standard schedules, split into 42 sub-schedules!

Particulars



Schedules to the Particulars

- Schedule 1 – Service commencement
- Schedule 2 – The Services
- Schedule 3 – Payment
- Schedule 4 – Quality Requirements
- Schedule 5 – Governance
- Schedule 6 – Contract management, reporting and information requirements
- Schedule 7 – Pensions
- Schedule 8 – Local System Plan Obligations
- Schedule 9 – System Collaboration and Financial Management Agreement

National elements

- The standardised national elements of the Contract consist of the GC, SC and how the schedules to the Particulars are structured
- So standard national terms will cover issues such as:
 - Contract management, suspension, termination and variation (GC)
 - Dispute resolution process (GC)
 - Mandating use of national tariff payment system guidance (SC)
 - How activity should be recorded and reported (SC)
 - Monitoring information/data to be provided (P)
 - National operational/quality standards to be met (P)

Local elements

- But much of the important detail is for local negotiation and recorded within the schedules to the Particulars, such as:
 - service specifications
 - agreed ICS policies and standards
 - locally negotiated prices
 - local quality standards
 - local reporting requirements

Order of Precedence (GC1)

- Watch out for any inconsistencies in your contract! Order of priority goes:
 - General Conditions then
 - Service Conditions then
 - Particulars then
 - Any other national NHS Guidance (including Contract Technical Guidance)
- Therefore GC & SC will override any conflicting provisions in the Particulars, e.g.:
 - Schedule 1B – Commissioner documents
 - Schedule 2G – Other local agreements, policies and procedures
 - Schedule 5A – Documents relied on

Other Types of Contract



NHS Standard Contract 2021/22 Particulars (Shorter Form)

Contract title / ref:

Prepared by: [NHS Standard Contract Help](#)
(please do not send to [nhs.uk](#))

Version number: 1

First published: March 2021

Publication Approval Number:



Template sub-contract for the provision of clinical services for use with the NHS Standard Contract (Full Length)

For more information, contact [NHS England Contract Help](#)
(Email: [contracts@nhs.uk](#))

NHS TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES (CONTRACT VERSION)

The Authority	[Insert name and address of the Authority]
The Supplier	[Insert name, address and, where applicable, the company number of the Supplier]
Date	[Insert date when signed by both parties]
Type of Services	[Insert type of services]

This Contract is made on the date set out above subject to the terms set out in the schedules listed below ("Schedules"). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Contract.

Schedules

Schedule 1	Key Provisions
Schedule 2	General Terms and Conditions
Schedule 3	Information and Data Provisions
Schedule 4	Definitions and Interpretations
Schedule 5	Specification and Tender Response Document
Schedule 6	Commercial Schedule
Schedule 7	Staff Transfer
Schedule 8	Expert Determination
Schedule 9	[Insert title of schedule]

Signed by the authorised representative of THE AUTHORITY

Name:	Signature:
Position:		

Shorter form contract

- Shorter form of the Contract for services of relatively low complexity and value
- Cannot be used for any hospital inpatient services, A&E, Minor Injuries Units or emergency ambulance services
- Can be used for non-inpatient MH and LD, community services, residential nursing homes, non-inpatient diagnostic services and PTS
- Strongly encouraged for appropriate services with low annual values...
- **BUT** need to consider risk – where the “light touch” approach of the shorter-form is not thought appropriate to the services or relationship
- “Light touch” can mean no teeth when things go wrong!

Other types of 'standard contract'

Publication	Purpose
NHS standard sub-contract	Used where a provider sub-contracts clinical services to another provider. Replicates the key terms of the NHS Standard Contract so there is no conflict in the supply chain.
NHS standard terms and conditions for procuring goods and services	Used where a provider sub-contracts with another provider for the supply of goods or non-clinical services .
Model Collaborative Commissioning Agreement	Used to document and agree commissioners' roles and responsibilities when a Contract involves multiple commissioners.
Model Grant Agreement	Used where NHS provides financial support to a voluntary organisation in pursuit of their commissioning functions. Cannot be used if specific clinical services are being commissioned.

NB use of the above documents is not mandatory, but it is strongly recommended to avoid reinventing the wheel!

Non-Contract Activity (NCA)

- Commissioners should have in place written contracts wherever possible – strongly recommended for any activity flow > £200k pa
- Nonetheless exceptions occur, e.g. unplanned admissions, and service is provided to patient with no signed contract in place
- Provider separately invoices the responsible commissioner for the service
- A contract is implied on national terms and conditions (GC and SC)
- Anything else as per provider's contract with their 'host' commissioner
- **NB NHSE looking at reforming 'Low Volume Activity' (from April 2022?)**

Supporting Guidance



NHS Standard Contract 2021/22 Technical Guidance

Prepared by: NHS Standard Contract Team, NHS England
nhs.cb.contractshelp@nhs.net

Published: March 2021

Republished: April 2021 (**amendments** are shown in bold and highlighted in yellow and are on pages 9, 10, 12, 14, 21 and 66)

Republished: May 2021 (**amendments** relate to invoicing and reconciliation and are highlighted in yellow on pages 103-107 and 110)

Republished: October 2021 (**amendments** relate to finance and contracting arrangements for the remainder of 2021/22 and are highlighted in green in paragraphs 2.7, 3.1-2 and 46.23-24)

Publication Approval Number: PAR0478

Key supporting guidance to be aware of...

Publication	Location	Content
Contract Technical Guidance	https://www.england.nhs.uk/nhs-standard-contract/21-22/	Detailed (151 pages!) technical guidance on all aspects of the Contract
<i>Who Pays?</i>	https://www.england.nhs.uk/who-pays/	Rules for establishing which commissioner is responsible for paying for patient services
National Tariff Payment System	https://www.england.nhs.uk/pay-syst/national-tariff/national-tariff-payment-system/	Rules for pricing NHS services (including locally negotiated prices)
Coding standards	https://www.datadictionary.nhs.uk/ https://hscic.kahootz.com/t_c_home/grouphome	How provider activity should be recorded, classified, coded and grouped

Key supporting guidance to be aware of...

Publication	Location	Content
NHS Choice Framework	https://www.gov.uk/government/publications/the-nhs-choice-framework	Sets out patients' legal right to choice in their healthcare
Evidence-Based Interventions guidance	https://www.england.nhs.uk/evidence-based-interventions/ebi-programme-guidance/	National guidance for CCGs on commissioning interventions with limited value
Dispute Resolution Process*	https://www.england.nhs.uk/operational-planning-and-contracting/	Details how NHSE will handle contract disputes referred to them under GC14 or disputes over signing of a new contract
CQUIN Guidance*	https://www.england.nhs.uk/nhs-standard-contract/cquin/	Guidance for agreeing CQUIN schemes

* Not updated since 2020/21

What are the most important sections of the Contract?



Areas of the Contract to know and love: some common problem areas

Theme	Common Issues	Contract References
1 Service specifications	A specific service/pathway has been commissioned	SC3 – service standards Sch 2A – service specifications
2 Activity volumes planned and delivered	Documenting the activity plan Managing variances from plan	SC29 – activity management Sch 2B – indicative activity plan Sch 2C – activity planning assumptions
3 Payment terms	Agreeing local prices Commissioners challenge payment Provider seeks additional payment	SC36 – payment terms Sch 3 – payment
4 Reporting requirements	Information is incomplete or missing Change in recording practice Information request is unreasonable	SC28 – information requirements Sch 6A – reporting requirements Sch 6B – data quality improvement plan

Areas of the Contract to know and love: some common problem areas

Theme	Common Issues	Contract References
5 Issue with sub-contracted provider	Sub-contracted provider has breached one or more terms of the contract	GC12 – assignment and sub-contracting Sch 5B – provider’s material subcontracts
6 Operational/quality standards	Provider performance not meeting required standards	SC37 – quality & SC38 – CQUIN GC8 – review GC9 – contract management Sch 4 – quality requirements
7 Contract variation	One party wants to vary the terms of the contract	GC13 – variation
8 Contract termination	One party wants to terminate the contract or service(s) within the contract	GC17 – termination P – notice period for termination
9 Unresolved disputes	Issue cannot be resolved through normal contract processes and requires escalation, e.g. external mediation	GC14 – dispute resolution P – nominated mediation body

What must a signed contract include?

- Indicative Activity Plan (sch 2B)
- Local Prices (sch 3A)
- Aligned Payment Incentive Arrangements where applicable (sch 3D)
- Expected Annual Contract Value (sch 3F)
- Local Quality Requirements (sch 4C)
- Reporting Requirements (sch 6A)

Based on DRP (s2.7) from 20/21, plus potentially

- CQUIN (sch 3E)

Full Listing of Contract Schedules

(for reference only)



Schedule 1: Service Commencement & Contract Term

Sub-schedule	Purpose	Contract References
1A – Conditions Precedent	Documents that must be provided and/or actions which must be completed by the Provider before it can start providing services, e.g. CQC registration	GC3 – Service Commencement GC4 – Transition Period
1B – Commissioner Documents	Documents that must be provided by the Commissioner to enable Provider to start service	GC4 – Transition Period
1C – Extension of Contract Term	Details of how the contract term may be extended. Only with competitive procurement – get legal advice re procurement law!	n/a

Schedule 2: The Services

Sub-schedule	Purpose	Contract References
2A – Service Specifications	Sets out details of the services to be provided under the contract	SC3 – Service Standards
2Ai – Service Specifications: Enhanced Health in Care Homes	Mandatory requirements for any provider with a role in the delivery of the EHCH care model	SC3 – Service Standards SC4 – Co-operation
2Aii – Service Specifications: Primary and Community Mental Health Services	Mandatory requirements for any provider with a role in the delivery of the PCMHS care model	SC3 – Service Standards SC4 – Co-operation
2B – Indicative Activity Plan	Anticipated indicative activity for each service by commissioner (may be zero)	SC29 – Activity Management
2C – Activity Planning Assumptions	Thresholds/metrics/KPIs to be used to manage activity delivered under the contract	SC29 – Activity Management

Schedule 2: The Services (cont.)

Sub-schedule	Purpose	Contract References
2D – Essential Services	Commissioners to list services essential to the contract. NHS Trusts only – FTs will be governed by their licence.	SC5 – Commissioner Requested Services/Essential Services
2E – Essential Services Continuity Plan	Continuity Plans where any Essential Services are listed in 2D	SC5 – Commissioner Requested Services/Essential Services
2F – Clinical Networks	Any Clinical Networks which the provider is required to participate in	SC26 – Clinical Networks, National Audit Programmes and Approved Research Studies
2G – Other Local Agreements, Policies and Procedures	Any specific agreements, policies or procedures that the parties have agreed to comply with, e.g. Prior Approval Schemes	SC25 – Procedures and Protocols SC29 – Activity Management
2H – Transition Arrangements	Arrangements to bring the contract into effect by the Commencement Date	GC4 – Transition Period

Schedule 2: The Services (cont.)

Sub-schedule	Purpose	Contract References
2I – Exit Arrangements	Arrangements for terminating the contract	GC18 – Consequence of Expiry or Termination
2J – Transfer of and Discharge from Care Protocols	Local agreement or protocols relating to Service Users’ transfer and discharge	SC11 – Transfer of and Discharge from Care
2K – Safeguarding Policies and Mental Capacity Act Policies	Provider’s policies for safeguarding children and adults	SC32 – Safeguarding Children and Adults
2L – Provisions Applicable to Primary Medical Services	Legal form for integrating primary care services provider (APMS) into the contract	n/a
2M – Development Plan for Personalised Care	Actions to be taken to implement the universal model of personalised care	SC10 – Personalised Care
2N – Health Inequalities Action Plan	Actions to be taken to reduce inequalities in access to care and treatment	SC13 – Equity of Access, Equality and Non-Discrimination

Schedule 3: Payment

Sub-schedule	Purpose	Contract References
3A – Local Prices	Details of any locally agreed prices payable for the services under the contract	SC36 – Payment Terms
3B – Local Price Variations	Details of any locally agreed variations to national prices/currencies (standard template to insert and notify to NHSEI)	SC36 – Payment Terms
3C – Local Price Modifications	Details of any locally agreed modifications to national prices/currencies (standard template to insert and notify to NHSEI)	SC36 – Payment Terms
3D – Aligned Payment and Incentive Rules	Agreed arrangements for implementing the API rules set out in the National Tariff guidance	SC36 – Payment Terms
3E – CQUIN	Relevant CQUIN indicators to be achieved	SC38 – CQUIN

Schedule 3: Payment (cont.)

Sub-schedule	Purpose	Contract References
3F – Expected Annual Contract Value	Expected annual value for calculating monthly payments on account (can be £0 for ‘call off’ contracts)	SC36 – Payment Terms
3G – Timing and Amounts of Payments in First and/or Final Contract Year	Only if the first or final Contract Year is not 1 April - 31 March , enter the timing and amounts of payments	SC36 – Payment Terms

Schedule 4: Quality Requirements

Sub-schedule	Purpose	Contract References
4A – Operational Standards	National standards with thresholds to be achieved (NB financial sanctions removed)	GC9 – Contract Management
4B – National Quality Requirements	National standards with thresholds to be achieved (NB financial sanctions removed)	GC9 – Contract Management
4C – Local Quality Requirements	Locally agreed standards with thresholds to be achieved (NB financial sanctions can no longer be included)	SC37 – Local Quality Requirements and Local Incentive Scheme GC9 – Contract Management
4D – Local Incentive Scheme	Local arrangements for incentivising quality, e.g. through additional outcomes-based payments	SC37 – Local Quality Requirements and Local Incentive Scheme

Schedule 5: Governance

Sub-schedule	Purpose	Contract References
5A – Documents Relied On	Any documents, consents or certificates that have been relied on by any party when entering into the contract	GC30 – Entire Contract
5B – Provider’s Material Subcontracts	If the provider is sub-contracting any services, details of material subcontracts	GC12 – Assignment and Sub-contracting
5C – Commissioner Roles and Responsibilities	Sets out the roles and responsibilities each commissioner has where there are multiple commissioners, per their Collaborative Commissioning Agreement	GC10 – Co-ordinating Commissioner and Representatives

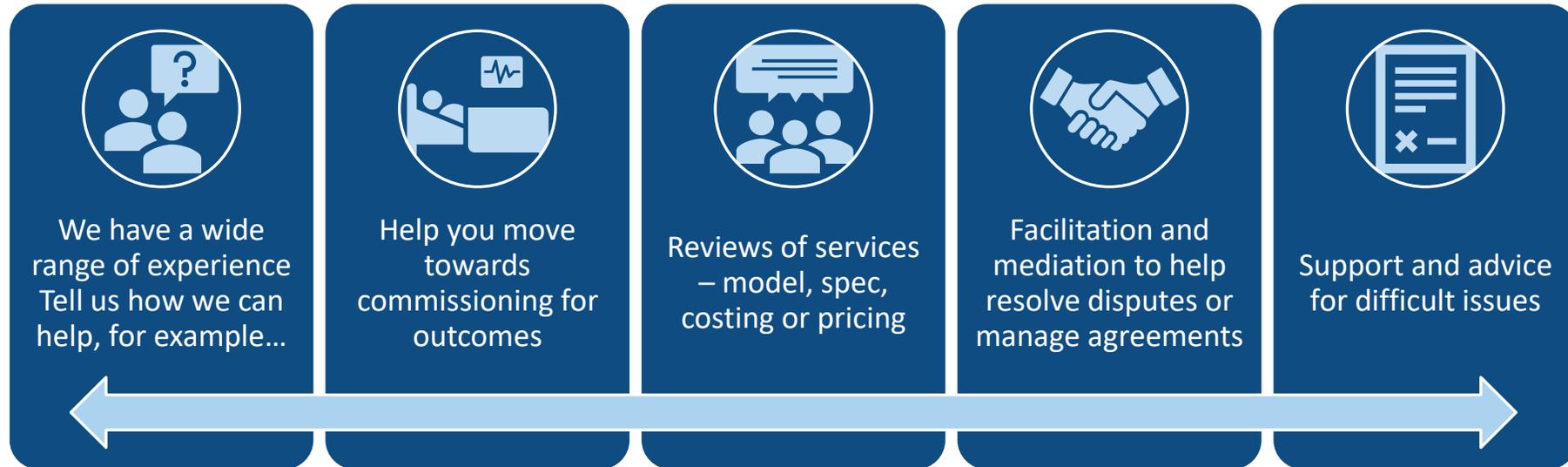
Schedule 6: Contract Management

Sub-schedule	Purpose	Contract References
6A – Reporting Requirements	Sets out all information/data to be reported to enable the contract to be managed	SC28 – Information Requirements
6B – Data Quality Improvement Plan (DQIP)	Agreed plans for developing longer-term information/reporting requirements	SC28 – Information Requirements
6C – Incidents Requiring Reporting Procedure	Agreed procedures for managing Serious Untoward Incidents, safety incidents, etc	SC33 – Incidents Requiring Reporting
6D – Service Development and Improvement Plan (SDIP)	Agreed plans for developing services provided under the contract	SC20 – Service Development and Improvement Plan
6E – Surveys	Requirements for reporting and publication of mandated and/or locally agreed surveys	SC12 – Communicating with and involving Service Users, Public and Staff
6F – Provider Data Processing Agreement	To be included where provider is a Data Processor rather than a Data Controller	GC21 – Patient Confidentiality, Data Protection, etc

Schedules 7-9...

Sub-schedule	Purpose	Contract References
7 – Pensions	NHS Pension Scheme arrangements where staff are transferring from an NHS to an independent sector provider. Only use with legal advice!	GC5 – Staff GC17 – Termination
8 – Local System Plan Obligations	Actions which the commissioners and provider have jointly agreed to take in their Local System Plan to develop and/or integrate services.	SC4 – Co-operation
9 – System Collaboration and Financial Management Agreement (SCFMA)	Lists the details of any SCFMA agreed by the ICS of which commissioner and provider are members. Covers issues such as financial transparency, dispute resolution process and how the system financial position will be managed.	SC4 – Co-operation

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- *Value not volume – commissioning for patient outcomes*
- *Why is costing important? A ‘how to’ guide to pricing and costing*
- *Preparing for April 2022 – what next?*

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