



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

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

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This template sub-contract should be read in conjunction with the guidance on the NHS standard sub-contract for the provision of clinical services 2017/18 and 2018/19 (full length and shorter-form versions), which is available on the NHS Standard Contract [2017/18 web page](https://www.england.nhs.uk/nhs-standard-contract/17-18/).

This template sub-contract was republished in August 2017 to change ‘GC18’ to ‘GC16’ in Sub-Contract Service Condition 6.4.

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**Sub-Contract Conditions**

**Service Conditions**

**General Conditions**

*Note: the Service Conditions and General Conditions are those of the NHS Standard Contract 2017/18 and 2018/19 (Shorter Form), as published by NHS England (https://www.england.nhs.uk/nhs-standard-contract/). They are not replicated in this template Sub-Contract but it is recommended that the parties print out or retain a copy of these for reference since they form part of this Sub-Contract.*

**SUB-CONTRACT PARTICULARS and SCHEDULES**

This Sub-Contract records the agreement between the Head Provider and the Sub-Contractor and comprises:

1. the **Sub-Contract Particulars** **and Schedules**

2. the **Sub-Contract Conditions**

3. the **General Conditions** and **Service Conditions**

as further defined or applied by this Sub-Contract.

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

| SIGNED by | ……………………………………………………….  Signature |
| --- | --- |
| [*insert authorised signatory’s name*]  for and on behalf of  [*insert head provider name*] | ……………………………………………………….  Title  ……………………………………………………….  Date |

| SIGNED by | ……………………………………………………….  Signature |
| --- | --- |
| [*insert authorised signatory’s name*]  for and on behalf of  [*insert sub-contractor name*] | ……………………………………………………….  Title  ……………………………………………………….  Date |

**SUB-CONTRACT PARTICULARS AND SCHEDULES**

**CONTRACT SUMMARY**

| Sub-Contract Reference |  |
| --- | --- |
| Effective Date |  |
| Expected Service Commencement Date |  |
| Longstop Date |  |
| Service Commencement Date | [*complete once services commence, if different from the Expected Service Commencement Date*] |
| Sub-Contract Term | (subject to extension under Schedule 1C where applicable) |
| Option to extend Sub-Contract Term? | YES / NO |
| Notice Period (for termination under GC17.2)  Where notice given by the Head Provider:  Where notice given by the Sub-Contractor: |  |
| Details of Head Contract | Commissioner(s): [ ]  Date: [ ]  Contract Term: [ ]  Services: [ ] |

***Guidance: in respect of termination notice periods, the parties should take account of the relationship with the Head Contract: the notice period for the Head Provider should be shorter than the corresponding period in the Head Contract, to allow the Head Provider to respond to notice given by the Commissioner; conversely, the notice period for the Sub-Contractor should be longer than the corresponding Head Contract period, to allow the Head Provider to give notice if necessary under the Head Contract.***

**SUB-CONTRACT SERVICES**

| Continuing Healthcare Services (CHC) |  |
| --- | --- |
| Community Services (CS) |  |
| Diagnostic, Screening and/or Pathology Services (D) |  |
| End of Life Care Services (ELC) |  |
| Mental Health and Learning Disability Services (MH) |  |
| Patient Transport Services (PT) |  |
| Essential Services? (NHS Trusts only) | YES/NO |

**GOVERNANCE AND REGULATORY**

| Sub-Contractor’s Nominated Individual | [ ]  Email: [ ]  Tel: [ ] |
| --- | --- |
| Sub-Contractor’s Information Governance Lead | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Caldicott Guardian | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Senior Information Risk Owner | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Accountable Emergency Officer | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Safeguarding Lead | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Child Sexual Abuse and Exploitation Lead | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Mental Capacity and Deprivation of Liberty Lead | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Freedom To Speak Up Guardian | [ ]  Email: [ ]  Tel: [ ] |

**CONTRACT MANAGEMENT**

| Addresses for service of Notices | Head Provider: [ ]  Address: [ ]  Email: [ ]  Sub-Contractor: [ ]  Address: [ ]  Email: [ ] |
| --- | --- |
| Head Provider Representative(s) | [ ]  Address: [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor Representative | [ ]  Address: [ ]  Email: [ ]  Tel: [ ] |

# SCHEDULE 1 – SERVICE COMMENCEMENT AND CONTRACT TERM

**A. Conditions Precedent**

The Sub-Contractor must provide the Head Provider with the following documents and complete the following actions before the Expected Service Commencement Date:

| 1. Evidence of appropriate Indemnity Arrangements 2. Evidence of CQC registration (where required) 3. Evidence of Monitor’s Licence (where required) 4. [Insert any additional requirements] |
| --- |

**C. Extension of Contract Term**

1. The Head Provider may opt to extend the Sub-Contract Term by [months/year(s)].

2. If the Head Provider wishes to exercise the option to extend the Sub-Contract Term, the Head Provider must give written notice to that effect to the Sub-Contractor no later than [*insert period*] before the original Expiry Date.

3. If the Head Provider gives notice to extend the Sub-Contract Term in accordance with paragraph 2 above, the Sub-Contract Term will be extended by the period specified in that notice and the Expiry Date will be deemed to be the date of expiry of that period.

[***OR*** – Not Used]

***Guidance: in respect of the notice period in paragraph 2, any extension option in the Head Contract should be taken into account: if the Commissioner can extend the Head Contract by notice, a shorter notice period should be applied here to allow the Head Provider to respond to an extension of the Head Contract.***

# SCHEDULE 2 – THE SERVICES

**A. Sub-Contract Service Specifications**

| [*Insert specification for the Sub-Contract Services*] |
| --- |

**B. Indicative Activity Plan**

| [*Insert text locally in respect of one or more Contract Years, or state Not Applicable*] |
| --- |

**D. Essential Services (NHS Trusts only)**

| [*Insert text locally or state Not Applicable*] |
| --- |

**G. Other Local Agreements, Policies and Procedures**

| [*Insert details / web links as required or state Not Applicable*] |
| --- |

**J. Transfer of and Discharge from Care Policies**

| [*Insert text locally as required or state Not applicable*] |
| --- |

**K. Safeguarding Policies and Mental Capacity Act Policies**

| [*Insert text locally as required*] |
| --- |

# SCHEDULE 3 – PAYMENT

[*insert detail of prices, including rates, method of calculation, whether activity based or block, any marginal rates, etc., any adjustment mechanism for subsequent years, and – if different from the default provisions in Sub-Contract Condition 5 – the invoicing and payment process*]

# SCHEDULE 4 – QUALITY REQUIREMENTS

***Guidance: these are the standards required of the Head Provider, and should be included or amended according to their relevance to the Sub-Contract Service requirements and service categories. Where an Operational Standard or National Quality Requirement does not apply directly to the Sub-Contract, but a related or amended quality indicator is agreed, that should be entered as a Local Quality Requirement in Schedule 4C.***

**A. Operational Standards and National Quality Requirements**

| **Ref** | **Operational Standards/National Quality Requirements** | **Threshold** | **Method of Measurement** | **Consequence of breach** | **Timing of application of consequence** | **Applicable Service Category** |
| --- | --- | --- | --- | --- | --- | --- |
| E.B.4 | Percentage of Service Users waiting 6 weeks or more from Referral for a diagnostic test\* | Operating standard of no more than 1% | Review of Service Quality Performance Reports | Where the number of Service Users waiting for 6 weeks or more at the end of the month exceeds the tolerance permitted by the threshold, £200 in respect of each such Service User above that threshold | Monthly | CS  D |
| E.B.S.3 | Care Programme Approach (CPA): The percentage of Service Users under adult mental illness specialties on CPA who were followed up within 7 days of discharge from psychiatric in-patient care\* | Operating standard of 95% | Review of Service Quality Performance Reports | Where the number of Service Users in the Quarter not followed up within 7 days exceeds the tolerance permitted by the threshold, £200 in respect of each such Service User above that threshold | Quarterly | MH |
|  | Duty of candour | Each failure to notify the Relevant Person of a suspected or actual Notifiable Safety Incident in accordance with Regulation 20 of the 2014 Regulations | Review of Service Quality Performance Reports | Recovery of the cost of the episode of care, or £10,000 if the cost of the episode of care is unknown or indeterminate | Monthly | All |
|  | Completion of a valid NHS Number field in mental health commissioning data sets submitted via SUS, as defined in Contract Technical Guidance | 99% | Review of Service Quality Performance Reports | Where the number of breaches in the month exceeds the tolerance permitted by the threshold, £10 in respect of each excess breach above that threshold | Monthly | MH |
|  | Completion of Mental Health Minimum Data Set ethnicity coding for all detained and informal Service Users, as defined in Contract Technical Guidance | Operating standard of 90% | Review of Service Quality Performance Reports | Where the number of breaches in the month exceeds the tolerance permitted by the threshold, £10 in respect of each excess breach above that threshold | Monthly | MH |
|  | Completion of IAPT Minimum Data Set outcome data for all appropriate Service Users, as defined in Contract Technical Guidance | Operating standard of 90% | Review of Service Quality Performance Reports | Where the number of breaches in the month exceeds the tolerance permitted by the threshold, £10 in respect of each excess breach above that threshold | Monthly | MH |
| E.H.4 | Early Intervention in Psychosis programmes: the percentage of Service Users experiencing a first episode of psychosis or ARMS (at risk mental state) who wait less than two weeks to start a NICE-recommended package of care\* | For the period 1 April 2017 to 31 March 2018, operating standard of 50%. From 1 April 2018, operating standard of 53% | Review of Service Quality Performance Reports | Issue of Contract Performance Notice and subsequent process in accordance with GC9 | Quarterly | MH |
| E.H.1 | Improving Access to Psychological Therapies (IAPT) programmes: the percentage of Service Users referred to an IAPT programme who wait six weeks or less from referral to entering a course of IAPT treatment\* | Operating standard of 75% | Review of Service Quality Performance Reports | Issue of Contract Performance Notice and subsequent process in accordance with GC9 | Quarterly | MH |
| E.H.2 | Improving Access to Psychological Therapies (IAPT) programmes: the percentage of Service Users referred to an IAPT programme who wait 18 weeks or less from referral to entering a course of IAPT treatment\* | Operating standard of 95% | Review of Service Quality Performance Reports | Issue of Contract Performance Notice and subsequent process in accordance with GC9 | Quarterly | MH |

\* as further described in *Joint Technical Definitions for Performance and Activity 2017/18-2018/19,* available at: <https://www.england.nhs.uk/wp-content/uploads/2015/12/joint-technical-definitions-performance-activity.pdf>

# SCHEDULE 4 – QUALITY REQUIREMENTS

**C. Local Quality Requirements**

| **Quality Requirement** | **Threshold** | **Method of Measurement** | **Consequence of breach** | **Timing of application of consequence** | **Applicable Service Specification** |
| --- | --- | --- | --- | --- | --- |
| [*Insert text and/or attach spreadsheet or documents locally*] |  |  |  |  |  |

# SCHEDULE 6 – CONTRACT MANAGEMENT, REPORTING AND INFORMATION REQUIREMENTS

1. **Reporting Requirements**

| **Report Required** | **Reporting Period** | **Format of Report** | **Timing and Method for delivery of Report** |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

1. **Incidents Requiring Reporting Procedure**

|  |
| --- |
| **Procedures for reporting, investigating, and implementing and sharing Lessons Learned from: Serious Incidents, Notifiable Safety Incidents and Other Patient Safety Incidents** |
| **Insert text locally** |

# SCHEDULE 7 – PENSIONS

**Insert text locally (template drafting available via** [**http://www.england.nhs.uk/nhs-standard-contract/**](http://www.england.nhs.uk/nhs-standard-contract/)**) or state Not Applicable**

***Guidance: the template drafting is not specifically designed for use in a sub-contract, and it is recommended that legal advice is sought.***

# SCHEDULE 8 – TUPE

**Insert text locally (template drafting available via** [**http://www.england.nhs.uk/nhs-standard-contract/**](http://www.england.nhs.uk/nhs-standard-contract/)**) or state Not Applicable**

***Guidance: although there is template drafting available, it is recommended that legal advice is sought where there is a possibility that there may be staff transfers either at service commencement or on expiry under TUPE or COSOP.***

**SUB-CONTRACT CONDITIONS**

1. **Operation of this Sub-Contract**
   1. The Head Provider has entered into the Head Contract with the Commissioner, and under this Sub-Contract agrees with the Sub-Contractor that the Sub-Contractor will perform certain of the services under the Head Contract on the Head Provider's behalf. The rights and obligations of the Head Provider and the Sub-Contractor are set out in the Sub-Contract Particulars and Schedules and in the Service Conditions and General Conditions as amended or added to by these Sub-Contract Conditions.
   2. The Service Conditions and General Conditions are incorporated into and form part of this Sub-Contract, as modified under this Sub-Contract, except that:
      1. wherever in the Service Conditions or General Conditions there is a reference to the Commissioner (or interactions between a number of Commissioners), for the purposes of this Sub-Contract that reference will be read as referring simply to the Head Provider;
      2. wherever in the Service Conditions or General Conditions there is a reference to the Provider, for the purposes of this Sub-Contract that reference will be read as referring to the Sub-Contractor;
      3. wherever in the Service Conditions or General Conditions there is a reference to any Schedule or the Particulars, for the purposes of this Sub-Contract that will be interpreted as referring to the corresponding element of the Sub-Contract Particulars and Schedules.

and the Service Conditions and General Conditions will be interpreted subject to the further alterations made for the purposes of this Sub-Contract as set out in Conditions 2 and 6.

1. **Interpretation**
   1. Except as provided expressly in these Sub-Contract Conditions, terms as defined in the Head Contract will have the same meaning when used in this Sub-Contract.
   2. Definitions:

**General Conditions** and **Service Conditions**: the General Conditions and Service Conditions published by NHS England for the NHS Standard Contract (Shorter Form) 2017/18 and 2018/19.

**Head Contract**: the contract between the Commissioner and the Head Provider in the form of the NHS Standard Contract 2017/18 and 2018/19 (Shorter Form).

**Sub-Contract Services**: the services specified in Schedule 2A.

* 1. Except as provided expressly in this Sub-Contract, the rules of interpretation in the Head Contract will apply to this agreement.
  2. For the purposes of this Sub-Contract, and unless the context otherwise requires, the following references in the Service Conditions and General Conditions will be interpreted as follows:

| *Term:* | *meaning for this Sub-Contract:* |
| --- | --- |
| "this agreement", "this Contract" or "Contract" | (this) Sub-Contract |
| "Parties" | the Head Provider and Sub-Contractor |
| "Services" | Sub-Contract Services |
| "Sub-Contract", "Sub-Contractor", etc. | sub-contract, sub-contractor, etc. |

* 1. The Schedules, as well as the Service Conditions and General Conditions (as amended) form part of this Sub-Contract and will have effect as if set out in full in the body of this agreement. Any reference to this Sub-Contract includes the Schedules.
  2. If there is any conflict or inconsistency between the sections of this Sub-Contract, the following order of priority applies:
     1. the Sub-Contract Conditions
     2. the Sub-Contract Particulars and Schedules
     3. the Service Conditions and General Conditions.

1. **Commencement and duration**
   1. This Sub-Contract comes into force on the Effective Date and will continue in force until the Expiry Date unless:
      1. it is terminated earlier in accordance with GC 17; or;
      2. the Head Contract is terminated for any reason, in which case this Sub-Contract will (unless the Parties agree otherwise in writing) terminate immediately and automatically, without further action being necessary by the Parties, and subject to all the rights of the Parties accrued up to the date of termination; or
      3. the Commissioner, in accordance with the Head Contract, requires the removal of the Sub-Contractor, or the termination of this Sub-Contract or any Sub-Contract Service.
   2. Delivery of the Sub-Contract services will begin on the Service Commencement Date (unless the Head Provider notifies a different date to accord with service delivery under the Head Contract, or the Parties agree otherwise).
2. **Co-operation**

The Sub-Contractor will co-operate with the Head Provider and (where requested) directly with the Commissioner in order to ensure effective delivery of the Sub-Contract Services. Where the Sub-Contractor informs the Head Provider of issues which require action under the Head Contract or under any related sub-contract, the Head Provider will endeavour to resolve those issues with the Commissioner or with the relevant sub-contractor.

1. **Payment**
   1. In consideration of the Sub-Contractor's provision of the Sub-Contract Services, the Head Provider will pay to the Sub-Contractor the Price as set out in Schedule 3.
   2. Unless stated otherwise in Schedule 3, the Sub-Contractor must invoice the Head Provider, within 10 days of the end of each month, the Price in respect of the Sub-Contract Services provided in the preceding month together with any monies owed to the Sub-Contractor in respect of a Local Incentive Scheme. Each invoice must contain and be accompanied by such information and be addressed to such individual as the Head Provider may inform the Sub-Contractor from time to time.
   3. The Head Provider must pay each undisputed invoice received in accordance with clause 5.2 within 30 days of receipt. Payment is exclusive of any applicable VAT for which the Head Provider will be additionally liable to pay the Sub-Contractor upon receipt of a valid tax invoice at the prevailing rate in force from time to time.
   4. If a Party contests in good faith any part of any payment calculated in accordance with this Sub-Contract the contesting Party must promptly notify the other Party, and any uncontested amount must be paid in accordance with this Sub-Contract. If the matter has not been resolved within 20 Operational Days of such notification, the contesting Party must refer the matter to Dispute Resolution.
2. **Alterations to Service Conditions and General Conditions for the purposes of this Sub-Contract**
   1. The alterations to the Service Conditions and General Conditions for the purpose of their incorporation into this Sub-Contract are as set out in this Condition 6.
   2. The following provisions are deleted:
      1. Service Conditions (SC): SC 6.3, 23.5, 28.3, 29.1, 36.1 to 36.26, 36.27A and 38;
      2. General Conditions (GC): GC 1.2, 9.9, 10.1, 13.2 and 13.4.

and any cross-references to those provisions are also deleted.

* 1. In the following provisions, references to the Head Provider will not be substituted for references to the "Commissioner" for the purposes of clause 1.2.1, but the provision will, for the purposes of this Sub-Contract, continue to refer to the Commissioner:
     1. Service Conditions (SC): SC 5.1, 23.2, 24.3, 28.5, 30.3, and (where the term "Commissioner" is used in relation to its being the Responsible Commissioner) SC 36.31.3 and 36.31.6;
     2. General Conditions (GC): GC 21.9.2, 21.13, 21.17, 22.4 and 23.3;
     3. Definitions: "Best Practice", "Local Counter Fraud Specialist" and "Service User",

and any reference in those provisions to a request or notice being given by a Commissioner will be deemed to apply where such a request or notice is given directly or is passed on to the Sub-Contractor by the Head Provider.

* 1. The following provisions will be amended (or will apply) as set out or described below:

Service Conditions:

|  |  |
| --- | --- |
| SC 36.27 | The last sentence of this Condition is deleted, and replaced with: "The Sub-Contractor's liability under this SC 36.27 will not exceed the Head Provider's liability under the equivalent provisions of the Head Contract, or (if less) that proportion of the Head Provider's liability that was caused by the Sub-Contractor's breach of the Operational Standards, National Quality Requirements or Local Quality Requirements". |
| SC 36.28 | This Condition is deleted and replaced with: "If a Never Event occurs, the Head Provider may deduct from payments due to the Sub-Contractor a sum equal to the deductions suffered by the Head Provider under the Head Contract in respect of that Never Event". |
| SC 33.5 | The right to use information provided by the Sub-Contractor in any report made in connection with Serious Incidents is available to the Commissioner as well as to the Head Provider. |

General Conditions

|  |  |
| --- | --- |
| GC 13.4 | Notwithstanding the deletion of GC 13.4, the Parties acknowledge that the Head Provider must comply with National Variations and that the Head Contract (and consequently this Sub-Contract) may be terminated for non-acceptance of a National Variation, and accordingly the Parties will co-operate to agree to vary this Sub-Contract to the extent necessary to enable the Head Provider to comply with National Variations. |
| GC 14.2 | The words "jointly by NHS Improvement and NHS England (where the Provider is an NHS Trust), or" are deleted. |
| GC 16 | The Head Provider may also suspend the Sub-Contract Services where those services are suspended by the Commissioner under the Head Contract. |
| GC 17.4.1 | The notice period is extended from 20 Operational Days to 40 Operational Days where the Head Provider's failure to pay is due to the failure of the Commissioner to pay under the Head Contract. |
| GC 20.3 | A new GC 20.3.6 is added as follows: "20.3.6 or (where the disclosing Party is the Head Provider) to the extent that the Head Provider is required to disclose such information under the Head Contract". |
| GC 21.17 and 21.18 | These Conditions will apply in favour of the Commissioner but will also apply in favour of the Head Provider if the Head Provider is a public body subject to the requirements of FOIA and/or EIR. |
| GC 21.19 to 21.12 | These Conditions will only apply if either the Head Provider or the Sub-Contractor is a public body. |
| GC 22.2 | The licence of Sub-Contractor Deliverables granted by the Sub-Contractor under GC 22.2 will apply in favour of the Commissioners for the purposes set out in GC 22.2, and in favour of the Head Provider for the purposes of receiving the Sub-Contracted Services and performing its obligations under the Head Contract. |
| GC 22.3.2 | GC22.3.2 will not apply to this Sub-Contract, notwithstanding that the Sub-Contractor may apply to NHS England's NHS Identity team for permission to use the NHS Identity where it does not otherwise have permission to use the NHS Identity. |
| GC 29 | The following text will be added after GC 29.1.6: "and for the avoidance of doubt the Commissioner may enforce any provision of this Sub-Contract to the extent that it is expressed as applying in favour of the Commissioner". |

Definitions

|  |  |
| --- | --- |
| Authorised Person | the Head Provider is added to the list of Authorised Persons |
| CQUIN | any references to CQUIN in any applicable definitions are deleted. |
| Referrer | the Head Provider is added to the entities listed in this definition. |
| Services | references to the Services will be construed as referring to the Sub-Contract Services |

* 1. The following time periods are amended as set out below in order to allow for related actions under the Head Contract:

| **Provision** | **timescale in the Service Conditions or General Conditions** | **amended timescale for this Sub-Contract** |
| --- | --- | --- |
| SC 30.2 | 5 Operational Days (for notification of the activation of the Sub-Contractor's Incident Response Plan, etc.) | 4 Operational Days |
| SC 36.29 | 20 Operational Days (for the Head Provider to reimburse statutory benefits) | 24 Operational Days |
| GC 11.4 and 11.5 | 5 Operational Days (for Sub-Contractor to provide information about Indemnity Arrangements) and 10 Operational Days (to provide evidence of post-termination cover) | 4 Operational Days and 8 Operational Days respectively |
| GC 17.5.4 | 20 Operational Days (for Sub-Contractor to remedy breach) | 16 Operational Days |
| GC 21.17.3 and 21.17.4 | 2 Operational Days (for Sub-Contractor to provide a copy of or transfer an FOIA request) | 1 Operational Day in each case |
| GC 21.17.6 | 5 Operational Days (for Sub-Contractor to provide relevant information) | 4 Operational Days |

**SERVICE CONDITIONS**

[*refer to the NHS Standard Contract 2017/18 and 2018/19 (Shorter Form) Service Conditions*]

**GENERAL CONDITIONS**

[*refer to the NHS Standard Contract 2017/18 and 2018/19 (Shorter Form) General Conditions*]

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