

Contract Basics



Introduction to the NHS Standard Contract

January 2023

BAILEY & MOORE

Housekeeping

- The presentation usually lasts 60 minutes, plus 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 to ‘know and love’... 😊

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 from 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?

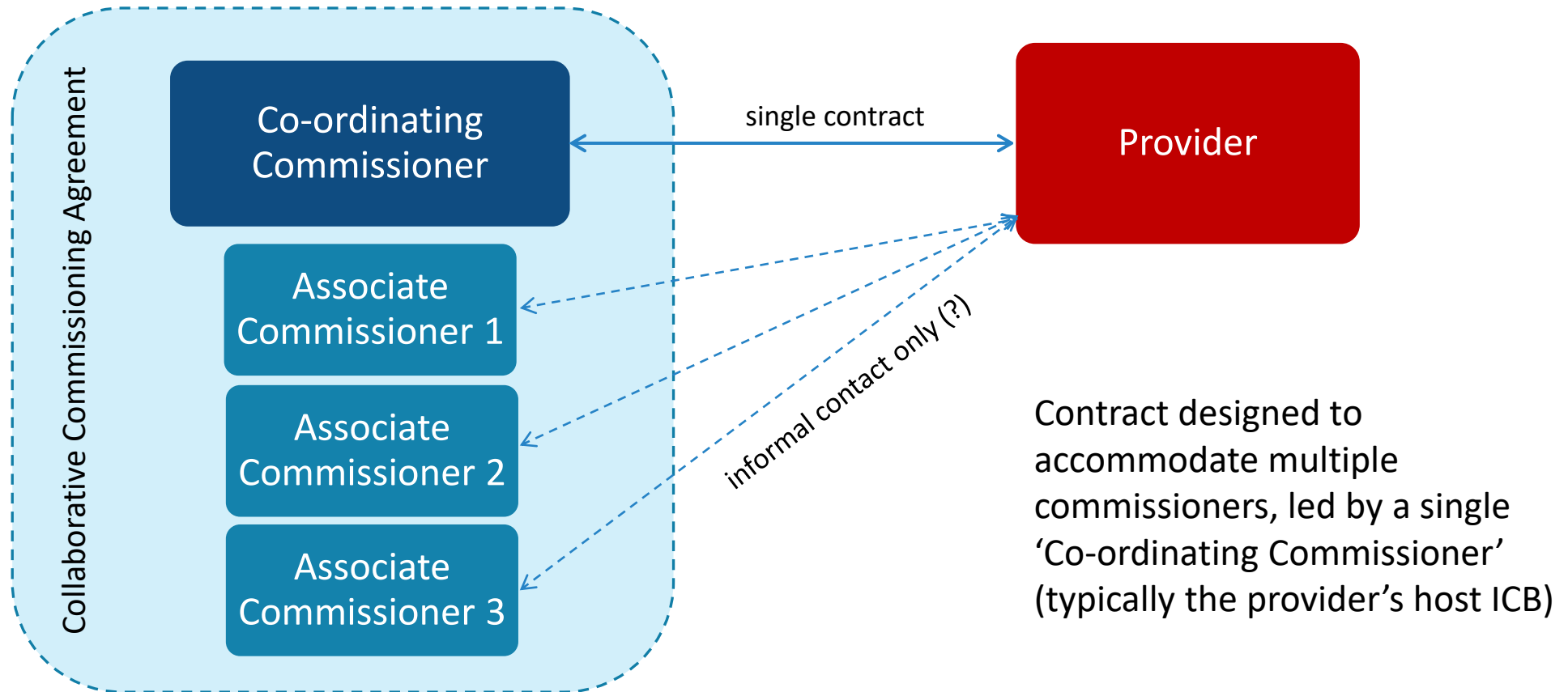
- One core national set of rules:
 - reflects national policy direction of the NHS Mandate and the law
 - cascades down to every provider commissioned by the NHS
- Level playing field for
 - all provider types (NHS, private, voluntary)
 - all sectors (acute, community, MH, ambulance)
- Economies of scale 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 secondary care services are being commissioned by an NHS commissioning body (ICB or NHS England)
- The only exceptions permitted are:
 - Core Primary Care services – governed by different legislation – but ‘non-core’ services such as LCS must use Standard Contract
 - Provider-provider contracts – model sub-contract recommended
 - Grant agreements with third sector – model agreement recommended
 - Financial contributions in respect of NHS-funded nursing home care
 - When the commissioner is non-NHS (usually local govt) and NHS commissioners are not party to the contract

Standard Contract is designed to enable 'collaborative commissioning' ...



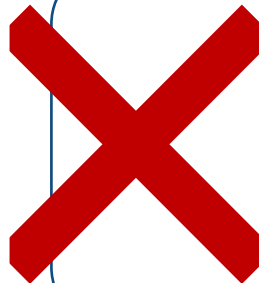
Contract designed to accommodate multiple commissioners, led by a single 'Co-ordinating Commissioner' (typically the provider's host ICB)

Not so good for provider collaboratives...



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 between all commissioners & summarised in 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

The contract is divided into 3 separate documents:



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



- Local content
- Names and addresses of the parties, signatures, etc
- Contract term
- Named leads
- Plus everything else that has been agreed... spread over 8 standard schedules, split into 38 sub-schedules!

Particulars



Particulars are divided into 8 schedules:

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

introduced in 20/21,
removed in 22/23!

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 NHS payment scheme guidance (SC)
 - How activity should be recorded and reported (SC)
 - National operational/quality standards to be met (SC)
 - Monitoring information/data to be provided nationally (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/payments
 - local quality standards
 - local reporting requirements
 - local ICS plan obligations

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

Contract Terminology (TG s5)

Phrase	Meaning
'must'	Absolute obligation to perform the action, regardless of cost, inconvenience, etc
'must use all reasonable endeavours'	Must pursue all reasonable courses of action, but can take account of cost etc in deciding not to pursue a course of action held to be 'unreasonable'
'must use reasonable endeavours'	Must make a reasonable attempt to perform the action, but doesn't have to spend time and money exploring all possible courses of action
'must have regard to'	Must make sure it is aware of the issue, guidance, etc and be prepared to justify any course of action that is contrary to it

Other Types of Contract



Sub-types of NHS Standard Contract

Publication	Purpose
Shorter Form Contract	Shortened version of the NHS Standard Contract, for use in low complexity, low value relationships
Standard Sub-Contract	Used where a NHS provider sub-contracts clinical services to another provider
Low Value Activity (LVA)	National rules when activity takes place at a provider with whom the commissioner has no written contract

More on these in the following slides...

Other types of 'NHS standard contract'...

Publication	Purpose
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.
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 .

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

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 Injury Units, emergency ambulance... or any contract in scope of NHS Payment Scheme API...
- ...which means it cannot be used with NHS Trusts as from 1 April 2023!
- Can be used for non-inpatient non-NHS Trust providers, e.g. PTS, nursing homes, hospices, locally commissioned primary care services
- **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!

NHS standard sub-contract

- Can be used when a provider sub-contracts some contracted NHS services to another provider
- Use is not mandatory (except for ICF sub-contracts) but strongly recommended
- Ensures the key national T&Cs in the head NHS Standard Contract flow down to the sub-contractor, so all contracts are consistent
- Timescales/notice periods are flexed so they 'fit' with the head contract
- Almost total flexibility to agree local content, but in practice certain aspects will need to match head contract, e.g. reporting requirements need to flow down
- Saves time and increases assurance for all parties involved

NHS standard contract v sub-contract

Issue	NHS Standard Contract	NHS Standard Sub-Contract
Service specifications	Non-mandatory template	Total flexibility re content
Directory of Services (DoS)	E-booking is mandatory	Optional
Pricing and payment	National Tariff guidance applies Monthly payments on account	Total flexibility re payment mech Payment in arrears
Quality requirements	Mandatory by service category	Need to match head contract
CQUIN schemes	Apply as per national guidance	No CQUIN, but can have LIS
Reporting requirements	National mandated elements	Total flexibility (but in practice will need to match head contract)
Data processing/GDPR	Provider will be Data Controller	If provider is Data Processor, use schedule 6F to document

When there is no contract in place: Low Volume Activity (LVA)

- Commissioners should have written contracts for any activity flow > £500k pa
- Nonetheless exceptions occur, e.g. unplanned admissions, and service is provided to a patient with no signed contract in place
- In these cases, a contract is implied on national terms and conditions (GC and SC)
- From April 2022, funding is covered by nationally determined annual block payments from commissioners to English NHS providers
- No longer any separate invoicing by providers for this activity... except for non-NHS providers, non-English NHS providers and non-emergency OOA MH placements

Grant Agreements

- Commissioners can use grant agreements to provide funding support for voluntary and community sector, where this supports their commissioning objectives
- **Non-mandatory model agreement** (updated March 2022) and associated guidance are available at <http://www.england.nhs.uk/nhs-standard-contract/grant-agreement/>
- Cannot obligate the body to provide a particular service but can contribute financially towards its work, subject to certain conditions, e.g. £ must be spent on specific project
- Need to provide appropriate level of assurance re quality of care
- NHS Standard Contract **must** still be used where NHS commissioning a specific clinical service
- See s11 of the Contract Technical Guidance

Grant Agreements

- Suggested guidance:
 - Identify clearly purpose of funding and intended outcome
 - Use intermediaries to select right partner
 - Partner with other commissioners – ICBs or local government
 - Develop application form and written agreement to ensure public money is used appropriately
 - Award process is not normally subject to EU procurement law, but must be clear and transparent
- Cannot use grant agreement where services are competitively tendered and potential providers include both voluntary sector and other types of provider – same form of contract must be offered to all bidders

Supporting Guidance



NHS Standard Contract 2022/23

Technical Guidance

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

Published: March 2022

Republished: March 2022 (changes made to paragraph 3.13)

Publication Approval Number: PAR907

Key supporting guidance to be aware of...

Publication	Location	Content
Contract Technical Guidance	https://www.england.nhs.uk/nhs-standard-contract/	Detailed (143 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
NHS Payment Scheme	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 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 – local 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 constitutes a signed contract?



Services

- Schedule 2A – service specifications
- Schedule 2B – indicative activity plan



Payment Terms

- Schedule 3A – local prices
- Schedule 3D – API, where in scope
- Schedule 3E – CQUIN, where in scope of API
- Schedule 3F – expected annual value



Quality Outcomes

- Schedule 4 – local quality requirements



Performance Monitoring

- Schedule 6A – reporting requirements

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*	List of services essential to the contract. NHS Trusts only – FTs governed by licence.	SC5 – Commissioner Requested Services/Essential Services
2E – Essential Services Continuity Plan*	Continuity Plans for any 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

*no longer needed under Health and Social Care Act 2022 – NHS Trusts and Foundation Trusts have common licensing regime

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 Variations	Details of any locally agreed variations to national prices/currencies (standard template to insert and notify to NHSE)	SC36 – Payment Terms
3C – Local Modifications	Details of any locally agreed modifications to national prices/currencies (standard template to insert and notify to NHSE)	SC36 – Payment Terms
3D – Aligned Payment and Incentive Rules	Agreed arrangements for implementing the API rules set out in the NHS Payment Scheme	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: Local Quality Requirements

Sub-schedule	Purpose	Contract References
4 – Local Quality Requirements	Locally agreed quality standards with thresholds to be achieved and financial incentives where appropriate (NB financial sanctions can no longer be included)	SC37 – Local Quality Requirements and Local Incentive Scheme GC9 – Contract Management

NB there were previously Schedules 4A and 4B, relating to national quality requirements – these have been subsumed into the SCs

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

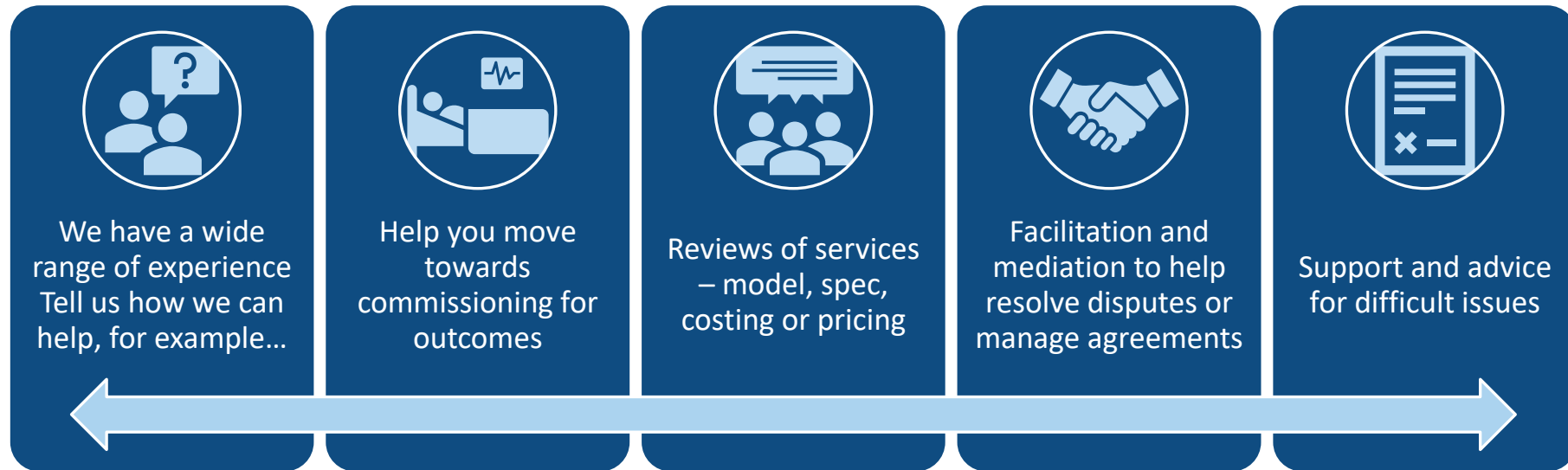
Schedule 6: Contract Management

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 – Data Processing Services	To be included where provider is a Data Processor rather than a Data Controller	GC21 – Patient Confidentiality, Data Protection, etc

Schedules 7 and 8...

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 – Joint 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

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