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**Template sub-contract for the provision of clinical services (for use with NHS Standard Contract (shorter-form 2017/18 and 2018/19)**

**TUPE Provisions**

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**TUPE Provisions**

Version number: 1

First published: December 2016

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Publications Gateway Reference Number: 06308

Classification: Official

This optional TUPE schedule is for use with the ‘Template sub-contract for use with the NHS Standard Contract 2017/18 and 2018/19 (shorter-form)’, which is available on the NHS Standard Contract [2017/18 web page](https://www.england.nhs.uk/nhs-standard-contract/17-18/), alongside guidance in its use.

***At Service commencement***

1. The Sub-Contractor must comply and must ensure that any sub-contractor will comply with their respective obligations under TUPE and COSOP in relation to any persons who transfer to the employment of the Sub-Contractor or that sub-contractor by operation of TUPE and/or COSOP as a result of this Contract or any sub-contract, and that the Sub-Contractor or the relevant sub-contractor (as appropriate) will ensure a smooth transfer of those persons to its employment. The Sub-Contractor must indemnify and keep indemnified the Head Provider, the Commissioner and any previous provider of services equivalent to the Services or any of them before the Service Commencement Date against any Losses in respect of:
   1. any failure by the Sub-Contractor and/or any sub-contractor to comply with its obligations under TUPE and/or COSOP in connection with any relevant transfer under TUPE and/or COSOP;
   2. any claim by any person that any proposed or actual substantial change by the Sub-Contractor and/or any sub-contractor to that person’s working conditions or any proposed measures on the part of the Sub-Contractor and/or any sub-contractor are to that person’s detriment, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the Sub-Contractor and/or sub-contractor; and/or
   3. any claim by any person in relation to any breach of contract arising from any proposed measures on the part of the Sub-Contractor and/or any sub-contractor, whether that claim arises before or after the date of any relevant transfer under TUPE and/or COSOP to the Sub-Contractor and/or sub-contractor.
2. Paragraphs 3 to 7 will only apply where any employees of the Head Provider transfer to the Sub-Contractor or its sub-contractor under TUPE on or before the Service Commencement Date.
3. The Transferring Employees will transfer to the Sub-Contractor or its sub-contractor under TUPE and/or COSOP on the Service Commencement Date and paragraphs 4 to 7 shall apply.
4. The Head Provider will on or before the Service Commencement Date:
   1. discharge all financial obligations owing to the Transferring Employees in respect of the period on or before the Service Commencement Date;
   2. procure that any loans or advances made by the Head Provider to the Transferring Employees before the Services Commencement Date are repaid to it;
   3. account to the proper authority for all PAYE tax deductions, pensions contributions and national insurance contributions payable in respect of the Transferring Employees in the period before the Service Commencement Date; and
   4. pay the Sub-Contractor the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Service Commencement Date.
5. The Head Provider will comply with its obligations under TUPE and COSOP in relation to the Transferring Employees by operation of TUPE and/or COSOP and will ensure a smooth transfer of the Transferring Employees to the Sub-Contractor or its sub-contractor.
6. The Head Provider will indemnify and keep indemnified the Sub-Contractor in relation to any Losses arising out of or in connection with any claim which arises as a result of any act or omission of the Head Provider in relation to the Transferring Employees or relevant Head Provider employees transferring to the Sub-Contractor under paragraph 7 prior to the Service Commencement Date save for where such act or omission results from complying with the instructions of the Sub-Contractor or its sub-contractor and save for where the Sub-Contractor or its sub-contractor fail to comply with its obligations under regulation 13 of TUPE.
7. If any person who is an employee of the Head Provider who is not a Transferring Employee claims or it is determined that their contract of employment has been transferred from the Head Provider to the Sub-Contractor or its sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, the Sub-Contractor or its sub-contractor must employ that person in accordance with its obligations and duties under TUPE and will be responsible for all liabilities arising in respect of any such person from the Service Commencement Date unless the Head Provider offers employment to such person and the offer is accepted.

***At the end of the Sub-Contract***

1. If the Head Provider notifies the Sub-Contractor that the Head Provider (or the Commissioner) intends to tender or retender any Sub-Contract Services, the Sub-Contractor must within 15 Operational Days following written request (unless otherwise agreed in writing) provide the Head Provider with anonymised details (as set out in Regulation 11(2) of TUPE) of Staff engaged in the provision of the relevant Sub-Contract Services who may be subject to TUPE. The Sub-Contractor must indemnify and keep indemnified the Head Provider, the Commissioner and, at the Head Provider’s request, any new provider who provides any services equivalent to the Sub-Contract Services or any of them after expiry or termination of this Sub-Contract or termination of a Sub-Contract Service, against any Losses in respect any inaccuracy in or omission from the information provided under this Schedule.
2. During the 3 months immediately preceding the expiry of this Sub-Contract or at any time following a notice of termination of this Sub-Contract or of any Sub-Contract Service being given, the Sub-Contractor must not and must procure that its sub-contractors do not, without the prior written consent of the Head Provider (that consent not to be unreasonably withheld or delayed), in relation to any persons engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service:
   1. terminate or give notice to terminate the employment of any person engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service (other than for gross misconduct);
   2. increase or reduce the total number of people employed or engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service by the Sub-Contractor and any sub-contractor by more than 5% (except in the ordinary course of business);
   3. propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service;
   4. replace or relocate any persons engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service or reassign any of them to duties unconnected with the Sub-Contract Services or the relevant Sub-Contract Service; and/or
   5. assign or redeploy to the Sub-Contract Services or the relevant Sub-Contract Service any person who was not previously a member of Staff engaged in the provision of the Sub-Contract Services or the relevant Sub-Contract Service.
3. Paragraphs 11 to 15 will only apply where any employees of the Sub-Contractor or a Third Party Sub-Contractor transfer to the Head Provider on or immediately following the expiry or earlier termination of this Sub-Contract in whole or in part.
4. The Subsequent Transferring Employees will transfer to the Head Provider under TUPE and/or COSOP on the Subsequent Service Transfer Date and Sub-Contract General Conditions 12 to 15 shall apply.
5. The Sub-Contractor will or will procure that a Third Party Sub-Contractor will on or before the Subsequent Service Transfer Date:
   1. discharge all financial obligations owing to the Subsequent Transferring Employees in respect of the period on or before the Subsequent Service Commencement Date;
   2. procure that any loans or advances made by the Sub-Contractor or a Third Party Sub-Contractor to the Subsequent Transferring Employees on or before the Subsequent Service Transfer Date are repaid to it;
   3. account to the proper authority for all PAYE tax deductions, pensions contributions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period before the Subsequent Service Transfer Date; and
   4. pay the Head Provider the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Service Transfer Date.
6. The Sub-Contractor will or will procure that a Third Party Sub-Contractor will comply with their respective obligations under TUPE and COSOP in relation to the Subsequent Transferring Employees and will ensure a smooth transfer of the Subsequent Transferring Employees to the Head Provider.
7. The Sub-Contractor will or will procure that a Third Party Sub-Contractor will indemnify and keep indemnified the Head Provider in relation to any Losses arising out of or in connection with any claim which arises as a result of any act or omission of the Sub-Contractor or Third Party Sub-Contractor in relation to the Subsequent Transferring Employees prior to the Subsequent Service Transfer Date save for where such act or omission results from complying with the instructions of the Head Provider and save for where the Head Provider fails to comply with its obligations under regulation 13 of TUPE.
8. The Sub-Contractor will or will procure that a Third Party Sub-Contractor will indemnify and keep indemnified the Head Provider in relation to any person who is an employee of the Sub-Contractor or Third Party Sub-Contractor who is not a Subsequent Transferring Employee is found to or it is alleged to transfer to the Head Provider under TUPE and/or COSOP.
9. In this Schedule:

**COSOP** means the Cabinet Office Statement of Practice *Staff Transfers in the Public Sector* January 2000

**Subsequent Service Transfer Date** means the point in time, if any, at which services equivalent to the Sub-Contracted Services (either in whole or in part) are first provided by the Head Provider, giving rise to a relevant transfer under TUPE and/or COSOP

**Subsequent Transferring Employees** means any employee, agent, consultant and/or contractor who immediately before the Subsequent Service Transfer Date is wholly or mainly engaged in the performance of services equivalent to Sub-Contracted Services (either in whole or in part) which are to be undertaken by the Head Provider on and following the Subsequent Service Transfer Date

**Transferring Employees** means those employees transferring from the Head Provider to the Sub-Contractor or any Third Party Sub-Contractor under TUPE and/or COSOP and listed in Part B of this Schedule entitled Head Provider Employees

**TUPE** meansthe Transfer of Undertakings (Protection of Employment) Regulations 2006 and EC Council Directive 77/187

**Part B – Head Provider's Employees**

Insert list of Transferring Employees or state 'Not Applicable'

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First published: December 2016

Published in electronic format only