

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

**Updated July 2018**

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

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Prepared by: NHS Standard Contract Team

NHS England

[nhscb.contractshelp@nhs.net](mailto:nhscb.contractshelp@nhs.net)

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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 [web page](https://www.england.nhs.uk/nhs-standard-contract/2017-19-update-may/).

This template Full Length Sub-Contract has been republished to incorporate the changes made to the NHS Standard Contract made by way of the National Variations published in January 2018 and May 2018. For reference, the NHS Standard Contract 2017-19 (January 2018 edition) and National Variation are available at <https://www.england.nhs.uk/nhs-standard-contract/17-19-updated/>. The NHS Standard Contract 2017-19 (May 2018 edition) and National Variation are available at https://www.england.nhs.uk/nhs-standard-contract/2017-19-update-may/.

The Standard Sub-Contract remains a non-mandatory model, but, (a) where providers choose to use it when entering into new sub-contracts commencing 1 April 2018 onwards, they should use this version 4; (b) where an existing sub-contract based on the Standard Sub-Contract runs beyond 31 March 2018, commissioners should update that existing sub-contract to reflect this version 4 (as applicable), to ensure that recent changes (January and May 2018) changes to the NHS Standard Contract ‘flow down’ to sub-contract level.

The material revisions in version 4 of the Sub-Contract are as follows:

|  |  |
| --- | --- |
| Section | Change |
| Sub-Contract Principles | Principle 26 now Not Used (as dealt with in Sub-Contract Services) |
| Sub-Contract Services | To indicate whether the Sub-Contractor is acting as a Data Processor or Sub-processor |
| Governance and Regulatory | To provide for identification of the Sub-Contractor’s Data Protection Officer (where required by Data Protection Legislation) |
| Schedule 6F | Insertion of a Sub-Contractor Data Processing Agreement, for use where required |
| Sub-Contract Service Conditions 5.26 | Insertion of optional wording to reflect operation of SC36.37A of the NHS Standard Contract |
| Sub-Contract Service Conditions 5.40 | Insertion of new provision in relation to the National Genomics Test Directory, reflecting SC36.52 of the NHS Standard Contract |
| Sub-Contract General Conditions 3.34, 3.36 | To reflect changes to GC21 of the NHS Standard Contract to accommodate the GDPR |

**NHS STANDARD SUB-CONTRACT**

**FOR THE PROVISION OF CLINICAL SERVICES 2017/18 and 2018/19 (updated July 2018)**

***(Note: for use with*** [***NHS Standard Contract 2017/18 and 2018/19 (May 2018 edition***](https://www.england.nhs.uk/nhs-standard-contract/2017-19-update-may/)***) full length version only)***

|  |  |
| --- | --- |
| **Sub-Contract Title/Reference** |  |

|  |  |
| --- | --- |
| **DATE OF SUB-CONTRACT** |  |
| **SERVICE COMMENCEMENT DATE** |  |
| **SUB-CONTRACT TERM** | **[ ] years/months commencing**  **[ ]**  **[(or as extended in accordance with Schedule 1C)]** |
| **HEAD PROVIDER** |  |
| **SUB-CONTRACTOR** |  |

|  |  |  |
| --- | --- | --- |
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**SUB-CONTRACT PRINCIPLES**

Structure and interpretation of this Sub-Contract

1. The Head Provider has entered into an agreement with theCommissioner for the provision of a range of clinical services. The Head Provider now wishes to sub-contract provision of certain of these services to the Sub-Contractor.
2. This Sub-Contract records the agreement between the Head Provider and the Sub-Contractor and comprises:
   1. the **Sub-Contract Principles**;
   2. the **Sub-Contract Particulars and Schedules (Part A)**;
   3. the **Sub-Contract Service Conditions (Part B)**;
   4. the **Sub-Contract General Conditions (Part C)**; and
   5. the **Sub-Contract Definitions (Part D)**

as completed and agreed by the Parties and as varied from time to time in accordance with the provisions of this Sub-Contract*.*

1. The following approach to interpretation applies:
   1. Any reference to Particulars and/or Schedules is a reference to the Sub-Contract Particulars and Schedules except as expressly stated otherwise.
   2. Any reference to Principles is a reference to the Sub-Contract Principles.
   3. The Service Conditions, General Conditions and Definitions and Interpretation set out in the NHS Standard Contract are incorporated into this Sub-Contract and apply to the extent set out in the Sub-Contract Service Conditions, the Sub-Contract General Conditions and the Sub-Contract Definitions (as appropriate). In that context, unless expressly stated to the contrary elsewhere, any reference in the NHS Standard Contract Service Conditions, NHS Standard Contract General Conditions and in the meanings of the NHS Standard Contract defined terms to:
      1. a/the/each “Commissioner”, “Relevant Commissioner”, “Responsible Commissioner” or “Co-ordinating Commissioner” shall be read for the purposes of this Sub-Contract as “Head Provider” and phrases such as “the Co-ordinating Commissioner may instruct the Commissioners”, “the Co-ordinating Commissioner may recommend to the Commissioners”, “the Co-ordinating Commissioner and each relevant Commissioner”, “the Co-ordinating Commissioner (on behalf of the Commissioners)”, “the Commissioners (or the Co-ordinating Commissioner on their behalf, as appropriate)”, “Commissioners (or such of them as the context requires)”, “each Commissioner will be severally liable” shall be read for the purposes of this Sub-Contract as “the Head Provider” and any reference to “their” in the context of Commissioners shall be read as “its”;
      2. “Contract” shall be read as “Sub-Contract”;
      3. “General Conditions” and “GC” shall be read as “NHS Standard Contract General Conditions”;
      4. “Parties” shall be read as the “Head Provider and the Sub-Contractor” and “Parties in Dispute” shall be read as “Parties”’;
      5. “Provider” shall be read as “Sub-Contractor”;
      6. “Service Conditions” and “SC” shall be read as “NHS Standard Contract Service Conditions”;
      7. “Services” shall be read as “Sub-Contracted Services” and the word “Service” when used alone and not as part of a longer definition shall be read as “Sub-Contracted Service”. Where the word “Service” appears as part of a definition (such as “Service User”) the definition in the NHS Standard Contract shall remain unaltered, other than in relation to “Service Specifications” which shall be read as “Sub-Contracted Service Specifications”;
      8. “Sub-Contract” and “Material Sub-Contract” shall be read as “Third Party Sub-Contract”;
      9. “Sub-Contractor” and “Material Sub-Contractor” shall be read as “Third Party Sub-Contractor”.
   4. Where in this Sub-Contract an NHS Standard Service Condition or an NHS Standard General Condition has been varied, replaced or supplemented in the Sub-Contract Service Conditions or the Sub-Contract General Conditions (as appropriate) and there is a cross-reference in the NHS Standard Contract to that Service Condition or General Condition it shall be read as a cross-reference to that Service Condition or General Condition as varied, replaced or supplemented by this Sub-Contract. By way of illustration, any reference to SC36, which has been deleted in its entirety from this Sub-Contract and replaced by Sub-Contract Service Conditions 5.21-5.38, shall be deemed to be a reference to Sub-Contract Service Conditions 5.21-5.38.
   5. Any cross-reference in the NHS Standard Contract to any Service Condition or General Condition which has been deleted and does not apply on construction to this Sub-Contract in the Sub-Contract Service Conditions or the Sub-Contract General Conditions (as appropriate), and has not been replaced by alternative conditions in this Sub-Contract, shall also be deemed deleted for the purposes of this Sub-Contract.
   6. Where a Schedule is referred to in a Service Condition or General Condition and that Schedule is not used in this Sub-Contract then the cross-reference to the Schedule shall be deemed deleted for the purposes of this Sub-Contract.
2. Principles 24 to 29 shall only apply if checked.
3. Any guidance notes in grey text do not form part of this Sub-Contract.

Timeframes and notice periods

1. The Sub-Contractor must provide all information requested by the Head Provider which relates to this Sub-Contract and in particular the Sub-Contracted Services in such form and with such timeliness to enable the Head Provider to meet any requirement or deadline set out in the Head Contract or otherwise specified by the Commissioner.
2. Without prejudice to the general requirement set out at Principle 6, and subject to Principle 8, the Parties confirm that all timeframes and notice periods set out in the NHS Standard Contract Service Conditions and General Conditions and incorporated into this Sub-Contract that apply to interactions between the Head Provider and the Sub-Contractor shall be increased or decreased by 20% (rounded up or down as appropriate to the nearest Operational Day/calendar day/week). If the timeframe or notice period is expressed in months, the number of weeks in the months in question shall be used for the purposes of calculating the increase or decrease. The following Principles illustrate how the increased/decreased timeframes and notice periods will apply:
   1. Where under the NHS Standard Contract Service Conditions and General Conditions (as incorporated into this Sub-Contract) the Sub-Contractor must carry out an action within a certain time period, the corresponding timeframe for the purposes of this Sub-Contract shall be 80% of the timeframe for the same provision under the NHS Standard Contract, rounded down to the nearest Operational Day/calendar day/week.

*Guidance: By way of illustration, if under SC32.6 the Head Provider requests the provision of evidence regarding addressing safeguarding concerns then the Sub-Contractor must provide this to the Head Provider no later than 8 Operational Days following receipt of the request.*

* 1. Where under the NHS Standard Contract Service Conditions and General Conditions (as incorporated into this Sub-Contract) the Head Provider must carry out an action within a certain time period, the corresponding timeframe for the purposes of this Sub-Contract shall be 120% of the timeframe for the same provision under the NHS Standard Contract, rounded up to the nearest Operational Day/calendar day/week.

*Guidance: By way of illustration, if under GC24.6 the Head Provider requests further information relating to a Change in Control the Head Provider has 24 Operational Days to request this information from the Sub-Contractor.*

* 1. Where under the NHS Standard Contract Service Conditions and General Conditions (as incorporated into this Sub-Contract) notice periods apply to the Head Provider, the corresponding notice period for the purposes of this Sub-Contract shall be 80% of the period specified in the NHS Standard Contract, rounded down to the nearest Operational Day/calendar day/week.

*Guidance: By way of illustration, if the Head Provider serves notice on the Sub-Contractor pursuant to SC29.24 the Head Provider must give the Sub-Contractor not less than 3 weeks’ notice.*

* 1. Where under the NHS Standard Contract Service Conditions and General Conditions (as incorporated into this Sub-Contract) notice periods apply to the Sub-Contractor, the corresponding notice period for the purposes of this Sub-Contract shall be 120% of the period specified in the NHS Standard Contract, rounded up to the nearest Operational Day/calendar day/week.

1. Principle 7 shall not apply in relation to the timeframes and notice periods in those Service Conditions, General Conditions and Definitions listed in the table in Schedule 8 and the corresponding timeframes and notice periods for the purposes of this Sub-Contract shall be as set out in those NHS Standard Contract Service Conditions, General Conditions and Definitions and Interpretation.

Commencement of the Sub-Contracted Services

1. The Parties acknowledge and agree that delivery of the Sub-Contracted Services cannot commence unless and until delivery of the relevant services has commenced under the Head Contract and the Head Provider has confirmed this in writing to the Sub-Contractor.

Interest of the Commissioner

1. The Sub-Contractor acknowledges the Commissioner’s interests in relation to this Sub-Contract and the Sub-Contractor must as appropriate co-operate with the Commissioner to ensure the effective delivery of the Sub-Contracted Services.
2. If the Commissioner raises any matter under the Head Contract that in any way relates to or involves the Sub-Contracted Services, including without limitation the initiation of a joint investigation or the agreement with the Head Provider of a Remedial Action Plan:
   1. the Sub-Contractor will take all actions as are reasonable to enable the Head Provider to comply with any matter raised under the Head Contract including any Remedial Action Plan;
   2. the Sub-Contractor will, where the Head Provider requests, agree to the Commissioner or any representatives of the Commissioner being present at any meetings between the Head Provider and the Sub-Contractor; and
   3. the Head Provider will, where appropriate, consult with the Sub-Contractor and request that the Commissioner takes into account any information that may reasonably be provided by the Sub-Contractor.
3. The Sub-Contractor acknowledges that where it is required under this Sub-Contract to seek the prior consent or agreement or satisfaction of the Head Provider, the Head Provider will be required under the Head Contract to seek prior consent or agreement or satisfaction of the Commissioner. In those circumstances the Head Provider’s consent, agreement or satisfaction will be subject to the consent, agreement or satisfaction of the Commissioner.
4. If at any time during the Contract Term the Sub-Contractor reasonably requests that a matter is raised with the Commissioner or any document is forwarded to the Commissioner the Head Provider must raise such matter or forward such document on behalf of the Sub-Contractor and provide to the Sub-Contractor any response received from the Commissioner. Examples of where it would be reasonable for the Sub-Contractor to request that a matter is raised with the Commissioner or any document is forwarded to the Commissioner include issues of patient safety or a matter where Commissioner involvement is essential for effective delivery of the Sub-Contracted Services.

Obligations on the Head Provider and Sub-Contractor

1. The Sub-Contractor must deliver the Sub-Contracted Services and perform its obligations under this Sub-Contract in such a manner as to ensure the Head Provider is able to comply with its obligations under the Head Contract insofar as those obligations relate to, depend on or may be affected by the Sub-Contracted Services, including compliance by the Sub-Contractor with any positive or negative obligation or duty imposed on the Head Provider under the Head Contract.
2. The Sub-Contractor confirms and agrees that in relation to:
   1. any plans, policies or any other documents the Sub-Contractor is required to have in place throughout the Contract Term, including without limitation, a Business Continuity Plan and an Incident Response Plan, will be equivalent to, consistent with and will operate in conjunction with the Head Provider’s corresponding plan, policy and/or document; and
   2. any plans, policies or any other documents agreed during the Contract Term including without limitation, any Data Quality Improvement Plan, Service Development and Improvement Plan, and any Remedial Action Plan will be consistent with any such plan, policy or other document agreed under the Head Contract. At the written request of the Head Provider, the Sub-Contractor will assist the Head Provider in developing a joint plan, policy or document in relation to (inter alia) the Sub-Contracted Services.
3. During the Contract Term, where any agreement is to be reached under the Head Contract and it impacts on the Sub-Contracted Services:
   1. the Head Provider must use reasonable endeavours to consult and discuss with the Sub-Contractor before reaching agreement under the Head Contract; and
   2. provided that the Head Provider has complied with Principle 16.1 the Sub-Contractor must comply with the agreement reached under the Head Contract.
4. Subject to the Sub-Contractor complying with its obligations under this Sub-Contract, the Head Provider must comply with its obligations under the Head Contract and must use all reasonable endeavours to procure that any other sub-contractor appointed by the Head Provider in relation to the Head Contract complies with its obligations under its sub-contract with the Head Provider.

Head Provider Recovery of Losses

1. Where the Sub-Contractor is obliged to carry out any action by a specific deadline, should the Sub-Contractor fail to do so and the Head Provider suffers any Losses as a consequence of that failure, the Head Provider shall be entitled to recover such Losses from the Sub-Contractor.
2. Without prejudice to the generality of Principle 18, should the Sub-Contractor fail to invoice the Head Provider in accordance with the provisions of this Sub-Contract, (including providing all required information to accompany an invoice and ensuring that the Head Provider receives the invoice and accompanying information by the deadline as set out in this Sub-Contract) then, if the Head Provider is late in submitting an invoice to the Commissioner or providing its reconciliation account as required under the Head Contract and receives no or a reduced payment from the Commissioner in respect of the corresponding Sub-Contracted Services, the Head Provider shall be under no obligation to pay all or the relevant proportion of the sum invoiced by the Sub-Contractor.
3. Where the Commissioner imposes on the Head Provider any sanctions under the Head Contract and the sanction is wholly or partly in respect of any act or omission of the Sub-Contractor in breach of this Sub-Contract the Head Provider is entitled to impose the same sanction or a due proportion of it on the Sub-Contractor provided that the Sub-Contractor was aware or ought to have been aware of the right of the Commissioner to impose the sanction on the Head Provider.
4. To avoid doubt, where under the Head Contract the Head Provider is required to indemnify any Commissioner, the Sub-Contractor must indemnify the Head Provider if and to the extent that its liability for that indemnity results from or arises out of the Sub-Contractor's negligence or breach of contract in connection with the performance of this Sub-Contract or the provision of the Sub-Contracted Services, except insofar as the loss, damage or injury incurred by the relevant Commissioner has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Head Provider, its employees or agents.
5. Where the Head Provider is sub-contracting services under the Head Contract to more than one sub-contractor, including the Sub-Contractor, and sanctions are imposed on the Head Provider under the Head Contract, the Head Provider must apportion such sanctions between, as appropriate, the Head Provider, the Sub-Contractor and the other sub-contractors commensurate with the extent of their respective contributions to the act or omission which led to the sanctions being imposed under the Head Contract. The Head Provider in so apportioning liability must at all times act reasonably.

Additional Principles

1. Other than as provided in Principle 24 below, the Sub-Contractor must adopt and operate the following plans, policies and/or procedures of the Head Provider:
   1. Service User consent policy;
   2. Complaints Procedure; and
   3. Death of a Service User Policy.

*Guidance: Insert any other policies or procedures here.*

*Guidance: If the Sub-Contractor is to operate the Head Provider’s Service User consent policy, Complaints Procedure and/or Death of a Service User Policy, then Principle 24 will not be applicable. It will be particularly important where there are multiple sub-contractors under the Head Contract that there is consistent application of Principles 23 and 24 across all sub-contractors. The Head Provider needs to be very clear as to which of its plans, policies and documents it wants the Sub-Contractor to operate and needs to disclose them to the Sub-Contractor.*

1. If any of the following boxes is checked, the Sub-Contractor is permitted to operate its own policy and/or procedure as appropriate:
   1. Sub-Contractor operates its own Service User consent policy  ***(only applicable to the Sub-Contract if this box is checked)***
   2. Sub-Contractor operates its own Complaints Procedure  ***(only applicable to the Sub-Contract if this box is checked)***
   3. Sub-Contractor operates its own Death of a Service User Policy  ***(only applicable to the Sub-Contract if this box is checked)***

*Guidance: The Sub-Contractor must use the Head Provider’s Service User consent policy, Complaints Procedure and Death of a Service User Policy unless any of the above boxes are checked.*

1. Prior Approval Scheme  ***(only applicable to the Sub-Contract if this box is checked***)
   1. The Parties agree that the following protocol will apply in respect of a Prior Approval Scheme.

*Guidance: Insert protocol here.*

*Guidance: If a Prior Approval Scheme is in place at the Effective Date or could be introduced during the Contract Term the Parties should agree an appropriate protocol for operating the Prior Approval Scheme including from whom approval is sought (i.e., Head Provider or Commissioner), timeframes that apply to seeking approval and notification of any amendments to the Prior Approval Scheme. It is important to ensure the protocol is consistent with SC29.*

1. Not Used.
2. Communication by the Sub-Contractor with the Service User and third parties  ***(only applicable to the Sub-Contract if this box is checked***)
   1. The Parties agree that the following protocol will apply in respect of communication by the Sub-Contractor with the Service User and third parties.

*Guidance : Insert protocol here.*

*Guidance: The Head Provider should consider if it is appropriate to put in place a protocol around how the Sub-Contractor communicates with third parties. The sorts of issues the Head Provider may want to address are around being copied into certain correspondence (i.e., between the Sub-Contractor and the Referrer), communication between the Sub-Contractor and third parties and whether this should be via the Head Provider, how a Sub-Contractor deals with any unmet needs of a Service User and branding of the Sub-Contracted Services.*

1. Service Commencement  ***(only applicable to the Sub-Contract if this box is checked)***

*Guidance: insert mechanism for identifying actual start date.*

*Guidance: Delivery of the Sub-Contracted Services cannot start until service delivery commences under the Head Contract. If timelines are delayed under the Head Contract, then in most circumstances there will be a delay in commencement of delivery of the Sub-Contracted Services. Sub-Contract General Condition 3.3 provides for commencement of delivery of the Sub-Contracted Services the day after the Head Provider confirms in writing to the Sub-Contractor that this must happen – provided that the Head Provider does not serve this notice before the Expected Service Commencement Date. However, the position in Sub-Contract General Condition 3.3 may vary on a case by case basis, particularly if the Head Contract has already started before the Sub-Contract is put in place. In these circumstances the Parties should set out here the mechanism for identifying the start date.*

1. The following Principles shall also apply to this Sub-Contract  ***(only applicable to this Sub-Contract if this box is checked and further Principles are inserted***)

*Guidance: Any other matters to be addressed must be inserted here, i.e. if the Head Provider is sub-contracting to multiple sub-contractors different aspects of the clinical services to be provided under the Head Contract, the Head Provider may want to include additional governance arrangements that apply across all sub-contractors.*

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’S NAME]** | …………………………………………………  Title  …………………………………………………  Date |
|  |  |
|  |  |
| **SIGNED by** | …………………………………………………  Signature |
| **[INSERT AUTHORISED SIGNATORY’S NAME] for and on behalf of [INSERT SUBCONTRACTOR’S NAME]** | …………………………………………………  Title  …………………………………………………  Date |

**SUB-CONTRACT PARTICULARS AND SCHEDULES**

*Guidance: Each of the following tables giving particulars of this Sub-Contract must be completed in full.*

**SUMMARY OF SUB-CONTRACT**

|  |  |
| --- | --- |
| Sub-Contract Reference |  |
| DATE OF SUB-CONTRACT (EFFECTIVE DATE) |  |
| EXPECTED SERVICE COMMENCEMENT DATE |  |
| LONGSTOP DATE |  |
| SERVICE COMMENCEMENT DATE (OF THE SUB-CONTRACTED SERVICES) | *Insert the date delivery of the Sub-Contracted Services actually commences* |
| CONTRACT TERM | [ ] years/months commencing [ ] [or as extended in accordance with Schedule 1 C (*Extension of Contract Term*)] *Guidance: it is really important to ensure consistency of Contract Term with the Head Contract so do check from when the Head Contract term runs. Amend the words in square brackets as appropriate. The Expiry Date therefore is the end of the term of this Sub-Contract.* |
| OPTION TO EXTEND CONTRACT TERM | YES/NO  By [ ] months/years |
| HEAD PROVIDER NOTICE PERIOD (for termination under GC 17.2) | [ ] months *Guidance: when inserting the notice period the Head Provider should ensure it has time to review and act on any notice given by the Commissioner. This notice period should therefore be shorter than that specified in the Head Contract.* |
| HEAD PROVIDER EARLIEST TERMINATION DATE | [ ] months after Service Commencement Date *Guidance: when inserting the date the Head Provider should ensure the date is no later than the earliest termination date set out in the Head Contract.* |
| SUB-CONTRACTOR NOTICE PERIOD (for termination under GC 17.3) | [ ] months *Guidance: when inserting the notice period the Head Provider should ensure it has time to review and act on any notice given by the Sub-Contractor. This notice period should therefore be longer than that specified in the Head Contract.* |
| SUB-CONTRACTOR EARLIEST TERMINATION DATE | [ ] months after Service commencement Date *Guidance: when inserting the date the Head Provider should ensure the date is no earlier than the earliest termination date set out in the Head Contract* |
| COMMISSIONER(S) UNDER HEAD CONTRACT | [ ] CCG (ODS [ ])  [ ] CCG (ODS [ ])  [ ] CCG (ODS [ ])  [NHS England] |
| DETAILS OF HEAD CONTRACT | *Insert date and brief description* |

|  |  |
| --- | --- |
| **SERVICES** |  |
| **Service Categories** | **Indicate all that apply** |
| **Accident and Emergency (A +E)** |  |
| **Acute Services (A)** |  |
| **Ambulance Services(AM)** |  |
| **Cancer Services (CR)** |  |
| **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)** |  |
| **Mental Health and Learning Disability Secure Services (MHSS)** |  |
| **NHS 111 Services (111)** |  |
| **Patient Transport Services (PT)** |  |
| **Radiotherapy Services (R)** |  |
| **Urgent Care/Walk-in Centre Services/Minor Injuries Unit (U)** |  |
| **Specialised Services** |  |
| **Services comprise or include Specialised Services or other services directly commissioned by NHS England** | **YES/NO** |
| **Service Requirements** |  |
| **Indicative Activity Plan** | **YES/NO** |
| **Activity Planning Assumptions** | **YES/NO** |
| **Essential Services** | **YES/NO** |
| **Sub-Contracted Services to which 18 Weeks applies** | **YES/NO** |
| **Is the Sub-Contractor acting as a Data Processor/Sub-processor in order to deliver the Services** | **YES/NO (if YES, Schedule 6F will apply)** |

|  |  |
| --- | --- |
| **GOVERNANCE AND REGULATORY** |  |
| **Nominated Mediation Body** | **CEDR/other – [ ]** |
| **Sub-Contractor’s Nominated Individual** | **[ ]**  **Email: [ ]**  **Tel: [ ]** |
| **Sub-Contractor’s Information Governance Lead** | **[ ]**  **Email: [ ]**  **Tel: [ ]** |
| **Sub-Contractor’s Data Protection Officer (if required by Data Protection Legislation)** | **[ ]**  **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 Prevent Lead** | **[ ]**  **Email: [ ]**  **Tel: [ ]** |
| **Sub-Contractor’s Freedom to Speak Up Guardian (s)** | **[ ]**  **Email: [ ]**  **Tel: [ ]** |

|  |  |
| --- | --- |
| **CONTRACT MANAGEMENT** |  |
| **Addresses for service of Notices** | **Head Provider: [ ]**  **Address: [ ]**  **Email: [ ]**  **Sub-Contractor [ ]**  **Address: [ ]**  **Email: [ ]** |
| **Frequency of Review Meetings** | **Ad hoc/Monthly/Quarterly/Six Monthly** |
| **Head Provider Representative** | **[ ]**  **Address: [ ]**  **Email: [ ]**  **Tel: [ ]** |
| **Sub-Contractor Representative** | **[ ]**  **Address: [ ]**  **Email: [ ]**  **Tel: [ ]** |

*Guidance: Each of the following Schedules must be completed in full (unless stated “Not Used”). When completing the Schedules the Head Provider should ensure that they fully reflect the Head Contract to the extent relevant to the Sub-Contracted Services. Schedules in the NHS Standard Contract which are not used in this Sub-Contract have been deleted save where their deletion would affect the numbering of this Part A.*

SCHEDULE 1– SERVICE COMMENCEMENT AND CONTRACT TERM

A. Conditions Precedent

The Sub-Contractor must provide the Head Provider with the following documents:

|  |
| --- |
| 1. [Evidence of appropriate Indemnity Arrangements] 2. [Evidence of CQC registration in respect of the Sub-Contractor (where required)] 3. [Evidence of Monitor’s Licence in respect of the Sub-Contractor (where required)] 4. [A copy of the/each Direction Letter] 5. [Insert any additional requirements] |

The Sub-Contractor must complete the following actions:

|  |
| --- |
| **[Insert any requirements]** |

B. Head Provider Documents

|  |  |  |
| --- | --- | --- |
| Date | Document | Description |
| **Insert text or state Not Applicable** |  |  |

C. Extension of Contract Term

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

*Guidance: when inserting the period of notice required to exercise this option, the Head Provider should ensure the period is shorter than the corresponding period set out in the Head Contract.*

1. The option to extend the Contract Term may be exercised:
   1. only once, and only on or before the date referred to in paragraph 1 above;
   2. only in respect of all Sub-Contracted Services.
2. If the Head Provider gives notice to extend the Contract Term in accordance with paragraph 1 above, the 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**

SCHEDULE 2 – THE SUB-CONTRACTED SERVICES

A. Sub-Contracted Service Specifications

*Guidance: This is a key Schedule and must set out a description of each of the Sub-Contracted Services. You should consider including:*

* *the service description/care pathway*
* *population covered*
* *any acceptance and exclusion criteria and thresholds*
* *any interdependencies eg, with other providers/sub-contractors of Head Provider*
* *applicability of national standards or Guidance*
* *location of Sub-Contractor premises*
* *any service limitations*
* *any requirement regarding caseloads, availability of clinics, etc*
* *where Specialised Services are provided include as relevant any derogations from National Service Specifications*

*It will be important to review the relevant service specification in the Head Contract to ensure this service specification is consistent.*

B. Indicative Activity Plan

|  |
| --- |
| **Insert text or state Not Applicable** |

C. Activity Planning Assumptions

|  |
| --- |
| **Insert text or state Not Applicable** |

D. Essential Services

*Guidance: If any of the Sub-Contracted Services are identified in the Head Contract as Essential Services then they should be identified as such here.*

|  |
| --- |
| **Insert text or state Not Applicable** |

E. Essential Services Continuity Plan

*Guidance: Ensure that this plan is consistent with the Essential Services Continuity Plan agreed between the Commissioner and the Head Provider.*

|  |
| --- |
| **Insert text or state Not Applicable** |

F. Clinical Networks

|  |
| --- |
| **Insert text or state Not Applicable** |

G. Other Local Agreements, Policies and Procedures

*Guidance: Ensure consistency with the agreements, policies and procedures set out in the Head Contract to the extent that they relate to the Sub-Contracted Services.*

|  |  |  |
| --- | --- | --- |
| **Policy** | **Date** | **Weblink** |
| **Insert text or state Not Applicable** |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

H. Transition Arrangements

*Guidance: Ensure consistency with the arrangements set out in the Head Contract to the extent that they relate to the Sub-Contracted Services.*

|  |
| --- |
| **Insert text or state Not Applicable** |

I. Exit Arrangements

*Guidance: Although these arrangements will be specific to the Sub-Contract the Head Provider should ensure consistency with the arrangements set out in the Head Contract to the extent that they relate to the Sub-Contracted Services.*

|  |
| --- |
| **Insert text or state Not Applicable** |

J. Transfer of and Discharge from Care Protocols

*Guidance: Although these protocols should be consistent with the provisions set out in the Head Contract (to the extent that they relate to the Sub-Contracted Services), it is important to bear in mind the circumstances in which a Service User may be discharged/transferred to or from the care of the Sub-Contractor. For example, a transfer from the Sub-Contractor to the Head Provider or to another sub-contractor (or vice versa) may not be considered a transfer of care for the purposes of the Head Contract protocol as the Service User remains the responsibility of the Head Provider throughout.*

|  |
| --- |
| **Insert text** |

K. Safeguarding Policies and Mental Capacity Act Policies

*Guidance: Ensure consistency with the policies set out in the Head Contract to the extent that they relate to the Sub-Contracted Services*

|  |
| --- |
| **Insert text** |

L. Provisions Applicable to Primary Care Services

*Guidance: Ensure consistency with the arrangements set out in the Head Contract to the extent that they relate to the Sub-Contracted Services*

|  |
| --- |
| **Insert text or state Not Applicable** |

SCHEDULE 3 – PRICE AND PAYMENT

*Guidance: This Sub-Contract is drafted on the basis that the Price is agreed between the Parties and the Sub-Contractor invoices the Head Provider monthly in arrears.*

*Guidance: This Schedule needs to set out the Price for each of the Sub-Contracted Services. Issues to consider including here are:*

* *If a national pricing mechanism is used or if any payments are to be made in advance of services delivered this must be set out in this Schedule (e.g. If there are any payments in advance of services delivered reconciliation wording will need to be added).*
* *In agreeing Price take into account as appropriate the rules set out in the National Tariff.*
* *Include details of the information that the Head Provider will require with each invoice.*
* *The Head Provider needs to ensure it receives all the information it requires from the Sub-Contractor in sufficient time to carry out any reconciliation under the Head Contract.*
* *Think about provision of information if there is more than one Commissioner in terms of providing separate invoices per Commissioner.*
* *Insert how price may vary from year to year. NB take into account any annual adjustments to reflect efficiency savings. You may want to link this to the pricing mechanism for adjustments under the Head Contract.*

SCHEDULE 4 – QUALITY REQUIREMENTS

For the avoidance of doubt the Operational Standards, National Quality Requirements and Never Events set out or referred to in the NHS Standard Contract shall apply in respect of this Sub-Contract, except as expressly varied in this Schedule 4.

A. Operational Standards

The Operational Standards shall apply to this Sub-Contract and to the provision of the Sub-Contracted Services according to the applicable service category (set out in Part A of this Sub-Contract (*Sub-Contract Particulars & Schedules*)). Where any elements of the Operational Standards are for local determination under the Head Contract, those elements in the Head Contract as determined locally shall apply to this Sub-Contract unless otherwise set out below.

*Guidance: Where any elements in the NHS Standard Contract are for local determination you need to consider how they apply here. The default wording above is that any local agreement will apply. This therefore assumes disclosure by the Head Provider to the Sub-Contractor of these local agreements. If local agreement is not to apply you need to insert the NHS Standard Contract provisions to ensure they apply.*

*Guidance: Best practice, to avoid any confusion, is to insert in this Sub-Contract all those Operational Standards that will apply to the provision of the Sub-Contracted Services.*

B. National Quality Requirements

The National Quality Requirements shall apply to this Sub-Contract and to the provision of the Sub-Contracted Services according to the applicable service category (set out in Part A of this Sub-Contract (*Sub-Contract* *Particulars & Schedules)*).

Where a National Quality Requirement in the NHS Standard Contract refers to submission of data via SUS, this will apply to the Sub-Contract irrespective of whether the Head Provider or Sub-Contractor submits the information via SUS.

*Guidance: To avoid confusion if relevant National Quality Requirements requiring submission of data via SUS apply to this Sub-Contract this Schedule should set out which party is responsible for such submission.*

*Guidance: Best practice, to avoid any confusion, is to insert in this Sub-Contract all those National Quality Requirements that will apply to the provision of the Sub-Contracted Services.*

C. Local Quality Requirements

The following Local Quality Requirements shall apply to this Sub-Contract and to the provision of the Sub-Contracted Services.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 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 |  |  |  |  |  |

D. **Not used**

*Guidance: This Sub-Contract is drafted on the basis that all incentive schemes are agreed on a contract by contract basis. These could mirror national ones but the decision on this is left to the individual parties and any incentive schemes should be set out under Schedule 4 Part F below.*

E. Local Incentive Scheme

|  |
| --- |
| **Insert text or state Not Applicable**  *Guidance: Do remember to set out the process for payments, how performance is measured and how it is reported on. The Head Provider may wish to make it clear that where a Sub-Contract incentive scheme relates to the same matters as a CQUIN scheme or Local Incentive Scheme under the Head Contract, the Sub-Contractor does not receive any payments for achieving its goals or milestones under the Sub-Contract unless and until the Head Provider receives the corresponding payment under the Head Contract.* |

F. Not used

G. Not used

SCHEDULE 5 – GOVERNANCE

A. Documents Relied On

Documents supplied by Sub-Contractor

|  |  |
| --- | --- |
| **Date** | **Document** |
| **Insert text or state Not Applicable** |  |
|  |  |
|  |  |
|  |  |

Documents supplied by Head Provider

|  |  |
| --- | --- |
| **Date** | **Document** |
| **Insert text or state Not Applicable** |  |
|  |  |
|  |  |
|  |  |

**B1. Not used**

**B2. Not used**

**C. Not used**

SCHEDULE 6 – CONTRACT MANAGEMENT, REPORTING AND INFORMATION REQUIREMENTS

A. Reporting Requirements

*Guidance: This table should reflect the requirements of the Head Contract as relevant to the Sub-Contracted Services. Do make sure that the timing for delivery of reports enables the Head Provider to meet the timing set out in the Head Contract. The reports the Head Provider will require will cover activity, finance, performance against quality requirements, never events and duty of candour, achievement of incentive schemes if relevant, NHS Safety Thermometer Report, complaints and incidents requiring reporting. Please refer to the NHS Standard Contract for details. Where there is more than one Commissioner as party to the Head Contract, if the Sub-Contractor is required to provide any reports in relation to each Commissioner this must be specified. If the Sub-Contractor is to report centrally i.e., to SUS, this must be stated below.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Report Required** | **Reporting Period** | **Format of Reporting** | **Timing and Method for delivery of Report** | **Application** |
|  |  |  |  |  |
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B. Data Quality Improvement Plan

*Guidance: In preparing the Sub-Contract the Head Provider should ensure consistency with any requirements in the Head Contract to the extent that they relate to the Sub-Contracted Services.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Data Quality Indicator** | **Data Quality Threshold** | **Method of Measurement** | **Milestone Date** | **Consequence** |
| **Insert text or state Not Applicable** |  |  |  |  |

C. Incidents Requiring Reporting Procedure

*Guidance: In preparing the Sub-Contract the Head Provider should ensure consistency with any requirements in the Head Contract to the extent that they relate to the Sub-Contracted Services.*

|  |
| --- |
| **Procedures for reporting, investigating, and implementing and sharing Lessons Learned from: (1) Serious Incidents (2) Notifiable Safety Incidents (3) other Patient Safety Incidents** |
| **Insert text** |

D. Service Development and Improvement Plan

*Guidance: In preparing the Sub-Contract the Head Provider should ensure consistency with any requirements in the Head Contract to the extent that they relate to the Sub-Contracted Services.*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Milestones** | **Timescales** | **Expected Benefit** | **Consequence of Achievement/Breach** |
| **Insert text or state Not Applicable** |  |  |  | [Subject to GC 9 (*Contract Management*)] or [locally agreed] |

E. Surveys

*Guidance: In preparing the Sub-Contract the Head Provider should ensure consistency with any requirements in the Head Contract to the extent that they relate to the Sub-Contracted Services.*

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of Survey** | **Frequency** | **Method of Reporting** | **Method of Publication** |
| **Insert text or state Not Applicable** |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

F. Sub-Contractor Data Processing Agreement

*NOTE: This Schedule 6F applies only where the Sub-Contractor is appointed to act as a Data Processor or Sub-processor under this Sub-Contract. Where the Head Provider is acting as Data Controller in respect of the relevant data, it may appoint the Sub-Contractor to act as a Data Processor in relation to that data; where the Head Provider is itself appointed to act as a Data Processor by one or more Commissioners under the Head Contract, it may appoint the Sub-Contractor to act as a Sub-processor under this Sub-Contract. Delete/populate this Schedule if and as applicable.*

1. **SCOPE**
   1. The Head Provider appoints the Sub-Contractor as a [Data Processor/Sub-processor] to perform the Data Processing Services.
   2. When delivering the Data Processing Services, the Sub-Contractor must, in addition to its other obligations under this Contract, comply with the provisions of this Schedule 6F.
   3. This Schedule 6F applies for so long as the Sub-Contractor acts as a [Data Processor/Sub-processor] in connection with this Contract.
2. **DATA PROTECTION**
   1. The Parties acknowledge that for the purposes of Data Protection Legislation in relation to the Data Processing Services [the Head Provider is the Data Controller and the Sub-Contractor is the Data Processor] [the [Co-ordinating] Commissioner is the Data Controller, the Head Provider is the Data Processor and the Sub-Contractor is the Sub-processor]. The Sub-Contractor must process the Processor Data only to the extent necessary to perform the Data Processing Services and only in accordance with written instructions set out in this Schedule, including instructions regarding transfers of Personal Data outside the EU or to an international organisation unless such transfer is required by Law, in which case the Sub-Contractor must inform the Head Provider [and the Co-ordinating Commissioner] of that requirement before processing takes place, unless this is prohibited by Law on the grounds of public interest.
   2. The Sub-Contractor must notify the Head Provider [and the Co-ordinating Commissioner] immediately if it considers that carrying out any of the Head Provider’s instructions would infringe Data Protection Legislation.
   3. The Sub-Contractor must provide all reasonable assistance to the Head Provider [and/or the Co-ordinating Commissioner] in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Head Provider [and/or the Co-ordinating Commissioner] , include:
      1. a systematic description of the envisaged processing operations and the purpose of the processing;
      2. an assessment of the necessity and proportionality of the processing operations in relation to the Data Processing Services;
      3. an assessment of the risks to the rights and freedoms of Data Subjects; and
      4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
   4. The Sub-Contractor must, in relation to any Personal Data processed in connection with its obligations under this Schedule 6F:
      1. process that Personal Data only in accordance with Annex A, unless the Sub-Contractor is required to do otherwise by Law. If it is so required the Sub-Contractor must promptly notify the Head Provider [and the Co-ordinating Commissioner] before processing the Personal Data unless prohibited by Law;
      2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Head Provider as appropriate to protect against a Data Loss Event having taken account of the:
         1. nature of the data to be protected;
         2. harm that might result from a Data Loss Event;
         3. state of technological development; and
         4. cost of implementing any measures;
      3. ensure that:
         1. when delivering the Data Processing Services the Sub-Contractor’s Staff only process Personal Data in accordance with this Schedule 6F (and in particular Annex A);
         2. it takes all reasonable steps to ensure the reliability and integrity of any Sub-Contractor’s Staff who have access to the Personal Data and ensure that they:
            1. are aware of and comply with the Sub-Contractor’s duties under this paragraph;
            2. are subject to appropriate confidentiality undertakings with the Sub-Contractor and any [further] Sub-processor;
            3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Head Provider or as otherwise permitted by this Sub-Contract;
            4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
            5. are aware of and trained in the policies and procedures identified in GC21.11 (*Patient Confidentiality, Data Protection, Freedom of Information and Transparency*) of the NHS Standard Contract.
      4. not transfer Personal Data outside of the EU unless the prior written consent of the Head Provider [and the Co-ordinating Commissioner] has been obtained and the following conditions are fulfilled:
         1. the Head Provider or the Sub-Contractor has provided appropriate safeguards in relation to the transfer as determined by the Head Provider [and the Co-ordinating Commissioner];
         2. the Data Subject has enforceable rights and effective legal remedies;
         3. the Sub-Contractor complies with its obligations under Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Head Provider and the Commissioners in meeting their obligations); and
         4. the Sub-Contractor complies with any reasonable instructions notified to it in advance by the Head Provider with respect to the processing of the Personal Data;
      5. at the written direction of the Head Provider, delete or return Personal Data (and any copies of it) to the Head Provider [or the Co-ordinating Commissioner, as appropriate] on termination of the Data Processing Services and certify to the Head Provider [and the Co-ordinating Commissioner] that it has done so within five Operational Days of any such instructions being issued, unless the Sub-Contractor is required by Law to retain the Personal Data;
      6. if the Sub-Contractor is required by any Law or Regulatory or Supervisory Body to retain any Processor Data that it would otherwise be required to destroy under this paragraph 2.4, notify the Head Provider [and the Co-ordinating Commissioner] in writing of that retention giving details of the Processor Data that it must retain and the reasons for its retention; and
      7. co-operate fully with the Head Provider [and the Co-ordinating Commissioner] during any handover arising from the cessation of any part of the Data Processing Services, and if the Head Provider directs the Sub-Contractor to migrate Processor Data to the Head Provider, or to a Commissioner or to a third party, provide all reasonable assistance with ensuring safe migration including ensuring the integrity of Processor Data and the nomination of a named point of contact for the Head Provider [and the Co-ordinating Commissioner].
   5. Subject to paragraph 2.6, the Sub-Contractor must notify the Head Provider [and the Co-ordinating Commissioner] immediately if, in relation any Personal Data processed in connection with its obligations under this Schedule 6F, it:
      1. receives a Data Subject Access Request (or purported Data Subject Access Request);
      2. receives a request to rectify, block or erase any Personal Data;
      3. receives any other request, complaint or communication relating to obligations under Data Protection Legislation owed by the Sub-Contractor, the Head Provider or any Commissioner;
      4. receives any communication from the Information Commissioner or any other Regulatory or Supervisory Body (including any communication concerned with the systems on which Personal Data is processed under this Schedule 6F);
      5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
      6. becomes aware of or reasonably suspects a Data Loss Event; or
      7. becomes aware of or reasonably suspects that it has in any way caused the Head Provider or any Commissioner to breach Data Protection Legislation.
   6. The Sub-Contractor’s obligation to notify under paragraph 2.5 includes the provision of further information to the Head Provider [and the Co-ordinating Commissioner] in phases, as details become available.
   7. The Sub-Contractor must provide whatever co-operation the Head Provider [and/or the Co-ordinating Commissioner] reasonably requires to remedy any issue notified to the Head Provider [and the Co-ordinating Commissioner] under paragraphs 2.5 and 2.6 as soon as reasonably practicable.
   8. Taking into account the nature of the processing, the Sub-Contractor must provide the Head Provider [and/or the Co-ordinating Commissioner] with full assistance in relation to either Party's (or any Commissioner’s) obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 2.5 (and insofar as possible within the timescales reasonably required by the Head Provider [and/or the Co-ordinating Commissioner]) including by promptly providing:
      1. the Head Provider [and the Co-ordinating Commissioner] with full details and copies of the complaint, communication or request;
      2. such assistance as is reasonably requested by the Head Provider [and/or the Co-ordinating Commissioner] to enable the Head Provider and/or the Co-ordinating Commissioner to comply with a Data Subject Access Request within the relevant timescales set out in Data Protection Legislation;
      3. assistance as requested by the Head Provider [and/or the Co-ordinating Commissioner] following any Data Loss Event;
      4. assistance as requested by the Head Provider [and/or the Co-ordinating Commissioner] with respect to any request from the Information Commissioner’s Office, or any consultation by the Head Provider or the Co-ordinating Commissioner with the Information Commissioner's Office.
   9. Without prejudice to the generality of GC15 *(Governance, Transaction Records and Audit)* of the NHS Standard Contract,the Sub-Contractor must allow for audits of its delivery of the Data Processing Services by the Head Provider, the Co-ordinating Commissioner or either’s designated auditor.
   10. For the avoidance of doubt the provisions of GC12 *(Assignment and Sub-contracting)* of the NHS Standard Contract and Sub-Contract General Conditions 3.20 – 3.22 apply to the delivery of any Data Processing Services.
   11. Without prejudice to GC12, before allowing any Sub-processor to process any Personal Data related to this Schedule 6F, the Sub-Contractor must:
       1. notify the Head Provider [(and if the Head Provider is a Data Processor regarding the Data Processing Services the relevant Data Controller)] in writing of the intended Sub-processor and processing;
       2. obtain the written consent of the Head Provider [(and if the Head Provider is a Data Processor regarding the Data Processing Services the relevant Data Controller)];
       3. carry out appropriate due diligence of the Sub-processor and ensure this is documented;
       4. enter into a binding written agreement with the Sub-processor which as far as practicable includes equivalent terms to those set out in this Schedule 6F and in any event includes the requirements set out at GC 21.15.2 of the NHS Standard Contract; and
       5. provide the Head Provider [(and if the Head Provider is a Data Processor regarding the Data Processing Services the relevant Data Controller)] with such information regarding the Sub-processor as the Head Provider [(and if the Head Provider is also a Data Processor regarding the Data Processing Services the relevant Data Controller)] may reasonably require.
   12. The Sub-Contractor must create and maintain a record of all categories of data processing activities carried out under this Schedule 6F, containing:
       1. the categories of processing carried out under this Schedule 6F;
       2. where applicable, transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where relevant, the documentation of suitable safeguards;
       3. a general description of the Protective Measures taken to ensure the security and integrity of the Personal Data processed under this Schedule 6F; and
       4. a log recording the processing of the Processor Data by or on behalf of the Sub-Contractor comprising, as a minimum, details of the Processor Data concerned, how the Processor Data was processed, when the Processor Data was processed and the identity of any individual carrying out the processing.
   13. The Sub-Contractor warrants and undertakes that it will deliver the Data Processing Services in accordance with all Data Protection Legislation and this Sub-Contract and in particular that it has in place Protective Measures that are sufficient to ensure that the delivery of the Data Processing Services complies with Data Protection Legislation and ensures that the rights of Data Subjects are protected.
   14. The Sub-Contractor must comply at all times with obligations equivalent to those imposed on the Head Provider [(and/or if the Head Provider is a Data Processor regarding the Data Processing Services those obligations imposed on the relevant Data Controller)] by virtue of Seventh Data Protection Principle for so long as the DPA 1998 remains in force and after that time with those set out at Article 32 of the GDPR and equivalent provisions implemented into Law.
   15. The Sub-Contractor must assist the Head Provider and the Commissioners in ensuring compliance with the obligations set out at Article 32 to 36 of the GDPR and equivalent provisions implemented into Law, taking into account the nature of processing and the information available to the Sub-Contractor.
   16. The Sub-Contractor must take prompt and proper remedial action regarding any Data Loss Event.
   17. The Sub-Contractor must assist the Head Provider and the Commissioners by taking appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Head Provider’s and the Commissioners’ obligations to respond to requests for exercising rights granted to individuals by Data Protection Legislation.

**Annex A**

**Data Processing Services**

**Processing, Personal Data and Data Subjects**

1. The Sub-Contractor must comply with any further written instructions with respect to [sub-]processing by the Head Provider.
2. Any such further instructions shall be incorporated into this Annex.

| **Description** | **Details** |
| --- | --- |
| Subject matter of the [sub-]processing | *[This should be a high level, short description of what the processing is about i.e. its subject matter]* |
| Duration of the [sub-]processing | *[Clearly set out the duration of the processing including dates]* |
| Nature and purposes of the [sub-]processing | *[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| Categories of Data Subject | *[Examples include: Staff (including volunteers, agents, and temporary workers), Commissioners/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]* |
| Plan for return and destruction of the data once the [sub-]processing is complete UNLESS requirement under union or member state law to preserve that type of data | *[Describe how long the data will be retained for, how it be returned or destroyed]* |

**Annex B - Definitions**

In this Schedule 6F the following words and phrases have the following meanings:

**Data Processing Services** the data processing services described in Annex A to this Schedule 6F

**Data Protection Impact Assessment** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

**Data Loss Event** any event that results, or may result, in unauthorised processing of Personal Data held by the Sub-Contractor under this Sub-Contract or Personal Data for which the Sub-Contractor has responsibility under this Sub-Contract including without limitation actual or potential loss, destruction, corruption or inaccessibility of Personal Data, including any Personal Data Breach

**Data Subject Access Request** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access their Personal Data

**Processor Data** is any data processed by the Sub-Contractor in connection with the Data Processing Services

**Protective Measures** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures

SCHEDULE 7 – EMPLOYEES

Part A – Head Provider’s Employees

**Insert list of Transferring Employees or state Not Applicable**

*Guidance: This list should only be of employees transferring from the Head Provider and not from any other provider.*

PART B – Pensions

|  |
| --- |
| **Insert text (template drafting available via**  **[https://www.england.nhs.uk/nhs-standard-contract/2017-19-update-may/) or state Not Applicable](http://england.nhs.uk/nhs-standard-contract) )**  *Guidance: The referenced template pensions drafting has not been designed specifically for a Sub-Contract. Users of this Sub-Contract are therefore recommended to take legal advice on whether any changes should be made to the template pensions drafting.* |

SCHEDULE 8 – TIMEFRAMES AND NOTICE PERIODS

The following timeframes and notice periods as set out in the NHS Standard Contract Service Conditions, General Conditions and Definitions and Interpretation shall remain as specified in the NHS Standard Contract Service Conditions, General Conditions and Definitions and Interpretation and shall not be increased or decreased in according with Principle 7.

|  |  |
| --- | --- |
| **NHS Standard Contract** |  |
| **Service Conditions** |  |
| 10.5 | The timeframe for compliance with a Local Authority Education, Health and Care Needs Assessment shall remain 6 weeks. |
| 11.7 | The timeframe for issue of a Clinic Letter to the relevant GP shall remain no more than 10 days (7 days from 1 April 2018). |
| 29.13 | The timeframe to meet to discuss any Activity Query Notice shall remain within 10 Operational Days following its issue. |
| 29.15 | The timeframe to hold a Utilisation Meeting shall remain within 10 Operational Days following agreement to do so. |
| 29.16 | The timeframe to meet to discuss a Joint Activity Review shall remain within 10 Operational Days following agreement to conduct the review. |
| 29.18 | The timeframe to issue a joint notice to the Head Provider’s and Sub-Contractor’s Governing Body shall remain at or within 10 Operational Days following the Joint Activity Review if they fail to agree an Activity Management Plan.  The right to refer the matter to Dispute Resolution if the Parties have not agreed an Activity Management Plan shall remain 10 Operational Days from the date of the joint notice. |
| **General Conditions** |  |
| 5.2.4, 5.2.6, 5.2.8 | The timeframes for review of staffing requirements, reporting to the Head Provider and making the outcomes public shall remain as stated in the NHS Standard Contract. |
| 5.13 | This timeframe shall remain 3 months. |
| 8.3 | The deadline for deeming a Dispute is withdrawn shall remain 10 Operational Days. |
| 8.4 | The timeframe within which to hold a Review Meeting shall remain 5 Operational Days following the relevant notice. |
| 9.6 | The timeframe within which the Parties must meet to discuss a Contract Performance Notice shall remain 10 Operational Days following the date of the Contract Performance Notice. |
| 9.8.1 | The timeframe for the Joint Investigation shall remain no longer than 2 months. |
| 9.11 | The timeframe within which the Remedial Action Plan must be agreed shall remain 5 Operational Days of either the Contract Management Meeting or Review Meeting. |
| 9.15 | The timeframe within which the Parties must attend a Contract Management Meeting shall remain 20 Operational Days following the date of a Contract Performance Notice. |
| 9.16 | If a Remedial Action Plan has not been agreed following notification to the Governing Bodies, the right of the Head Provider to withhold further payments shall remain 10 Operational Days following the notification. |
| 9.20 | The timeframe to issue an Exception Report following failure to remedy the breach of a Remedial Action Plan shall remain 5 Operational Days. |
| 11.7 | The timeframe regarding continuing Indemnity Arrangements shall remain for a maximum of 21 years following expiry or termination. |
| 13.9 | The timeframe to meet to discuss a Variation Proposal and the Recipient’s Response shall remain 10 Operational Days from the date of the Recipient’s Response. |
| 14.2.1 | The timeframe for involvement of a senior person shall remain 10 Operational Days. |
| 14.2.2 | The timeframe for involvement of the chief executive etc. shall remain 5 Operational Days. |
| 14.4 | The timeframe for escalation of a Dispute shall remain 5 Operational Days. |
| 14.10 | The timeframe for serving a statement of case shall remain 5 Operational Days. |
| 14.11 | The timeframe for responding to the statement of case shall remain 5 Operational Days. |
| 17.10.7 | The six month rolling period shall remain a six month rolling period. |
| 18.2 | The rights of the Head Provider to recover additional costs shall remain in respect of a six month period. |
| 24.4, 24.5 | The timeframes of 6 months and 12 months following the Change in Control Notification shall remain. |
| 36.2.1 | The notice period for effective service shall remain 5 Operational Days. |
| **Definitions** |  |
| Negotiation Period | The timeframe shall remain 15 Operational Days. |
| Suspension Event | In sub-clause (iii) the timeframe shall remain as 12 months. |

SUB-CONTRACT SERVICE CONDITIONS

1. Subject to the interpretation provisions set out in Principles 3 and 7, the NHS Standard Contract Service Conditions shall apply to this Sub-Contract and shall be deemed to be incorporated into this Sub-Contract as if they were set out in full below except where:
   1. specified otherwise in this Part B of this Sub-Contract; or
   2. the NHS Standard Service Conditions only apply to specific service categories and those service categories are not ticked in the Services Categories table at Part A of this Sub-Contract.
2. The following Service Conditions shall not apply to this Sub-Contract:

SC6.2; 6.2A; 6.3; 17.4-17.6, 19.3, 19.4–19.6; 28.12; 29.3.1; 29.3.2; 29.6; 29.26; 36; 38.

*Guidance: if any further Service Conditions are not applicable to the Sub-Contracted Services, Condition 2 can be extended to include them.*

1. Where pursuant to Principle 23 the Sub-Contractor is required to follow the Head Provider’s Service User consent policy, Complaints Procedure, Death of a Service User Policy or any other plans, policies or documents of the Head Provider then the requirement in the relevant Service Condition on the Sub-Contractor to operate its own such plans, policies or documents shall not apply. Where Principle 23 applies, all references in the NHS Standard Contract to the Service User consent policy, Complaints Procedure, Death of a Service User Policy or any other plans, policies or documents shall be deemed to be a reference to such policy, procedure plan or document of the Head Provider.
2. Where a protocol has been agreed in respect of Principle 27, the relevant NHS Standard Service Conditions shall be construed in accordance with such protocol.
3. In addition to the NHS Standard Contract Service Conditions the following Sub-Contract Service Conditions shall apply or the NHS Standard Contract Service Conditions shall apply as amended.

Regulatory Requirements (SC2)

* 1. If the Sub-Contractor is not a public authority it will as applicable to this Sub-Contract comply with and respond to all National Standards and all Guidance including any guidance of any relevant Regulatory or Supervisory Body either where it has a legal obligation to so comply or respond or where the Head Provider has an obligation to comply with and/or respond to National Standards and Guidance.

Service Standards (SC3)

* 1. The provisions of SC3.2A or 3.2B (as applicable) shall also apply to this Sub-Contract if failure by the Sub-Contractor to comply with SC3.1 is directly attributable to or caused by an act or omission of the Commissioner.

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Commissioner Requested Services/Essential Services (SC5)

* 1. SC5.1 shall also apply to this Sub-Contract where any of the Sub-Contracted Services are designated as CRS by the Commissioner.

Choice, Referral and Booking (SC6)

* 1. The Sub-Contractor must provide all information as required by the Head Provider regarding relevant Sub-Contracted Services and appointment slots in such manner to enable the Head Provider to comply with its obligations under SC6.2 and SC6.3.
  2. SC6.6.2 shall be replaced with “The Sub-Contractor acknowledges the provisions of SC6.6.2 and shall not by any act or omission cause the Head Provider to be in breach of it.”
  3. The words “to this Contract” in SC6.6 shall be replaced with “to the Head Contract”.

Withholding and/or Discontinuation of Service (SC7)

* 1. The last sentence of SC7.4A, SC7.4B, SC7.4C or SC7.4D (as applicable) shall be deemed deleted for the purposes of this Sub-Contract.

Personalised Care Planning and Shared Decision-Making (SC10)

* 1. The Sub-Contractor shall be required to co-operate with requests relating to Education, Health and Care Needs Assessments under SC10.5 whether that request is made directly of the Sub-Contractor or indirectly via the Head Provider.

Service User Health Records (SC23)

* 1. The words “for whom that Commissioner is responsible” shall be deemed deleted from SC23.2.1 and 23.2.2 for the purposes of this Sub-Contract.

Information Requirements (SC28)

* 1. Where there is more than one Commissioner, the Sub-Contractor will provide information in such a way that each dataset that it provides under this Sub-Contract contains the ODS code and/or other appropriate identifiers for each relevant Commissioner.
  2. Information to be provided by the Sub-Contractor under SC28 and Schedule 6A (Reporting Requirements) must be provided to the Head Provider in aggregated form or disaggregated form as the Head Provider may direct.
  3. Any obligations to report to SUS are outside the terms of this Sub-Contract unless expressly stated otherwise in this Sub-Contract.
  4. The words “instruct the Commissioners to withhold or itself withhold (on behalf of all Commissioners)” in SC28.14.2 and SC28.15 shall be replaced with “withhold”.
  5. The paragraph after SC28.18.3 shall be deemed deleted for the purposes of this Sub-Contract.

Managing Activity and Referrals (SC29)

* 1. The Sub-Contractor must adhere to any Referral and treatment protocols that may be agreed between the Head Provider and the Commissioner and which are relevant to the Sub-Contracted Services and notified to the Sub-Contractor.
  2. The words “in relation to any Commissioner” shall be deemed deleted from SC29.8 and SC29.9 for the purposes of this Sub-Contract.
  3. The words “in respect of each Commissioner” shall be deemed deleted from SC29.11A, SC29.11B and SC29.11C for the purposes of this Sub-Contract.
  4. If the Sub-Contractor requests Prior Approval in accordance with a Prior Approval Scheme and the Head Provider or the Commissioner, as appropriate, fails to respond within the time period specified in the Prior Approval Scheme then Prior Approval will be deemed to have been given.

Emergency Preparedness, Resilience and Response (SC30)

* 1. SC30.5.2 and 30.8.1 will not apply if the Commissioner exercises its rights to insist that the Head Provider suspends the Sub-Contracted Services.

Duty of Candour (SC35)

* 1. Notwithstanding any other provision of this Sub-Contract, if an incident requiring reporting or a Notifiable Safety Incident occurs, the Sub-Contractor must inform the Head Provider within 3 Operational Days of the occurrence or immediately if a death or serious injury results and must keep the Head Provider up to date with all developments and subsequent actions the Sub-Contractor takes and will take all reasonable actions as directed by the Head Provider.

Payment Terms (SC36)

* 1. The Price shall be calculated in accordance with Schedule 3.
  2. Unless otherwise stated in Schedule 3 the Price:
     1. shall be payable with effect from the Service Commencement Date;
     2. shall remain fixed during the Contract Term; and
     3. is the entire price payable by the Head Provider to the Sub-Contractor in respect of the Sub-Contracted Services and includes, without limitation, any royalties, licence fees, supplies, all consumables and equipment used by the Sub-Contractor, travel costs, accommodation expenses and the cost of Staff.
  3. Unless stated otherwise in Schedule 3 or Schedule 4, the Sub-Contractor must invoice the Head Provider, within 10 days of the end of each month, the Price in respect of the Sub-Contracted 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.
  4. The Head Provider must pay each undisputed invoice received in accordance with Condition 5.23 of this Part B within 30 days of receipt of such invoice.
  5. To avoid any doubt, the Sub-Contractor will be entitled to be paid for Sub-Contracted Services delivered during the continuance of:
     1. any Significant Incident or Emergency, except as otherwise provided or agreed under SC30 (*Emergency Preparedness, Resilience and Response*) or this Sub-Contract; and
     2. any Event of Force Majeure, except as otherwise provided or agreed under GC 28 (*Force Majeure*).
  6. If the Sub-Contractor breaches any of the thresholds in respect of the Operational Standards, the National Quality Requirements or the Local Quality Requirements the Sub-Contractor must repay to the Head Provider or the Head Provider must deduct from payments due to the Sub-Contractor (as appropriate), the relevant sums as determined in accordance with Schedule 4A (*Operational Standards*) and/or Schedule 4B (*National Quality Requirements*) and/or Schedule 4C (*Local Quality Requirements*) (as appropriate) [but, in the case of Operational Standards and/or National Quality Requirements, only if and to the extent that the Head Provider incurs a corresponding deduction or obligation to repay under the Head Contract.]

*Note: depending on the identity of the Head Provider it may be appropriate to include the wording in square brackets in order to reflect the operation of SC36.37A*.

* 1. The Never Events shall apply to this Sub-Contract and to the provision of the Sub-Contracted Services. Where the words “Commissioner” and/or “Responsible Commissioner” are used in the Never Events Policy Framework they will be interpreted for the purposes of this Sub-Contract as Commissioner and/or Responsible Commissioner and not Head Provider.
  2. Where applicable, the Sub-Contractor must administer all statutory benefits to which the Service User is entitled and within a maximum of 24 Operational Days following receipt of an appropriate invoice the Head Provider must reimburse the Sub-Contractor any statutory benefits correctly administered.
  3. The Sub-Contractor must administer and collect all statutory charges which the Service User is liable to pay and which may lawfully be made in relation to the provision of the Sub-Contracted Services, and must account to whoever the Head Provider reasonably directs in respect of those charges.
  4. The Parties acknowledge the requirements and intent of the Overseas Visitor Charging Regulations and Overseas Visitor Charging Guidance, and accordingly:
     1. the Sub-Contractor must comply with all applicable Law and Guidance (including the Overseas Visitor Charging Regulations, the Overseas Visitor Charging Guidance and the Who Pays? Guidance) in relation to the identification of and collection of charges from Chargeable Overseas Visitors, including the reporting of unpaid NHS debts in respect of the Sub-Contracted Services provided to non-EEA national Chargeable Visitors to the Department of Health;
     2. if the Sub-Contractor has failed to take all reasonable steps to:
        1. identify a Chargeable Overseas Visitor; or
        2. recover charges from the Chargeable Overseas Visitor or other person liable to pay charges in respect of that Chargeable Overseas Visitor under the Overseas Visitor Charging Regulations,

the Head Provider will not be liable to make any payment to the Sub-Contractor in respect of any Sub-Contracted Services delivered to that Chargeable Overseas Visitor and where such a payment has been made the Sub-Contractor must refund it to the Head Provider;

* + 1. (subject to Sub-Contract Service Condition 5.30.2) the Head Provider must pay the Sub-Contractor, in accordance with all applicable Law and Guidance (including the Overseas Visitor Charging Regulations, Overseas Visitor Charging Guidance and Who Pays? Guidance), the appropriate contribution on account for all Sub-Contracted Services delivered by the Sub-Contractor in accordance with this Sub-Contract to any Chargeable Overseas Visitor in respect of whom the Commissioner is the Responsible Commissioner;
    2. the Sub-Contractor must refund to the Head Provider any such contribution on account if and to the extent that charges are collected from a Chargeable Overseas Visitor or other person liable to pay charges in respect of that Chargeable Overseas Visitor, in accordance with all applicable Law and Guidance (including Overseas Visitor Charging Regulations, Overseas Visitor Charging Guidance and the Who Pays? Guidance);
    3. the Sub-Contractor must make full use of existing mechanisms designed to increase the rates of recovery of the cost of the Sub-Contracted Services provided to overseas visitors insured by another EEA state, including the EEA reporting portal for EHIC and S2 activity; and
    4. the Head Provider must pay the Sub-Contractor, in accordance with all applicable Law and Guidance (including Overseas Visitor Charging Regulations, Overseas Visitor Charging Guidance and the Who Pays? Guidance), the appropriate sum for all Sub-Contracted Services delivered by the Sub-Contractor to any overseas visitor in respect of whom that Commissioner is the responsible commissioner and which have been reported through the EEA reporting portal.
  1. In its performance of this Sub-Contract the Sub-Contractor must not provide or offer to a Service User any clinical or medical services for which any charges would be payable by the Service User except in accordance with this Sub-Contract, the Law and/or Guidance.
  2. The Sub-Contractor must administer and pay all Patient Pocket Money to which a Service User is entitled to that Service User in accordance with Good Practice and the local arrangements that are in place and the Head Provider must reimburse the Sub-Contractor within 24 Operational Days following receipt of an appropriate invoice any Patient Pocket Money correctly administered and paid to the Service User.
  3. 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 all or any part of any payment calculated in accordance with this Sub-Contract the contesting Party must within 5 Operational Days of receipt by that Party of an invoice in accordance with this Sub-Contract, notify the other Party, setting out in reasonable detail the reasons for contesting that account or invoice (as applicable), and in particular identifying which elements are contested and which are not contested; and
     1. any uncontested amount must be paid in accordance with this Sub-Contract by the Party from whom it is due; and
     2. if the matter has not been resolved within 20 Operational Days of the date of notification under this Sub-Contract Service Condition 5.34, the contesting Party must refer the matter to Dispute Resolution;

and following the resolution of any Dispute referred to Dispute Resolution in accordance with this this Sub-Contract Service Condition 5.34, insofar as any amount shall be agreed or determined to be payable the Sub-Contractor must immediately issue an invoice or credit note (as appropriate) for such amount. The Sub-Contractor must make any payment due to the Head Provider immediately together with interest calculated in accordance with this Sub-Contract Service Condition 5.35. For the purposes of Sub-Contract Service Condition 5.35 the date the amount was due will be the date it would have been due had the amount not been disputed.

* 1. Subject to any express provision of this Sub-Contract to the contrary (including without limitation the Withholding and Retention of Payment Provisions), each Party will be entitled, in addition to any other right or remedy, to receive Interest on any payment not made from the day after the date on which payment was due up to and including the date of payment.
  2. Whenever any sum is due from one Party to another as a consequence of Dispute Resolution or otherwise, the Party due to be paid that sum may deduct it from any amount that it is due to pay the other, provided that it has given 5 Operational Days’ notice of its intention to do so.
  3. The Parties must comply with Law and Guidance (including Who Pays? Guidance and Invoice Validation Guidance) in respect of the use of data in the preparation and validation of invoices.
  4. [Notwithstanding Sub-Contract Service Condition 2, the Sub-Contractor acknowledges the provisions of SC36.50 and, in the event that notice is served on the Head Provider pursuant to those provisions (and provided that such notice has been communicated to the Sub-Contractor and the Head Provider had used all reasonable endeavours to discuss any relevant existing supply agreements of the Sub-Contractor with its Co-ordinating Commissioner), the Sub-Contractor will not be entitled to payment for any item specified in that notice which is purchased and used in breach of such a notice.]

*Note: relevant to Specialised Services only, so may be deleted and replaced with ‘Not used’ where not appropriate.*

* 1. The Sub-Contractor (if an NHS Trust or an NHS Foundation Trust) must use all reasonable endeavours to co-operate with NHS Improvement and NHS Supply Chain to implement in full the requirements of the Nationally Contracted Products Programme.
  2. [With effect from 1 October 2018, where, in the course of providing the Sub-Contracted Services, the Sub-Contractor or any Third Party Sub-Contractor requires a sample taken from a Service User to be subject to a genomic laboratory test listed in the National Genomic Test Directory, that sample must be submitted to the appropriate Genomic Laboratory Hub commissioned by NHS England to arrange and/or perform the relevant test. Each submission of a sample must be made in accordance with the criteria for ordering tests set out in the National Genomic Test Directory.]

*Note: relevant to A+E, A, CR, CS, D, MH, MHSS, R only, so may be deleted and replaced with ‘Not used’ where not appropriate*

Local Quality Requirements and Quality Incentive Scheme (SC37)

* 1. In agreeing the Local Quality Requirements and the Quality Incentive Scheme Indicators before the start of each Contract Year the Parties will ensure that they reflect variations to the Head Contract as relevant to the Sub-Contracted Services.
  2. The text in brackets at the end of SC37.3 shall be deemed deleted for the purposes of this Sub-Contract.

SUB-CONTRACT GENERAL CONDITIONS

1. Subject to the interpretation provisions set out in Principles 3 and 7 and except where specified in this Part C of this Sub-Contract, the NHS Standard Contract General Conditions shall apply to this Sub-Contract and shall be deemed to be incorporated into this Sub-Contract as if they were set out in full below.
2. The following NHS Standard Contract General Conditions shall not apply to this Sub-Contract:

GC1.1; 1.2; 3; 9.26, 10.1; 10.2; 12.2-12.5; 12.10; 13.2; 13.11; 14.4.1; 14.5; 15.8.3; 15.8.7; 15.13; 17.6; 17.9.

1. In addition to the NHS Standard Contract General Conditions the following Sub-Contract General Conditions shall apply or the NHS Standard Contract General Conditions shall apply as amended.

Definitions and Interpretations (GC1)

* 1. If there is any conflict or inconsistency between the provisions of this Sub-Contract and the NHS Standard Contract the provisions of this Sub-Contract shall take priority over the provisions of the NHS Standard Contract.
  2. If there is any conflict or inconsistency between the provisions of this Sub-Contract that conflict or inconsistency must be resolved according to the following order of priority:
     1. the Sub-Contract Principles;
     2. the Sub-Contract General Conditions;
     3. the Sub-Contract Service Conditions;
     4. the Particulars and Schedules; and
     5. the Sub-Contract Definitions.

Service Commencement (GC3)

* 1. Unless otherwise varied by Principle 28, the Sub-Contractor will begin delivery of the Sub-Contracted Services on the day after the date on which the Head Provider confirms in writing to the Sub-Contractor that delivery of the relevant services are to commence under the Head Contract provided always that such date shall not be before the Expected Service Commencement Date.

Staff (GC5)

* 1. The provisions of GC5.13 of the NHS Standard Contract shall also apply to this Sub-Contract if the Head Provider notifies the Sub-Contractor that the Commissioner intends to tender or retender any of the Sub-Contracted Services.
  2. Any indemnity given to the Head Provider by the Sub-Contractor pursuant to GC5.11, 5.12 and 5.14 of the NHS Standard Contract (as incorporated into this Sub-Contract) shall also apply in favour of the Commissioner and the Sub-Contractor shall be deemed to have provided an indemnity in identical terms to the Commissioner.
  3. Sub-Contract General Conditions 3.7 to 3.11 shall only apply where any employees of the Head Provider transfer to the Sub-Contractor or a Third Party Sub-Contractor under TUPE on or before the Service Commencement Date.
  4. The Transferring Employees will transfer to the Sub-Contractor or any Third Party Sub-Contractor under TUPE and/or COSOP on the Service Commencement Date and Sub-Contract General Conditions 3.8 – 3.11 shall apply.
  5. 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.
  6. 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 Third Party Subcontractor.
  7. 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 Sub-Contract Service Condition 3.11 prior to the Service Commencement Date save for where such act or omission results from complying with the instructions of the Sub-Contractor or Third Party Sub-contractor and save for where the Sub-Contractor or Third Party Sub-contractor fail to comply with its obligations under regulation 13 of TUPE.
  8. 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 Third Party Sub-contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, the Sub-Contractor or Third Party Sub-contractor must employ that person in accordance with its obligations and duties under TUPE and shall 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.
  9. Sub-Contract General Conditions 3.13 to 3.17 shall 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.
  10. 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 3.13 - 3.17 shall apply.
  11. 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.
  12. 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.
  13. 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.
  14. 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.

Contract Management (GC9)

* 1. The words “Co-ordinating Commissioner may recommend the Commissioners to withhold or itself withhold (on behalf of all Commissioners)” in GC 9.16 shall be replaced with “Head Provider may withhold”, and the words "instruct the Commissioners to withhold, or itself withhold (on behalf of all Commissioners)" in GC 9.21.1 shall be replaced with "withhold".
  2. The last sentence in GC 9.22, GC 9.24 and GC 9.25 shall be deemed deleted for the purposes of this Sub-Contract.

Assignment and Sub-Contracting (GC12)

* 1. The approval of any sub-contracting arrangement shall be subject to:
     1. the approval of the Commissioner; and
     2. the approval by the Head Provider of the terms of the Third Party Sub-Contract which must be consistent with the terms of this Sub-Contract. The Sub-Contractor confirms and agrees with the Head Provider that the terms of any Third Party Sub-Contract will ensure that the Head Provider can meet all its obligations under the Head Contract to the extent they relate to the Sub-Contracted Services including without limitation those under GC 24.
  2. In relation to any proposed Third Party Sub-Contract the Sub-Contractor must carry out such actions and impose such obligations on any Third Party Sub-Contractor as may be required to enable the Head Provider to comply with its obligations under the Head Contract.
  3. Otherwise than as part of a statutory reorganisation where the Head Provider is a public body, or as part of an intra-group reorganisation where the Head Provider is part of a group of companies, the Head Provider may not transfer or assign all or any of its rights or obligations under this Sub-Contract except with the prior written approval of the Sub-Contractor unless this Sub-Contract expressly states otherwise.

Variations (GC13)

* 1. The Sub-Contractor acknowledges that the Head Contract cannot be varied except in accordance with GC13. The Sub-Contractor agrees that:
     1. the Sub-Contractor will not seek to vary any element of this Sub-Contract where the corresponding provision in the Head Contract cannot be varied unless the variation is essential to the delivery of the Sub-Contracted Services;
     2. in proposing a Variation or responding to a Variation proposal it must have regard to the Head Provider’s position under the Head Contract;
     3. should any variation be proposed under the Head Contract and that variation impacts on the Sub-Contracted Service the Sub-Contractor must:
        1. provide the Head Provider with all information the Head Provider reasonably requires within the timescales requested by the Head Provider to enable the Head Provider to respond to any variation proposed by the Commissioner; and
        2. use all reasonable endeavours to ensure the Head Provider is able to fulfil its obligations under GC13 of the Head Contract to the extent any proposed variation relates to the Sub-Contracted Services.
  2. If a proposed Variation would or might have the effect of changing the Price the Head Provider and the Sub-Contractor must seek to agree that change in accordance with the principles underpinning the price agreed as at the Effective Date.
  3. The provisions of GC13.12 of the NHS Standard Contract shall also apply to this Sub-Contract if a proposed Variation could have a cost implication for the Commissioner.

Dispute Resolution (GC14)

* 1. If any Dispute arises under this Sub-Contract and the same or a similar Dispute arises under the Head Contract, and/or if a Dispute arises under the Head Contract and that Dispute relates in any way to this Sub-Contract, the Sub-Contractor or the Sub-Contracted Services:
     1. the Sub-Contractor will, if requested by the Head Provider, negotiate with both the Commissioner and Head Provider and enter into mediation and/or expert determination with both the Commissioner and Head Provider
     2. the Sub-Contractor will provide any assistance reasonably required by the Head Provider in pursuance of a resolution of that Dispute or those Disputes;
     3. the Sub-Contractor agrees to be bound by the resolution agreed or determined under the Head Contract to the extent that it relates in any way to his Sub-Contract, the Sub-Contractor or the Sub-Contracted Services.

Suspension (GC16)

* 1. Where the NHS Standard Contract requires the Sub-Contractor to deliver to the Head Provider all materials, papers, documents and operating manuals owned by the Head Provider this shall be deemed to include any materials, papers, documents and operating manuals owned by the Commissioner and provided to the Sub-Contractor in respect of the Sub-Contracted Services.

Termination (GC17)

* 1. The Sub-Contractor may terminate this Sub-Contract with immediate effect by written notice to the Head Provider:
     1. subject to any express provision of this Sub-Contract to the contrary if at any time the aggregate undisputed amount due to the Sub-Contractor from the Head Provider exceeds the equivalent of 3 times the average monthly income to the Sub-Contractor under this Sub-Contract and full payment is not made within 20 Operational Days (or 40 Operational Days if the reason for non-payment is due to the failure of the Commissioner to pay the Head Provider under the Head Contract) of receipt of written notice from the Sub-Contractor referring to this Sub-Contract General Condition 3.28 and requiring payment to be made; or
     2. if the Head Provider is in persistent material breach of any of its obligations under this Sub-Contract so as to have a material and adverse effect on the ability of the Sub-Contractor to provide the Sub-Contracted Services, and the Head Provider fails to remedy that breach within 40 Operational Days of the Head Provider’s receipt of the Sub-Contractor’s written notice identifying the breach; or
     3. if the Head Provider breaches the terms of Sub-Contract General Condition 3.22; or
     4. any warranty given by the Head Provider under GC25.2 as it applies to this Sub-Contract is found to be materially untrue or misleading.
  2. In addition to the rights of the Head Provider under GC17 as incorporated into this Sub-Contract the Head Provider may terminate this Sub-Contract or any affected Sub-Contracted Service, with immediate effect, by written notice to the Sub-Contractor if:
     1. the Head Contract terminates in whole or part for any reason whatsoever; or
     2. the Head Contract expires and is not renewed for any reason whatsoever; or
     3. the Commissioner directs the Head Provider to remove or replace the Sub-Contractor or terminate this Sub-Contract or any affected Sub-Contracted Service in accordance with the Commissioner’s rights under the Head Contract.

Consequence of Expiry or Termination (GC18)

* 1. The provisions of GC18.2 of the NHS Standard Contract shall also apply to this Sub-Contract if the Commissioner procures any terminated Sub-Contracted Services from an alternative provider and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable by the Commissioner to the Head Provider for providing or procuring the provision of the same Sub-Contracted Service.
  2. Where the NHS Standard Contract requires the Sub-Contractor to return to the Head Provider materials, papers, documents and operating manuals owned by the Head Provider this shall be deemed to include any materials, papers, documents and operating manuals owned by the Commissioner and provided to the Sub-Contractor in respect of the Sub-Contracted Services.
  3. The words “to the relevant Commissioners” shall be deemed deleted from GC 18.8.2 for the purposes of this Sub-Contract.

Confidential Information of the Parties (GC20)

* 1. Notwithstanding GC20, the Head Provider shall be entitled to disclose information in its possession that relates to this Sub-Contract or its subject matter or any negotiations relating to it or the Sub-Contractor to the Commissioner or other third party as may be required under the Head Contract. The Sub-Contractor acknowledges the further rights of disclosure that the Commissioner or other third party has in relation to such information under the Head Contract.

Patient Confidentiality, Data Protection, Freedom of Information and Transparency (GC21)

* 1. Whether or not a Party or Third Party Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and the ICO Guidance on Data Controllers and Data Processors and any further Data Guidance from a Regulatory or Supervisory Body. The Parties acknowledge that a Party or Third Party Sub-Contractor may act as both a Data Controller and a Data Processor. The Parties have indicated in the Particulars whether they consider the Sub-Contractor to be a Data Processor or a Sub-processor for the purposes of this Contract.
  2. The provisions of GC 21.13 of the NHS Standard Contract shall also apply to this Sub-Contract if such information is required by the Commissioner.
  3. Where the Sub-Contractor, in the course of delivering the Sub-Contracted Services, acts a Data Processor or a Sub-processor on behalf of the Head Provider, the provisions of Schedule 6F (*Sub-Contractor Data Processing Agreement*) will apply.
  4. The Sub-Contractor acknowledges that the Head Provider may be and the Commissioner is subject to the requirement of the FOIA. The Sub-Contractor must assist and co-operate with the Head Provider to enable it to comply with its disclosure obligations under FOIA, if any, and to meet its obligations to the Commissioner under GC 21.18 of the Head Contract.
  5. GC 21.19 to GC21.22 of the NHS Standard Contract shall only apply to this Sub-Contract where one or both Parties are public bodies and thereby required as a matter of Law or Guidance to publish this Sub-Contract.

Intellectual Property (GC22)

* 1. The licence of Provider Deliverables granted by the Provider under GC22.2 of the NHS Standard Contract shall apply in favour of the Commissioners for the purposes set out in GC22.2, and to the Head Provider for the purposes of receiving the Sub-Contracted Services and performing its obligations under the Head Contract.
  2. GC22.3.2 shall 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.
  3. Principle 3.3.1 shall not apply to GC22.4, and accordingly the obligations on the Sub-Contractor under GC22.4 apply in favour of the Commissioners and not in favour of the Head Contractor.

Change in Control (GC24)

* 1. The Sub-Contractor must inform the Head Provider in writing on and in any event within 5 Operational Days of a Change in Control in the Sub-Contractor.

Third Party Rights (GC29)

* 1. Notwithstanding the provisions of GC29.1 of the NHS Standard Contract, the Commissioner shall be entitled to enforce or enjoy the benefit of this Sub-Contract to the extent applicable to the Commissioner and for the avoidance of doubt any third party rights of the Commissioner shall include all rights granted under the Head Contract to the Commissioner to the extent they are relevant to the Sub-Contracted Services.
  2. Should the Head Contract be suspended for any reason and the Commissioner determines at its absolute discretion that the Sub-Contractor should continue to provide the Sub-Contracted Services, the Commissioner shall be entitled to step into the role of the Head Provider under this Sub-Contract until such time as the suspension of the Head Contract ceases, the Head Contract is terminated or the Commissioner requests the suspension of the Sub-Contracted Services.
  3. Should the Head Contract be terminated for any reason and the Commissioner wishes to enter into a contract directly with the Sub-Contractor, the Sub-Contractor must use all reasonable endeavours to enter into such contract with the Commissioner on terms substantially the same as the terms set out in this Sub-Contract promptly following termination of the Head Contract.

**SUB-CONTRACT DEFINITIONS**

1. Subject to the interpretation provisions set out in Principle 3, defined terms in this Sub-Contract (including for the avoidance of doubt the defined terms in the NHS Standard Contract) shall have the same meaning as in the NHS Standard Contract unless otherwise specified below or the context requires otherwise.
2. The following words and phrases have the following meaning for the purposes of this Sub-Contract:

|  |  |
| --- | --- |
| Activity Management Plan | shall have the meaning set out in the NHS Standard Contract but the words “in relation to the relevant Commissioners” in paragraph (i) shall be deemed deleted for the purposes of this Sub-Contract |
| Actual Annual Value | for the relevant Contract Year the aggregate of all payments made to the Sub-Contractor under this Sub-Contract in respect of the Sub-Contracted Services delivered in that Contract Year (excluding payments in relation to any Local Incentive Scheme and after any deductions, withholdings or set-off) |
| Actual Monthly Value | for the relevant month the aggregate of all payments made to the Sub-Contractor under this Sub-Contract in respect of the Sub-Contracted Services delivered in that month (excluding payments in relation to any Local Incentive Scheme but before any deductions, withholdings or set-off) |
| Actual Quarterly Value | for the relevant Quarter the aggregate of all payments made to the Sub-Contractor under this Sub-Contract in respect of the Sub-Contracted Services delivered in that Quarter (excluding payments in relation to any Local Incentive Scheme but before any deductions, withholdings or set-off) |
| Authorised Person | the Head Provider, the Commissioner or its authorised representatives, any body or person concerned with the treatment or care of a Service User approved by the Commissioner and/or the Head Provider and (for the purposes permitted by Law) any authorised representative of any Regulatory or Supervisory Body |
| Commissioner | the entity identified as such in the Summary of Sub-Contract in the Sub-Contract Particulars and Schedules and where there is more than one commissioner each reference to commissioner shall mean each and every commissioner or a commissioner or the co-ordinating commissioner as the context shall require |
| Derogation | agreement by NHS England that specified provisions within a National Service Specification do not apply on a time-limited basis, pending action being taken by the Head Provider and/or the Sub-Contractor to ensure that, from an agreed date, it can meet all of the requirements of the National Service Specification on an ongoing basis |
| Expiry Date | the date of expiry of this Sub-Contract |
| General Condition or GC | any general condition as set out in the NHS Standard Contract |
| Head Contract | the contract entered into between the Head Provider and the Commissioner on the terms of the NHS Standard Contract |
| Head Provider | the Party identified as such in the Summary of Sub-Contract in the Sub-Contract Particulars and Schedules |
| Local Counter Fraud Specialist | the accredited local counter fraud specialist appointed by the Commissioner, the Head Provider or the Sub-Contractor (as appropriate) |
| Local Security Management Specialist | the accredited local security management specialist appointed by the Commissioner, the Head Provider or the Sub-Contractor (as appropriate) |
| Material Sub-Contract | shall have the same meaning as Third Party Sub-Contract |
| Material Sub-Contractor | shall have the same meaning as Third Party Sub-Contractor |
| National Quality Requirements | the national quality requirements set out in Schedule 4B (National Quality Requirements) of the NHS Standard Contract |
| Operational Standards | the operational standards set out in Schedule 4A (Operational Standards) of the NHS Standard Contract |
| Parties in Dispute | the Head Provider and the Sub-Contractor |
| Price | the price as set out in Schedule 3 |
| Prior Approval | the approval by the Commissioner of care or treatment, including diagnostics, to an individual Service User or a group of Service Users prior to referral or following initial assessment |
| Prior Approval Scheme | a scheme under which the Commissioner gives Prior Approval for treatments and services prior to referral or following initial assessment that may form part of the Sub-Contracted Services required by the Service User following referral |
| Quality Incentive Scheme Indicator | an indicator or measure of the Sub-Contractor’s performance in relation to a Local Incentive Scheme |
| Referral | the referral of any Service User to the Sub-Contractor which includes referral initiated by or on behalf of the Commissioner, the Head Provider, any Staff or the Service User |
| Service Commencement Date | the date the Sub-Contracted Services actually commence in accordance with the terms of this Sub-Contract |
| Service Condition or SC | any service condition as set out in the NHS Standard Contract |
| Service Specifications/ Sub-Contracted Service Specifications | each of the service specifications set out in Schedule 2A |
| Service User | a patient or service user for whom the Commissioner has statutory responsibility and who receives Sub-Contracted Services under this Sub-Contract |
| Service Variation | a Variation proposed by the Head Provider which relates to a Sub-Contracted Service and reflects: (i) the assessment by the Commissioner or Head Provider of Pathway needs, the availability of alternative providers and demand for any Sub-Contracted Services; and/or (ii) the joint assessment of two or more of the Sub-Contractor, the Head Provider and the Commissioner of the quality and clinical viability of the relevant Sub-Contracted Service and the Services Environment; and/or (iii) the likely impact of any transformational need and/or the reconfiguration of a care pathway that might affect the Sub-Contracted Service |
| Sub-Contract | this sub-contract entered into between the Head Provider and the Sub-Contractor, including the Service Conditions, General Conditions and Definitions and Interpretation of the NHS Standard Contract as incorporated into this sub-contract |
| Sub-Contract Definitions | the definitions as set out in this Part D of this Sub-Contract |
| Sub-Contract General Conditions | the general conditions as set out in Part C (Sub-Contract General Conditions) of this Sub-Contract |
| Sub-Contract Service Conditions | the service conditions as set out in Part B (Sub-Contract Service Conditions) of this Sub-Contract |
| Sub-Contracted Services | the services (and any part of parts of those services) described in each of, or, as the context admits, all of the Sub-Contracted Service Specifications and/or as otherwise provided or to be provided by the Sub-Contractor under and in accordance with this Sub-Contract |
| Sub-Contractor | the Party identified as such in the Summary of Sub-Contract in the Sub-Contract Particulars and Schedules |
| Subsequent Service Transfer Date | 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 | 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 |
| Suspension Event | shall have the meaning set out in the NHS Standard Contract and the following sub-clause (vii) shall be inserted into the definition – “the Commissioner suspending provision of the Services under the Head Contract and such suspension relates in whole or in part to the Sub-Contracted Services” |
| Third Party Sub-Contract | any sub-contract entered into by the Sub-Contractor or by any Third Party Sub-Contractor of any level for the purpose of the performance of any obligation on the part of the Sub-Contractor under this Sub-Contract |
| Third Party Sub-Contractor | any sub-contractor, whether of the Sub-Contractor itself or at any further level of sub-contracting under any Third Party Sub-Contract |
| Transferring Employees | 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 Schedule 7A entitled Head Provider Employees |

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