



**NHS Standard Sub-
Contract for the Provision
of Clinical Services
2016/17
Guidance**

NHS Standard Sub-Contract for the provision of clinical services 2016/17

Guidance

Version number: 2

First published: June 2015 (version 1) by the [Department of Health](#)

Updated: March 2016 (version 2)

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Classification: Official

NHS England INFORMATION READER BOX

Directorate

Medical	Commissioning Operations	Patients and Information
Nursing	Trans. & Corp. Ops.	Commissioning Strategy
Finance		

Publications Gateway Reference: 05071

Document Purpose	Guidance
Document Name	NHS Standard Sub-Contract for the provision of clinical services 2016/17 Guidance
Author	NHS Standard Contract Team
Publication Date	March 2016
Target Audience	CCG Clinical Leaders, CCG Accountable Officers, CSU Managing Directors, Care Trust CEs, Foundation Trust CEs, Local Authority CEs, NHS Trust Board Chairs, NHS England Regional Directors, Directors of Finance, NHS Trust CEs, Parties to NHS Standard Contract (commissioners and providers)
Additional Circulation List	
Description	This guidance accompanies the template sub-contract for the provision of clinical services 2016/17. The template sub-contract is not mandatory but is made available for providers to use when sub-contracting clinical services under a full-length NHS Standard Contract 2016/17.
Cross Reference	Template Sub-Contract for the provision of clinical services (for use with NHS Standard Contract 2016/17 https://www.england.nhs.uk/nhs-standard-contract/16-17/)
Superseded Docs (if applicable)	NHS standard sub-contract for the provision of clinical services 2015/16 and guidance https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services
Action Required	NA
Timing / Deadlines (if applicable)	NA
Contact Details for further information	NHS Standard Contract Team 4E64 Quarry House Quarry Hill Leeds LS2 7UE nhscb.contractshelp@nhs.net https://www.england.nhs.uk/nhs-standard-contract/16-17/
Document Status	This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of this document are not controlled. As a controlled document, this document should not be saved onto local or network drives but should always be accessed from the intranet.

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1 Introduction

1.1 Purpose of the NHS Standard Sub-Contract for the Provision of Clinical Services

1.1.1 Health providers deliver NHS funded clinical services under the terms of the NHS Standard Contract. It is becoming increasingly common for providers to sub-contract delivery of certain clinical services to a third party. This subcontracting can take many forms. It can be the sub-contracting of an entire service or of delivery of part of a care pathway. It can be the sub-contracting to one sub-contractor or to multiple sub-contractors under a prime contractor commissioning model.

1.1.2 Until 2015/16 there was no national template sub-contract for clinical services and there was therefore been considerable activity at NHS provider level developing bespoke sets of terms and conditions. A template sub-contract was developed for the Department of Health in 2015 by the Department of Health's solicitors Mills & Reeve, with considerable input from the NHS Standard Contract Team at NHS England. The NHS Standard Contract Team has updated that template (and this guidance) for 2016/17.

1.1.3 The purpose of the NHS Standard Sub-Contract for the Provision of Clinical Services 2016/17 ("Standard Sub-Contract") is to save time and effort for NHS providers and to reduce their risk, and that of commissioners, by ensuring consistency of the Standard Sub-Contract with the NHS Standard Contract.

1.1.4 Note that the Standard Sub-Contract is designed for use with the full-length version of the NHS Standard Contract 2016/17 only. We have not, for the time being, produced a template sub-contract for use with the shorter-form version of the NHS Standard Contract (a new product for 2016/17), but that may be something we consider doing in due course.

1.1.5 Although use of the Standard Sub-Contract is not mandatory, its use is recommended because it is consistent with the NHS Standard Contract, and its widespread use will result in a higher degree of contracting consistency and less negotiation for the parties involved, which will in turn lead to cost savings and risk reduction.

1.1.6 Note that the Standard Sub-Contract is designed for use when sub-contracting clinical services. When providers of clinical services are outsourcing provision of non-clinical support services such as catering, cleaning, portering etc, the Department of Health's standard Terms and Conditions for the Provision of Services will be a more appropriate template.

1.2 Development process

1.2.1 The Department of Health ("DH") and NHS England recognised the need for the Standard Sub-Contract that would benefit both providers of NHS funded care and their sub-contractors. Mills & Reeve were appointed to draft the Standard Sub-Contract in close co-operation with the DH and

NHS England. (As noted above, the NHS Standard Contract Team at NHS England has updated the Standard Sub-Contract for 2016/17.)

1.2.2

It was agreed that the following principles should underpin the development of the Standard Sub-Contract.

- (i) The structure of the Standard Sub-Contract should reflect the structure of the NHS Standard Contract, ensuring consistency of approach and familiarity for users.
- (ii) The Service Conditions and General Conditions of the NHS Standard Contract should form part of the Standard Sub-Contract, where appropriate. This approach ensures that obligations on the provider under the NHS Standard Contract pass to the sub-contractor in the Standard Sub-Contract minimising exposure of the provider. Similarly where the Commissioner has rights under the NHS Standard Contract in relation to sub-contractors, these rights flow down into the Standard Sub-Contract.
- (iii) It should be easy to identify the differences between the Standard Sub-Contract and the NHS Standard Contract. Application of the NHS Standard Contract Service Conditions and General Conditions is therefore by reference rather than by a full repetition. This approach ensures users can at a glance see where the Standard Sub-Contract differs from the NHS Standard Contract.
- (iv) Ease of use as well as sufficient flexibility to respond to project specific requirements. Users of the Standard Sub-Contract only have to complete the Sub-Contract Particulars and Schedules and the additional conditions in the Sub-Contract Principles. The latter can also be supplemented to reflect project specific requirements. The remaining sections of the Standard Sub-Contract are standard form and should not require amendment.
- (v) The Standard Sub-Contract should be appropriate for use on a variety of contracting arrangements and in circumstances where there is one or there are a number of sub-contractors. Do note that the Standard Sub-Contract is appropriate for use where there are multiple commissioners under one head contract. However, it has not been designed for use where there are multiple head contracts.
- (vi) The Standard Sub-Contract should also be suitable for use whatever the nature of the sub-contractor organisation: whether NHS, social enterprise, charity, private sector provider.
- (vii) A structure and approach to ensure ease of updating of the Standard Sub-Contract in line with the annually revised NHS Standard Contract.

1.2.3

A draft of the Standard Sub-Contract (2015/16 version) was shared with a selection of stakeholders, representing NHS commissioners, CSUs, NHS and independent sector providers, and we ran through the draft and the

principles underpinning it with those stakeholders at a workshop. Those principles were endorsed, positive feedback was received on the Standard Sub-Contract and the Standard Sub-Contract was further refined to reflect the output of the workshop.

1.3 Scope of this Guidance

1.3.1 This Guidance contains:

- (i) an overview of the structure of the Standard Sub-Contract;
- (ii) a summary of the parts of the Standard Sub-Contract that will need completing for each project;
- (iii) a practical overview of how to read the Sub-Contract Service Conditions and Sub-Contract General Conditions;
- (iv) detail on how timelines and notice periods are approached in the Standard Sub-Contract; and
- (v) an overview of how some of the key topics in the NHS Standard Contract are addressed in the Standard Sub-Contract.

1.3.2 It is assumed that users of the Standard Sub-Contract have a working knowledge of and are familiar with the NHS Standard Contract. This Guidance does not therefore describe each condition of the Standard Sub-Contract and for further information on the detailed conditions users are referred to the Technical Guidance that accompanies the NHS Standard Contract.

1.3.3 For those elements of the Standard Sub-Contract that will need completing there are guidance notes embedded in the Standard Sub-Contract, which give helpful tips and prompts to the user.

1.3.4 A final point to keep in mind is that NHS providers will be familiar with their rights and obligations as set out in the NHS Standard Contract as a service provider. However, the provider is stepping into the shoes of the commissioner for the purposes of the Standard Sub-Contract. It is therefore advisable that the provider reviews the NHS Standard Contract paying particular attention to how the rights and obligations of the commissioner under that Contract will be reflected in the provider's rights and obligations in its Standard Sub-Contract role as recipient of the sub-contracted service.

Structure and use of the Standard Sub-Contract

1.4 Structure of the Standard Sub-Contract

1.4.1 There are 5 parts to the Standard Sub-Contract:

- (i) Sub-Contract Principles;
- (ii) Sub-Contract Particulars and Schedules;
- (iii) Sub-Contract Service Conditions;
- (iv) Sub-Contract General Conditions; and
- (v) Sub-Contract Definitions.

1.4.2 The structure of the Standard Sub-Contract reflects the NHS Standard Contract so should be familiar to its users. The additional element to the Standard Sub-Contract is the Sub-Contract Principles. This draws the Standard Sub-Contract together and makes it work from a legal perspective. It enables the Service Conditions, General Conditions and Definitions of the NHS Standard Contract to apply to the Standard Sub-Contract without copying them out. This keeps the Standard Sub-Contract as short a document as possible.

1.5 Preparing the Standard Sub-Contract for use

1.5.1 There are only two elements of the Standard Sub-Contract that require local input. These are the Sub-Contract Particulars and Schedules and the Additional Conditions set out in the Sub-Contract Principles.

Sub-Contract Particulars and Schedules

1.5.2 Part A of the Standard Sub-Contract comprises the Sub-Contract Particulars and Schedules. This is a section that needs completing for each Standard Sub-Contract on a case-by-case basis. It reflects the NHS Standard Contract where appropriate in a sub-contract context. Ensuring consistency between the Particulars and Schedules of the Standard Sub-Contract and those of the Head Contract will be key.

1.5.3 When completing the Schedules the Head Provider should keep two questions in mind.

- (i) Has the Head Provider ensured all the details and requirements that are set out in the Head Contract Schedules and relate to the services to be provided by the Sub-Contractor have been written into the Sub-Contract Schedules?
- (ii) Are there any additional requirements that apply to the Sub-Contractor? This is particularly relevant where there are multiple sub-contracts supporting the same NHS Standard Contract.

- 1.5.4 Some Schedules in the NHS Standard Contract are not used. They have been removed from the Standard Sub-Contract unless to remove them would disturb the numbering in which case the words “Not Used” have been inserted against the Schedule in question.

Additional Conditions set out in the Sub-Contract Principles

- 1.5.5 There are some Conditions in the Sub-Contract Principles that may only apply to particular contracting arrangements. If they apply the relevant box must be checked and any details included, as appropriate.
- 1.5.6 There is then space at the end of the Sub-Contract Principles to insert any additional project specific requirements that are not addressed elsewhere.

Varying any other elements of the Standard Sub-Contract

- 1.5.7 Unlike the NHS Standard Contract there are no parts of the Standard Sub-Contract that are mandated. So it is possible to vary or delete the Conditions of the Standard Sub-Contract. The Standard Sub-Contract should not, however, be amended or varied unless essential to do so for the particular circumstances of a contract. The Standard Sub-Contract has been structured in such a manner so that all Service Conditions and General Conditions of the NHS Standard Contract apply where appropriate and have been varied or supplemented where essential to do so for sub-contracting arrangements. This ensures the rights and obligations of the Parties are back to back with the NHS Standard Contract, that the obligations on the Head Provider flow down into the Standard Sub-Contract and the rights of Commissioners in relation to sub-contractors are also incorporated into the Standard Sub-Contract.

1.6 Execution of the Standard Sub-Contract

- 1.6.1 NHS bodies using the Standard Sub-Contract are advised to review their Standing Orders, Standing Financial Instruments and Scheme of Delegation to ensure the method of signing and proposed signatory is consistent with their governing documents. It is also good practice to ensure the proposed signatory of the other party has authority to do so. Depending on the required approach to execution, amendments may be required to the signature block at the end of the Sub-Contract Principles.

2 How to read the Sub-Contract Service Conditions, Sub-Contract General Conditions and Sub-Contract Definitions

2.1 Incorporation of the NHS Standard Contract Service Conditions and General Conditions

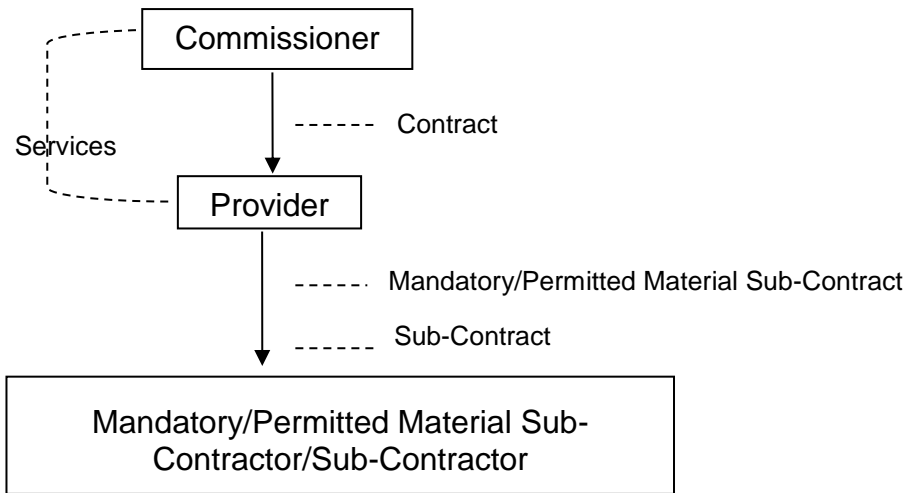
2.1.1 The approach to the Standard Sub-Contract is that the Service Conditions, General Conditions and Definitions of the NHS Standard Contract apply in the Standard Sub-Contract wherever possible. This ensures that the obligations on the provider under the NHS Standard Contract flow down to and are incorporated into the Standard Sub-Contract and are binding on the Sub-Contractor.

2.1.2 It is therefore essential that the NHS Standard Contract and the Standard Sub-Contract are read together. Although on first review, the approach to incorporation in the Standard Sub-Contract may seem daunting, it is useful to remember that users will rarely, if ever, read the entire Standard Sub-Contract from end to end. We anticipate that individual Conditions will be reviewed only when they need to be referred to.

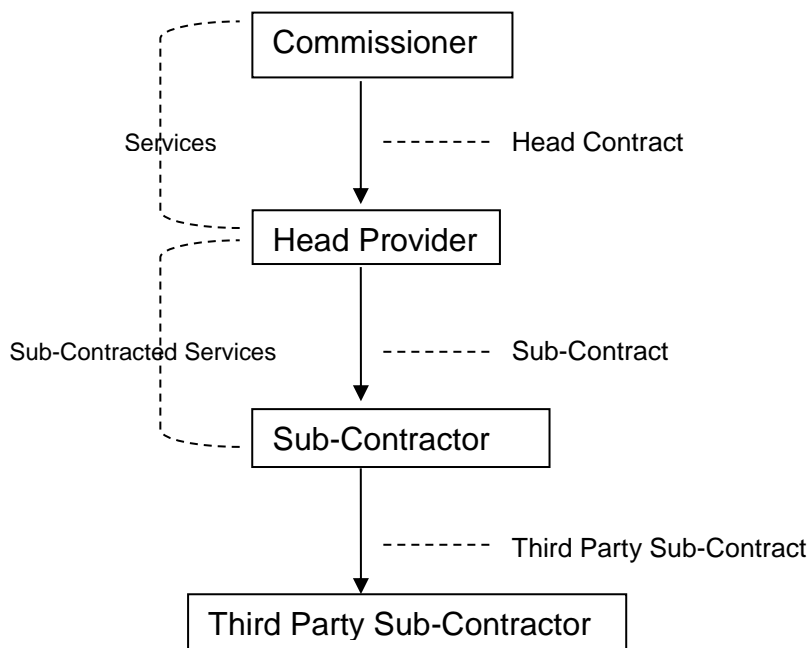
2.1.3 The way to read the Service Conditions, General Conditions and Definitions in the NHS Standard Contract is through word substitution. The core word substitutions used in the flow-down of terms are set out in Condition 3 of the Sub-Contract Principles. They adopt a common sense approach as follows.

- (i) Wherever Commissioner is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Head Provider for the purpose of the Standard Sub-Contract.
- (ii) Wherever Provider is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Sub-Contractor for the purpose of the Standard Sub-Contract.
- (iii) Wherever Contract is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Sub-Contract for the purpose of the Standard Sub-Contract.
- (iv) Wherever Services is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Sub-Contracted Services for the purpose of the Standard Sub-Contract.
- (v) Wherever Sub-Contract/Mandatory Material Sub-Contract/Permitted Material Sub-Contract is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Third Party Sub-Contract for the purpose of the Standard Sub-Contract.
- (vi) Wherever Sub-Contractor/Mandatory Material Sub-Contractor/Permitted Material Sub-Contractor is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Third Party Sub-Contractor for the purpose of the Standard Sub-Contract.

2.2 Terminology under the NHS Standard Contract is as follows



2.3 Terminology under the Standard Sub-Contract is as follows



2.4 Worked example

The example below shows how SC1 of the NHS Standard Contract is read for the purposes of the Standard Sub-Contract. The substituted words are in bold and itali

SC 1 – NHS Standard Contract

- 1.1 The Provider must provide the Services in accordance with the Fundamental Standards and the Service Specifications. The Provider must perform all of its obligations under the Contract in accordance with:
 - 1.1.1 the terms of this Contract; and
 - 1.1.2 the Law; and
 - 1.1.3 Good Practice.
- 1.2 The Commissioners must perform all of their obligations under the Contract in accordance with:
 - 1.1.1 the terms of this Contract; and
 - 1.1.2 the Law; and
 - 1.1.3 Good Practice.
- 1.3 The Parties must abide by and promote awareness of the NHS Constitution, including the rights and pledges set out in it. The Provider must ensure that all Sub-Contractors and all Staff abide by the NHS Constitution.
- 1.4 The Parties must have regards to the Armed Forces Covenant and associated Guidance.

Applying word substitution, for the purposes of the Standard Sub-Contract this becomes:

- 1.1 The **Sub-Contractor** must provide the **Sub-Contracted Services** in accordance with the Fundamental Standards and the **Sub-Contracted Service Specifications**. The **Sub-Contractor** must perform all of its obligations under this **Sub-Contract** in accordance with:
 - 1.1.1 the terms of this **Sub-Contract**; and
 - 1.1.2 the Law; and
 - 1.1.3 Good Practice.
- 1.2 The **Head Provider** must perform all of **its** obligations under the **Sub-Contract** in accordance with:
 - 1.1.1 the terms of this **Sub-Contract**; and
 - 1.1.2 the Law; and
 - 1.1.3 Good Practice.
- 1.3 The Parties must abide by and promote awareness of the NHS Constitution, including the rights and pledges set out in it. The **Sub-Contractor** must ensure that all **Third Party Sub-Contractors** and all Staff abide by the NHS Constitution.
- 1.4 The Parties must have regards to the Armed Forces Covenant and associated Guidance.

2.5 Sub-Contract Service Conditions

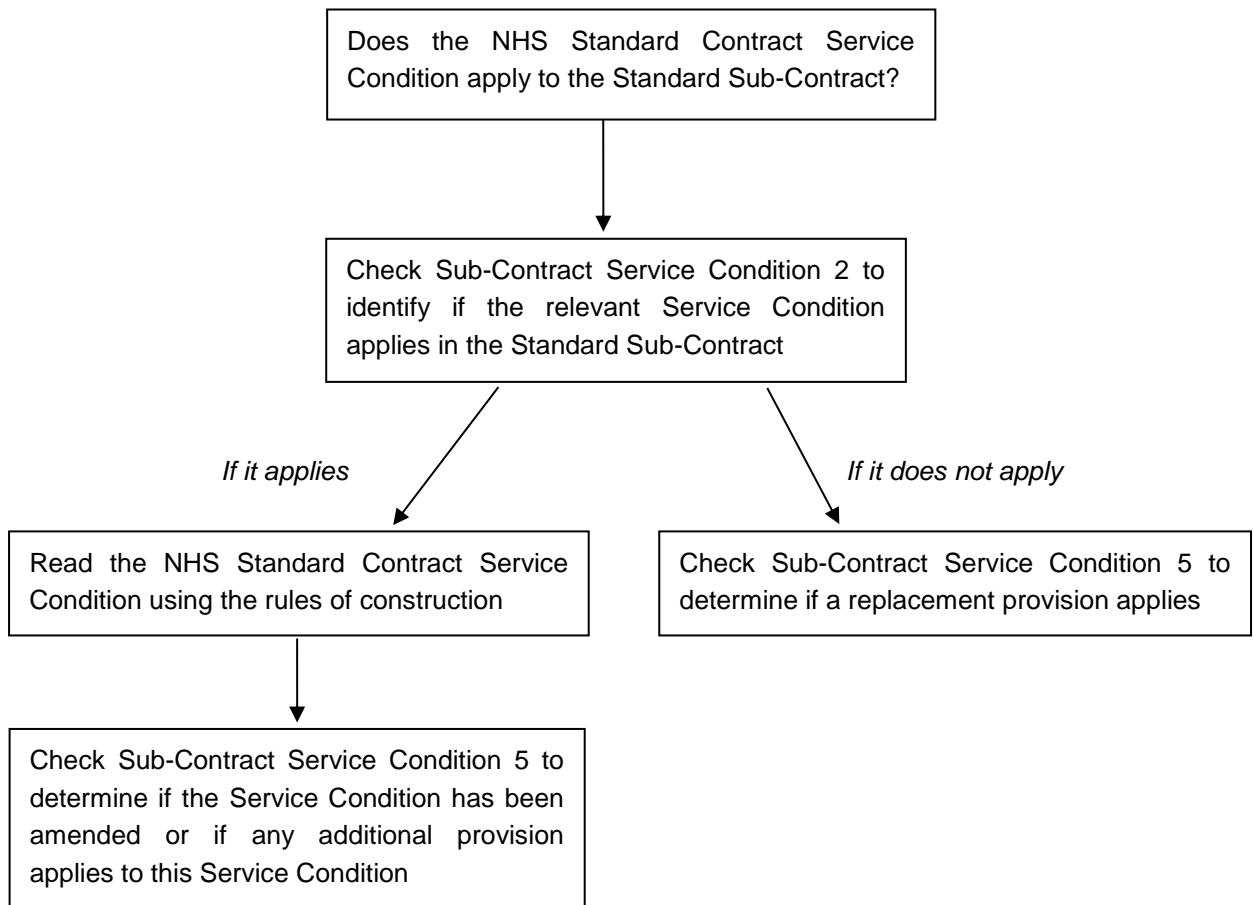
2.5.1 The basic rule for the Sub-Contract Service Conditions is that the Service Conditions in the NHS Standard Contract apply to the Standard Sub-Contract. However:

- (i) a few the Service Conditions in the NHS Standard Contract do not apply as they are not relevant to the Standard Sub-Contract;
- (ii) a few of the Service Conditions in the NHS Standard Contract are extended to give rights to the Commissioner as well as the Head Provider; and
- (iii) there are a handful of new Service Conditions that only apply to the Standard Sub-Contract.

2.5.2 The approach to reading the Sub-Contract Service Conditions is as follows.

- (i) Identify if the NHS Standard Contract Service Condition applies to the Standard Sub-Contract. This is done by looking at Condition 2 in the Sub-Contract Service Conditions.
- (ii) If the NHS Standard Contract Service Condition applies, then it should be read using the rules of construction (ie word substitution) summarised above.
- (iii) Also check Condition 5 of the Sub-Contract Service Conditions to see if any Service Condition has been amended or an additional Sub-Contract Service Condition applies. If there are any variations or additions, these should be read alongside the NHS Standard Contract Service Condition. They can be easily identified as the sub-headings in Condition 5 of the Sub-Contract Service Conditions signpost the corresponding provision in the NHS Standard Contract.
- (iv) If the NHS Standard Contract Service Condition does not apply to the Standard Sub-Contract you still need to check Condition 5 to see if any Sub-Contract Service Condition applies instead of the corresponding NHS Standard Contract Service Condition. This can be easily identified as the sub-headings in Condition 5 of the Sub-Contract Service Conditions signpost the corresponding provision in the NHS Standard Contract.

2.5.3 In summary the approach to reading a Sub-Contract Service Condition is:



2.6 Sub-Contract General Conditions

2.6.1 The basic rule for the Sub-Contract General Conditions is that the General Conditions in the NHS Standard Contract apply to the Standard Sub-Contract. However:

- (i) a few of the General Conditions in the NHS Standard Contract do not apply as they are not relevant to the Standard Sub-Contract;
- (ii) a few of the General Conditions in the NHS Standard Contract are extended to give rights to the Commissioner as well as the Head Provider; and
- (iii) there are a handful of new General Conditions that only apply to the Standard Sub-Contract.

2.6.2 The approach to reading the Sub-Contract General Conditions is as follows.

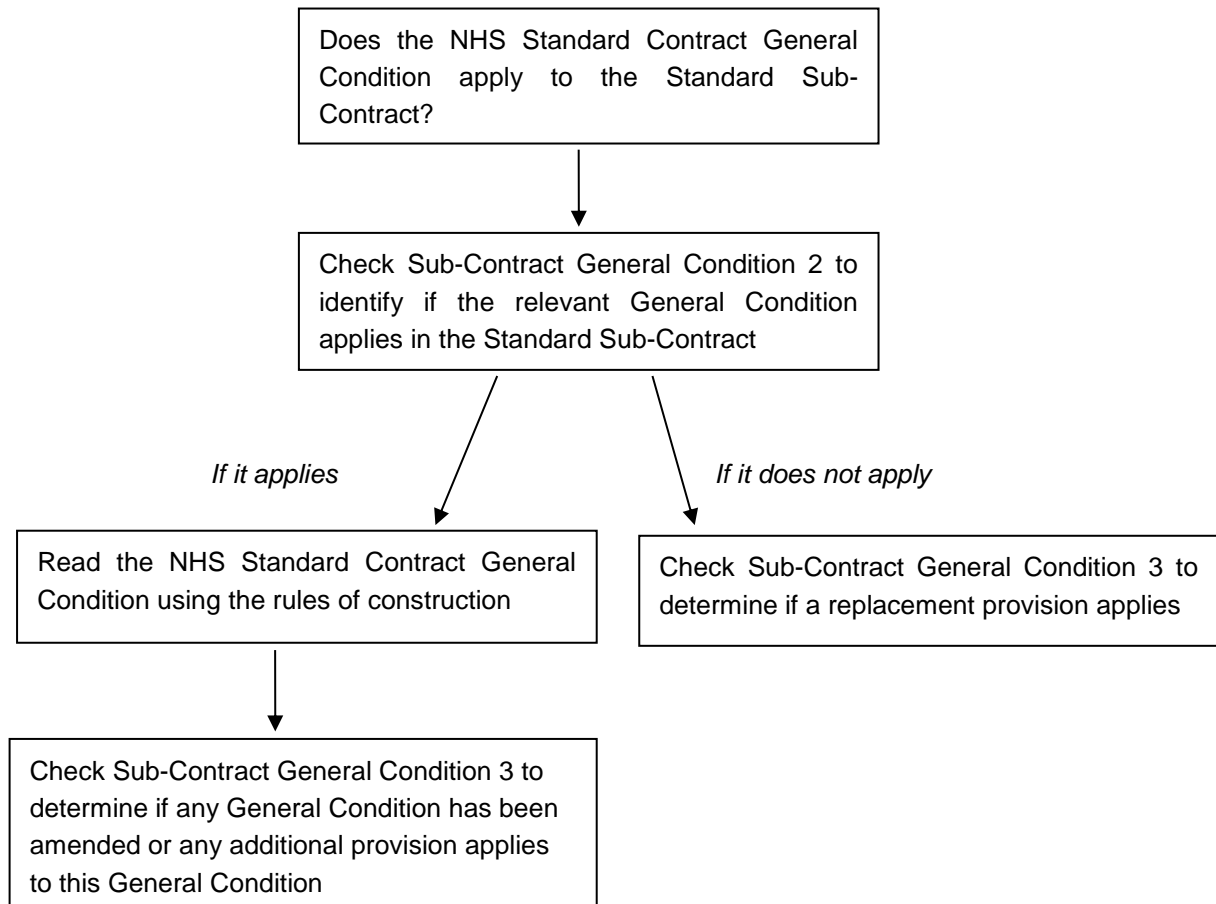
- (i) Identify if the NHS Standard Contract General Condition applies to the Standard Sub-Contract. This

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is done by looking at Condition 2 in the Sub-Contract General Conditions.

- (ii) If the NHS Standard Contract General Condition applies it should be read using the rules of construction (ie word substitution) summarised above.
- (iii) Also check Condition 3 of the Sub-Contract General Conditions to see if any General Condition has been amended or any additional Sub-Contract General Condition applies. If there are any variations or additions, these should be read alongside the NHS Standard Contract General Condition. They can be easily identified as the sub-headings in Condition 3 of the Sub-Contract General Conditions signpost the corresponding provision in the NHS Standard Contract.
- (iv) If the NHS Standard Contract General Condition does not apply to the Standard Sub-Contract you still need to check Condition 3 to see if any Sub-Contract General Condition applies instead of the corresponding NHS Standard Contract General Condition. This can be easily identified as the sub-headings in Condition 3 of the Standard Sub-Contract signpost the corresponding provision in the NHS Standard Contract.

2.6.3 In summary the approach to reading a Sub-Contract General Condition is:



2.7 Sub-Contract Definitions

- 2.7.1 Part D of the Standard Sub-Contract contains the Sub-Contract Definitions. The basic rule is that the Definitions in the NHS Standard Contract apply to the Standard Sub-Contract. A few of the Definitions in the NHS Standard Contract needed rewording to work in the context of the Standard Sub-Contract, and are therefore presented as new Sub-Contract Definitions and there are a handful of new Definitions that only apply to the Standard Sub-Contract.

3 Timeframes and notice periods

3.1 Approach to timeframes and notice periods

- 3.1.1 There are a number of obligations in the NHS Standard Contract that must be met within a specified number of days, weeks or months. If the same timeframes flowed down into the Standard Sub-Contract then there is a risk that the Head Provider could be in breach of its Head Contract. A similar issue arises regarding notice periods.
- 3.1.2 For example, the Commissioner requests certain information under the NHS Standard Contract and the deadline for providing the information is 10 calendar days. Two days after receipt of the request for information the Head Provider realises this is information that the Sub-Contractor holds. The Head Provider then requests the information from the Sub-Contractor. If the timeframes within the NHS Standard Contract applied, then the Sub-Contractor would have 10 calendar days to provide the information to the Head Provider. If the Sub-Contractor does not provide the information until the 10th day, the Head Provider would then be delivering the information to the Commissioner on the 12th day under the Head Contract and would therefore be in breach of the Head Contract.
- 3.1.3 To ensure consistency with the Head Contract and to enable the Head Provider to comply with its obligations under the Head Contract the time frames and notice periods set out in the NHS Standard Contract have been reduced or extended (as appropriate) by 20%. The operation of this rule is set out in Condition 7 of the Sub-Contract Principles and is summarised below. For clarity and ease of use we have set out in the tables a quick reference guide to the main timeframes and notice periods in the NHS Standard Contract and their corresponding timeframes and notice periods as they apply in the Standard Sub-Contract.

3.2 Obligation on the Sub-Contractor to carry out an action within a certain time period

- 3.2.1 Where under the NHS Standard Contract Service Conditions and General Conditions (as incorporated into the Standard Sub-Contract) the Sub-Contractor must carry out an action within a certain time period, the timeframe is reduced by 20%, rounded down to the nearest Operational Day/calendar day/week. (for example SC32.6, GC5.12).

Timeframe in NHS Standard Contract Service Conditions or General Conditions	Timeframe for the purposes of this Standard Sub-Contract
2 Operational Days/2 days	1 Operational Day/1 day
3 Operational Days/3 days	2 Operational Days/2 days
5 Operational Days/5 days	4 Operational Days/4 days
10 Operational Days/10 days	8 Operational Days/8 days
15 Operational Days/15 days	12 Operational Days/12 days
20 Operational Days/20 days	16 Operational Days/16 days
28 Operational Days/28 days	22 Operational Days/22 days
30 Operational Days/30 days	24 Operational Days/24 days
40 Operational Days/40 days	32 Operational Days/32 days
3 months	10 weeks
6 months	20 weeks

3.3 Obligation on the Head Provider to carry out an action, including the exercise by the Head Provider of a right, within a certain time period

3.3.1 Where under the NHS Standard Contract Service Conditions and General Conditions (as incorporated into this Standard Sub-Contract) the Head Provider must carry out an action within a certain time period, the timeframe is increased by 20%, rounded up to the nearest Operational Day/calendar day/week (for example GC24.6).

Timeframe in NHS Standard Contract Service Conditions or General Conditions	Timeframe for the purposes of this Standard Sub-Contract
2 Operational Days/2 days	3 Operational Days/3 days
3 Operational Days/3 days	4 Operational Days/4 days
5 Operational Days/5 days	6 Operational Days/6 days
10 Operational Days/10 days	12 Operational Days/12 days
15 Operational Days/15 days	18 Operational Days/18 days
20 Operational Days/20 days	24 Operational Days/24 days
28 Operational Days/28days	34 Operational Days/34 days
30 Operational Days/30 days	36 Operational Days/36 days
40 Operational Days/40 days	48 Operational Days/48 days

3 months	16 weeks
6 months	32 weeks

3.4 Notice periods for service of notice by the Sub-Contractor

3.4.1 Where under the NHS Standard Contract Service Conditions and General Conditions (as incorporated into this Standard Sub-Contract) notice periods apply to the Sub-Contractor, the notice period is increased by 20%, rounded up to the nearest Operational Day/calendar day/week.

Notice period in NHS Standard Contract Service Conditions or General Conditions	Notice period for the purposes of this Standard Sub-Contract
1 month	6 weeks
3 months	16 weeks
6 months	32 weeks
12 months	63 weeks

3.5 Notice periods for service of notice by the Head Provider

3.5.1 Where under the NHS Standard Contract Service Conditions and General Conditions (as incorporated into this Standard Sub-Contract) notice periods apply to the Head Provider, the notice period is reduced by 20%, rounded down to the nearest Operational Day/calendar day/week (for example SC29.24).

Notice period in NHS Standard Contract Service Conditions or General Conditions	Notice period for the purposes of this Standard Sub-Contract
1 month	3 weeks
3 months	10 weeks
6 months	20 weeks
12 months	41 weeks

3.6 A few points of clarification

3.6.1 Although the notice periods and timeframes have been increased or decreased to ensure consistency with and enable the Head Provider to comply with the Head Contract, they still do not give the Head Provider a great deal of flexibility. It will be important for the Head Provider to act immediately on all

matters where there are deadlines or where notice periods apply. Contract managers will need to be aware of this requirement to act quickly.

- 3.6.2 These revised timeframes and notice periods apply irrespective of whether the matter relates to the Head Contract. To approach this in any other way would lead to uncertainty between the parties.
- 3.6.3 There are a few exceptions to the rule. There are some timeframes and notice periods where it is not appropriate to apply the 20% rule. This is primarily because the timescales apply to both parties acting together and it is not possible therefore to amend the provision. These exceptions are set out in Schedule 8 of the Standard Sub-Contract.
- 3.6.4 The timeframes and notice periods rule only applies as between the Head Provider and the Sub-Contractor. So where obligations are in respect of a third party only, the timeframe shall be as set out in the NHS Standard Contract Service Condition or General Condition (eg SC7.3.1 where the obligation is to inform the Service User, Carer or Legal Guardian, GC12.6.1 which ensures payment of Third Party Sub-Contractors by the Sub-Contractor within 30 days).

Similarly where there is an obligation to carry out an action within a certain timeframe but this does not involve the Head Provider then the timeframe shall remain as set out in the NHS Standard Contract. Further, where there is a generic statement such as GC20.8, which states that GC 20 shall survive expiry or termination for a period of five years, it shall remain as drafted in the General Condition.

- 3.6.5 All references to 'before the start of the Contract Year' and 'during the Contract Year' shall be read as drafted.
- 3.6.6 18 Weeks Information and 18 Weeks Referral-to-Treatment Standard remain as drafted. Similarly all waiting times and treatment times in the Quality Requirements shall remain as set out in the NHS Standard Contract (unless a specific Standard Sub-Contract specifies otherwise).
- 3.6.7 Any timeframes and notice periods specified in any part of the Standard Sub-Contract shall be as set out in the Standard Sub-Contract. The 20% construction rule only applies to timeframes and notice periods in the NHS Standard Contract Service Conditions, General Conditions and Definitions as incorporated into the Standard Sub-Contract.

4 Key topics in the NHS Standard Contract

4.1 This section sets out how some of the key topics in the NHS Standard Contract are addressed in the Standard Sub-Contract.

Approach in the NHS Standard Contract	Approach in the Standard Sub-Contract²	Some issues to consider when preparing the Standard Sub-Contract
<i>Service Specifications</i>		
Sets out (a) mandatory headings which must be used but the content is for local determination and (b) optional headings which are optional for use and the content is for local determination.	Although one of the most important parts of the Standard Sub-Contract, parties have total flexibility as to the content.	Schedule 2 includes guidance notes for consideration when preparing the Sub-Contract Services Specifications. The Guidance to the NHS Standard Contract also sets out a process for developing the services specification.
<i>Quality Requirements</i>		
Operational Standards - apply according to service category and are mainly mandatory with a few elements for local determination.	Operational Standards in the Head Contract apply according to service category, including any elements that are for local determination.	If elements for local determination under the Head Contract do not apply in the Standard Sub-Contract this must be stated. To avoid confusion, best practice is to set out all Operational Requirements that apply to the Standard Sub-Contract in Schedule 4 of the Standard Sub-Contract.
National Quality Requirements - apply according to service category and are mainly mandatory with a few elements for local determination.	National Quality Requirements in the Head Contract apply according to service category.	To avoid confusion, best practice is to set out all National Quality Requirements that apply to the Standard Sub-Contract in Schedule 4 of the Standard Sub-Contract.
Never Events - apply to all service categories.	Never Events - apply to all service categories.	
Local Quality Requirements – for	Local Quality Requirements – for local determination between Head Provider and	Head Provider will want to ensure these mirror those in the Head Contract, as

local determination.	Sub-Contractor.	appropriate to the Sub-Contracted Services, and should consider any other Local Quality Requirements that may be relevant to the individual Sub-Contractor or should apply across multiple sub-contractors.
CQUINs		
National CQUIN goals apply.	National CQUINs are not incorporated into the Standard Sub-Contract.	
Local CQUIN goals to be agreed between Commissioner and Head Provider.	Local Incentive Schemes – to be agreed between Head Provider and Sub-Contractor on a case-by-case basis and set out in Schedule 4F of the Standard Sub-Contract. These can include National CQUIN goals and mirror the approach in the Head Contract to incentivisation if required.	Where Local Incentive Schemes are included in the Standard Sub-Contract, do remember to include how performance is measured and reported on and the payment process. Particular care should be taken in developing incentive schemes where the Head Provider has subcontracted services under one Head Contract to multiple sub-contractors, or the Head Provider and Sub-Contractor deliver services across different parts of the same pathway.
Managing Activity and Referrals		
Activity planning: prior to the start of each contract year, the Parties are expected to agree an Indicative Activity Plan and the Commissioner has the option to set Activity Planning Assumptions.	The same approach to the Indicative Activity Plan and Activity Planning Assumptions are taken in the Standard Sub-Contract although it will be the Head Provider setting the Activity Planning Assumptions, if required.	Activity planning will not be relevant to all sub-contracts and in these circumstances 'not applicable' should be stated in Schedules 2B and 2C of the Standard Sub-Contract. The associated NHS Standard Contract Service Conditions as incorporated into the Standard Sub-Contract will then not apply.
Activity management: either party must give early warning of any	The same approach to managing activity is adopted in the Standard Sub-	

<p>unexpected or unusual patterns of activity or referrals. This is then addressed through a range of mechanisms: Activity Query Notice, Utilisation Improvement Plan, Joint Activity Review and Activity Management Plan.</p>	<p>Contract, irrespective of whether a Standard Sub-Contract sets out an Indicative Activity Plan or Activity Planning Assumptions.</p>	
<p>Prior approval schemes: the NHS Standard Contract sets out a process for those treatments or services that require Commissioner prior approval.</p>	<p>If there are any Prior Approval Schemes in the Head Contract that apply to the Sub-Contract Services, then they will form part of the Standard Sub-Contract.</p>	<p>Consideration should be given to how a Prior Approval Scheme will work in practice. Condition 24 of the Sub-Contract Principles provides for the Standard Sub-Contract to set out a protocol for operating any Prior Approval Scheme including from whom prior approval is sought (i.e. the Head Provider or the Commissioner).</p>
<p>Reporting Requirements</p>		
<p>Schedule 6B has three sections: National Requirements Reported Centrally, National Requirements Reported Locally and Local Requirements Reported Locally. The first two elements are mandated. The third element is for local agreement. There is also a separate regime for small providers.</p>	<p>Parties have total flexibility to agree appropriate reporting requirements on a contract-by-contract basis and the requirements need to be set out in Schedule 6B of the Standard Sub-Contract.</p>	<p>The Head Provider should consider all the information it will require both to performance manage the Standard Sub-Contract and to be able to report fully under the Head Contract. The Head Provider should also consider the quality of information the Sub-Contractor will provide and whether there needs to be an agreed Data Quality and Improvement Plan.</p> <p>If the Sub-Contractor is to submit any reports centrally then this must be stated in Schedule 6B of the Standard Sub-Contract.</p>
<p>Price and Payment</p>		
<p>National Prices apply</p>	<p>National Prices do not apply to the Standard Sub-</p>	

<p>where applicable.</p> <p>The right to modify or vary the National Prices in certain circumstances as permitted by the National Tariff.</p>	<p>Contract and the Head Provider and Sub-Contractor agree their own pricing mechanism.</p>	
<p>Local Prices agreed where the National Tariff does not specify or mandate a National Price.</p>	<p>Parties have total flexibility to negotiate the pricing structure for all Sub-Contracted Services and this is then set out in Schedule 3 of the Standard Sub-Contract. The price can always be linked to a National Price and or currency if that is seen as appropriate.</p>	<p>The Parties should consider how the price under the Head Contract might change from year to year and set out a mechanism to vary the price under the Standard Sub-Contract. This is particularly important for the Head Provider where the price under the Head Contract could decrease to reflect required efficiency savings.</p>
<p>Invoicing and payment monthly of 1/12 of Expected Annual Contract Value.</p> <p>Reconciliation process</p> <p>Invoicing and payment monthly in arrears where there is no expected annual contract value.</p> <p>Different regime for Small Providers.</p>	<p>The concept of Expected Annual Contract Value is not used in the Standard Sub-Contract.</p> <p>Invoicing is monthly in arrears within 10 days of end of the relevant month.</p> <p>Payment of undisputed invoices within 30 days of their receipt.</p>	<p>Set out the information the Head Provider will require with each invoice, particularly if there is more than one commissioner.</p> <p>Do NOT extend the 10 days within which the Sub-Contractor must submit invoices as this could have a detrimental impact on a Head Provider's ability to provide required information to the Commissioner and to comply with reconciliation obligations.</p> <p>If payment is made on the basis of an expected annual contract value and therefore there will need to be a reconciliation process, insert appropriate provisions in the Sub-Contract Service Conditions and check the related Definitions in the NHS Standard Contract to ensure they work in the Standard Sub-Contract.</p>

<i>Directly Bookable Services</i>		
<p>The Provider must describe and publish all relevant services and associated appointment slots in a Directory of Services and ensure services are directly bookable as required by guidance.</p>	<p>There is no obligation on the Sub-Contractor to produce a Directory of Services or to enable the Sub-Contracted Services to be directly bookable.</p> <p>There is, however, an obligation on the Sub-Contractor to provide all information the Head Provider requires regarding appointment slots.</p>	<p>It may be appropriate in some sub-contracting arrangements, particularly for larger value contracts, for the Sub-Contractor to comply with all Choose and Book requirements. In these circumstances in Sub-Contract Service Condition 2 remove reference to SC6.2 and SC6.3. By doing this NHS Standard Contract Service Conditions 6.2 and 6.3 then apply in the Standard Sub-Contract.</p>
<i>Term and extensions</i>		
<p>Commissioners may determine locally the duration of each contract. There is a right to extend the contract on one occasion provided the contract is clear at the time it is entered into that there is a provision to so extend. Guidance also highlights the importance of consistency here with procurement law.</p>	<p>The Standard Sub-Contract takes the same approach to duration and extension.</p>	<p>When considering the duration of the Standard Sub-Contract the Head Provider should bear in mind: (a) there is a right to terminate the Standard Sub-Contract if the Head Contract is terminated or not extended (b) any changes to the NHS Standard Contract during the term of the Standard Sub-Contract are only incorporated into the Standard Sub-Contract if they are National Variations and (c) any changes to the template Standard Sub-Contract during the term of a signed Standard Sub-Contract will not apply.</p> <p>If Parties want to have the flexibility of extending on more than one occasion then Schedule 1C can be amended. If the Head Provider is subject to procurement law care should be taken to ensure the approach is consistent with the Head Provider's procurement obligations.</p>

<i>Transfer of Staff</i>		
<p>The provider and any sub-contractor must comply with their respective obligations under TUPE if staff are to transfer to them at the start of the contract and if staff transfer to a new provider at the end of the contract. As staff will not transfer either from or to the commissioner, the TUPE provisions are limited in their scope.</p>	<p>The TUPE provisions in the NHS Standard Contract are incorporated into the Standard Sub-Contract.</p> <p>The Standard Sub-Contract has additional provisions regarding staff which apply if (a) employees of the Head Provider transfer to either the Sub-Contractor or a Third Party Sub-Contractor at the start of the Standard Sub-Contract and (b) employees of the Sub-Contractor or a Third Party Sub-Contractor transfer to the Head Provider at the end of the Standard Sub-Contract.</p>	<p>Schedule 7A should only be used where staff are transferring from the Head Provider at service commencement. If staff transfer from any other provider do NOT use this Schedule.</p>