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NHS Template sub-contract for the provision of clinical services for use with the NHS Standard Contract 2023/24 (Shorter Form)

Version 1, March 2023

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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 2023/24 (full length and shorter form versions), which is available on the [NHS Standard Contract 2023/24 web page.](https://www.england.nhs.uk/nhs-standard-contract/)

*Guidance: This template sub-contract is a template only and should be populated by the Head Provider following receipt of appropriate legal advice.*

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**PART B: SUB-CONTRACT CONDITIONS**

**Service Conditions**

**General Conditions**

*Note: the Service Conditions and General Conditions are those of the NHS Standard Contract 2023/24 (Shorter Form), as published by NHS England (*[*https://www.england.nhs.uk/nhs-standard-contract/*](https://www.england.nhs.uk/nhs-standard-contract/)*). They are not replicated in this template Sub-Contract but they do form part of this Sub-Contract and the Parties should therefore be aware of the provisions relating to acceptance of the Service Conditions and General Conditions contained on the execution page of this Sub-Contract.*

**SUB-CONTRACT PARTICULARS and SCHEDULES**

**Sub-Contract title:** ……………………………………………………….

**Sub-Contract ref:** ……………………………………………………..….

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

1. the **Sub-Contract Particulars** **and Schedules,** as completed and agreed by the Parties and as may be varied from time to time in accordance with GC13 (*Variations)*;

2. the **Sub-Contract Conditions**; and

3. the **General Conditions** and **Service Conditions,** as published by NHS England from time to time at: <https://www.england.nhs.uk/nhs-standard-contract>

as further defined or applied by this Sub-Contract.

Each Party acknowledges and agrees:

(i) that it accepts and will be bound by the Service Conditions and General Conditions, as applied by this Sub-Contract, as published by NHS England at the date of this Sub-Contract, and

(ii) that it will accept and will be bound by the Service Conditions and General Conditions, as applied by this Sub-Contract, as from time to time updated, amended or replaced and published by NHS England pursuant to its powers under Regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (*Responsibilities and Standing Rules*) Regulations 2012, with effect from the date of such publication.

**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 Sub-Contractor's name*] | ……………………………………………………….  Title  ……………………………………………………….  Date |

**PART A: SUB-CONTRACT PARTICULARS AND SCHEDULES**

**CONTRACT SUMMARY**

|  |  |
| --- | --- |
| Sub-Contract Reference |  |
| Head Provider |  |
| Sub-Contractor |  |
| Effective Date  *See GC2.1* | [The date of this Sub-Contract] *OR [as specified here*] |
| Expected Service Commencement Date  *See GC3.1* |  |
| Longstop Date  *See GC4.1 and GC17.5* |  |
| Sub-Contract Term | [ ] years/months commencing on  [ ]  (subject to extension under Schedule 1C where applicable)  *Guidance: it is really important to ensure consistency of the Sub-Contract Term with the term of the Head Contract so check from when the Head Contract term runs. Insert the number of years or months in the square brackets and delete as appropriate. The Expiry Date therefore is the end of the term of this Sub-Contract.* |
| Head Provider option to extend Sub-Contract Term? | YES / NO (see Schedule 1C *which only applies if YES is indicated here*) |
| Notice Period *(for termination under GC17.2)*  Where notice given by the Head Provider:  Where notice given by the Sub-Contractor: | *Guidance: in respect of termination notice periods, the parties should take account of the relationship with the Head Contract: the notice period for the Head Provider should be shorter than the corresponding period in the Head Contract, to allow the Head Provider to respond to notice given by the Commissioner; conversely, the notice period for the Sub-Contractor should be longer than the corresponding Head Contract period, to allow the Head Provider to give notice if necessary under the Head Contract.* |
| Details of Head Contract | Commissioner(s): [ ]  Date: [ ]  Contract Term: [ ]  Services: [ ] |

**SUB-CONTRACT SERVICES**

| **Service Categories** | **Indicate all categories of service which the Sub-Contractor is commissioned to provide under this Sub-Contract.**  *Note that certain provisions of the Service Conditions and Annex A to the Service Conditions apply in respect of some service categories but not others* |
| --- | --- |
| Continuing Healthcare Services (including continuing care for children) (CHC) |  |
| Community Services (CS) |  |
| Diagnostic, Screening and/or Pathology Services (D) |  |
| End of Life Care Services (ELC) |  |
| Mental Health and Learning Disability Services (MH) |  |
| Patient Transport Services (non-emergency) (PT) |  |

**GOVERNANCE AND REGULATORY**

|  |  |
| --- | --- |
| Sub-Contractor’s Nominated Individual | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Information Governance Lead | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Caldicott Guardian | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Senior Information Risk Owner | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Accountable Emergency Officer | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Safeguarding Lead (children) / named professional for safeguarding children | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Safeguarding Lead (adults) / named professional for safeguarding adults | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Child Sexual Abuse and Exploitation Lead | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Mental Capacity and Liberty Protection Safeguards Lead | [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor’s Freedom To Speak Up Guardian(s) | [ ]  Email: [ ]  Tel: [ ] |

**CONTRACT MANAGEMENT**

| Addresses for service of Notices  *See GC36* | Head Provider: [ ]  Address: [ ]  Email: [ ]  Sub-Contractor: [ ]  Address: [ ]  Email: [ ] |
| --- | --- |
| Head Provider Representative(s)  *See GC10.2* | [ ]  Address: [ ]  Email: [ ]  Tel: [ ] |
| Sub-Contractor Representative  *See GC10.2* | [ ]  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-Contract Services. Schedules in the Head 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 before the Expected Service Commencement Date, each in a form satisfactory to the Head Provider:

| 1. Evidence of appropriate Indemnity Arrangements 2. [Evidence of CQC registration (where required)] 3. [Evidence of the Provider Licence (where required)] 4. [Add text locally] |
| --- |

**C. Extension of Contract Term**

1. The Head Provider may opt to extend the Sub-Contract Term by [ ] months/year(s)].
2. If the Head Provider wishes to exercise the option to extend the Sub-Contract Term, the Head Provider must give written notice to that effect to the Sub-Contractor no later than [*insert period*] before the original Expiry Date.
3. If the Head Provider gives notice to extend the Sub-Contract Term in accordance with paragraph 2 above, the Sub-Contract Term will be extended by the period specified in that notice and the Expiry Date will be deemed to be the date of expiry of that period.

[***OR*** – Not Used]

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

# SCHEDULE 2 – THE SERVICES

**A. Sub-Contract Service Specifications**

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

**B. Indicative Activity Plan**

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

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

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

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

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

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

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

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

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

# SCHEDULE 3 – PAYMENT

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

# SCHEDULE 4 – QUALITY REQUIREMENTS

*.*

**A. National Quality Requirements**

For the avoidance of doubt, the National Quality Requirements set out or referred to in the Head Contract will apply in respect of this Sub-Contract, according to the applicable service category (set out in Part A of this Sub-Contract), except as expressly varied in this Schedule 4A.

Where a National Quality Requirement in the Head Contract refers to submission of data via SUS, this will apply to this 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.*

**B. Local Quality Requirements**

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Quality Requirement | Threshold | Method of Measurement | Period over which the Requirement is to be achieved | Applicable Service Specification |
| Insert text and/or attach spreadsheet or documents in respect of one or more Sub-Contract Years or state Not Applicable |  |  |  |  |

# SCHEDULE 6 – CONTRACT MANAGEMENT, REPORTING AND INFORMATION REQUIREMENTS

1. **Reporting Requirements**

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

**SCHEDULE 6 – CONTRACT MANAGEMENT, REPORTING AND INFORMATION REQUIREMENTS**

**E. Sub-Contractor Data Processing Agreement**

|  |
| --- |
| **Where the Sub-Contractor is to act as a Data Processor, or Sub-processor, insert text locally (mandatory template drafting available via** [**https://www.england.nhs.uk/nhs-standard-contract/**](https://www.england.nhs.uk/nhs-standard-contract/)**).**  **If the Sub-Contractor is not to act as a Data Processor or Sub-processor, state Not Applicable** |

# SCHEDULE 7 – PENSIONS

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

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

# SCHEDULE 8 – TUPE

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

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

**PART B: SUB-CONTRACT CONDITIONS**

1. **Operation of this Sub-Contract**
   1. The Head Provider has entered into the Head Contract with the Commissioner(s), and under this Sub-Contract agrees with the Sub-Contractor that the Sub-Contractor will perform certain of the services under the Head Contract on the Head Provider's behalf. The rights and obligations of the Head Provider and the Sub-Contractor are set out in the Sub-Contract Particulars and Schedules and in the Service Conditions and General Conditions as amended or added to by these Sub-Contract Conditions.
2. **Interpretation**
   1. The Service Conditions and General Conditions in the Head Contract are incorporated into and form part of this Sub-Contract, as modified by this Sub-Contract. Any reference to any Schedule or the Particulars in the Service Conditions or General Conditions will, for the purposes of this Sub-Contract, be interpreted as referring to the corresponding element of the Sub-Contract Particulars and Schedules.
   2. Except as provided expressly in these Sub-Contract Conditions, terms as defined in the Head Contract will have the same meaning when used in this Sub-Contract.
   3. Definitions:

**Commissioner:** the commissioner which is party to the Head Contract.

**General Conditions** and **Service Conditions**: the General Conditions and Service Conditions published by NHS England for the NHS Standard Contract 2023/24 (Shorter Form).

**Head Contract**: the contract between the Commissioner and the Head Provider in the form of the NHS Standard Contract 2023/24 (Shorter Form).

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

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

| **Term:** | **meaning for this Sub-Contract:** |
| --- | --- |
| "Commissioner", "relevant Commissioner", "Responsible Commissioner" or "Co-ordinating Commissioner" | Head Provider |
| "this agreement", "this Contract" or "Contract" | (this) Sub-Contract |
| "Parties" | the Head Provider and Sub-Contractor |
| "Provider" | Sub-Contractor |
| "Services" | Sub-Contract Services |
| "Sub-Contract", "Sub-Contractor", etc. | Sub-Sub-Contract, Sub-Sub-Contractor, etc. |

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

|  |  |
| --- | --- |
| **Authorised Person** | the Head Provider is added to the list of Authorised Persons. |
| **Price** | the price as set out in Schedule 3. |
| **Referrer** | the Head Provider is added to the entities listed in this definition. |

1. **Commencement and duration**
   1. This Sub-Contract comes into force on the Effective Date and will continue in force until the Expiry Date unless:
      1. it is terminated earlier in accordance with GC17; or
      2. the Head Contract is terminated for any reason, in which case this Sub-Contract will (unless the Parties agree otherwise in writing) terminate immediately and automatically, without further action being necessary by the Parties, and subject to all the rights of the Parties accrued up to the date of termination; or
      3. the Commissioner, in accordance with the Head Contract, requires the removal of the Sub-Contractor, or the termination of this Sub-Contract or any Sub-Contract Service.
   2. Delivery of the Sub-Contract Services will begin on the Service Commencement Date (unless the Head Provider notifies a different date to accord with service delivery under the Head Contract, or the Parties agree otherwise).
2. **Co-operation**
   1. The Sub-Contractor will co-operate with the Head Provider and (where requested) directly with the Commissioner in order to ensure effective delivery of the Sub-Contract Services. Where the Sub-Contractor informs the Head Provider of issues which require action under the Head Contract or under any related sub-contract, the Head Provider will endeavour to resolve those issues with the Commissioner or with the relevant sub-contractor.
   2. The Sub-Contractor must deliver the Sub-Contract 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-Contract Services, including compliance by the Sub-Contractor with any positive or negative obligation.
3. **Payment**
   1. In consideration of the Sub-Contractor's provision of the Sub-Contract Services, the Head Provider will pay to the Sub-Contractor the Price as set out in Schedule 3.
   2. Unless stated otherwise in Schedule 3, the Sub-Contractor must invoice the Head Provider, within 10 days of the end of each month, the Price in respect of the Sub-Contract Services provided in the preceding month together. Each invoice must contain and be accompanied by such information and be addressed to such individual as the Head Provider may inform the Sub-Contractor from time to time.
   3. The Head Provider must pay each undisputed invoice received in accordance with clause 5.2 within 30 days of receipt. Payment is exclusive of any applicable VAT for which the Head Provider will be additionally liable to pay the Sub-Contractor upon receipt of a valid tax invoice at the prevailing rate in force from time to time.
   4. If a Party contests in good faith any part of any payment calculated in accordance with this Sub-Contract the contesting Party must promptly notify the other Party, and any uncontested amount must be paid in accordance with this Sub-Contract. If the matter has not been resolved within 20 Operational Days of such notification, the contesting Party must refer the matter to Dispute Resolution.
4. **Alterations to Service Conditions and General Conditions for the purposes of this Sub-Contract**
   1. The following provisions are deleted:

**Service Conditions (SC):** SC4.2, 6.3, 29.1 and 36.1 to 36.15

**General Conditions (GC):** GC1.1, 1.2, 3, 10.1, 13.2, and 21.9

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

* 1. In the following provisions, references to the "Commissioner", “Commissioners” or “Co-ordinating Commissioner” (as applicable):
     1. will continue to refer to the Commissioner:

**Service Conditions (SC):** SC5.1, 23.2, 24.3, 28.5, 30.3, and (where the term "Commissioner" is used in relation to its being the Responsible Commissioner) 36.18.4

**General Conditions (GC):** GC21.13

**Definitions:** "Best Practice", "Local Counter Fraud Specialist" and "Service User"

* + 1. will refer to the Commissioner and the Provider:

**General Conditions (GC):** 21.18, 22.4, 23.3

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

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

**Service Conditions:**

|  |  |
| --- | --- |
| SC23 (Service User Health Records) | The words “for whom that Commissioner is responsible” will be deemed deleted from SC23.2 the purposes of this Sub-Contract. |
| SC33.5 (Patient Safety) | The right to use information provided by the Sub-Contractor in any report made in connection with Serious Incidents is available to the Commissioner as well as to the Head Provider. |

**General Conditions:**

|  |  |
| --- | --- |
| GC16 (Suspension) | The Head Provider may also suspend the Sub-Contract Services where those services are suspended by the Commissioner under the Head Contract. |
| GC17.4.1 (Termination) | The notice period is extended from 20 Operational Days to 40 Operational Days where the Head Provider's failure to pay is due to the failure of the Commissioner to pay under the Head Contract and the words “Expected Annual Contract Value” will be read as the expected Price per Sub-Contract Year (if any). |
| GC20.3 (Confidential Information) | A new GC20.3.6 is added as follows: "or (where the disclosing Party is the Head Provider) to the extent that the Head Provider is required to disclose such information under the Head Contract". |
| GC21 (Patient Confidentiality, Data Protection, Freedom of Information and Transparency) | The provisions of GC21.13 of the Head Contract will also apply to this Sub-Contract if such information is required by the Commissioner.  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 GC21.18 of the Head Contract.  GC21.18 to GC21.22 will only apply to the Sub-Contract if either the Head Provider or the Sub-Contractor is a public body. |
| GC22.2 (Intellectual Property) | The licence of Sub-Contractor Deliverables granted by the Sub-Contractor under GC22.2 will apply in favour of the Commissioners for the purposes set out in GC22.2, and in favour of the Head Provider for the purposes of receiving the Sub-Contract Services and performing its obligations under the Head Contract.  GC22.3.2 will not apply to this Sub-Contract, notwithstanding that the Sub-Contractor may apply to NHS England's NHS Identity team for permission to use the NHS Identity where it does not otherwise have permission to use the NHS Identity. |
| GC29 (Third Party Rights) | The following text will be added after GC29.1.6: "and for the avoidance of doubt the Commissioner may enforce any provision of this Sub-Contract to the extent that it is expressed as applying in favour of the Commissioner". |

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

| **Provision** | **Timescale in the Service Conditions or General Conditions** | **Amended timescale for this Sub-Contract** |
| --- | --- | --- |
| SC30.2 | 5 Operational Days (for notification of the activation of the Sub-Contractor's Incident Response Plan, etc.) | 4 Operational Days |
| SC36.16 | 20 Operational Days (for the Head Provider to reimburse statutory benefits) | 24 Operational Days |
| GC11.4 and 11.5 | 5 Operational Days (for Sub-Contractor to provide information about Indemnity Arrangements) and 10 Operational Days (to provide evidence of post-termination cover) | 4 Operational Days and 8 Operational Days respectively |
| GC15.6 | 10 Operational Days (for notification to appoint an Auditor) | 8 Operational Days |
| GC17.5.4 | 20 Operational Days (for Sub-Contractor to remedy breach) | 16 Operational Days |
| GC21.18.3 and 21.18.4 | 2 Operational Days (for Sub-Contractor to provide a copy of or transfer an FOIA request) | 1 Operational Day in each case |
| GC21.18.6 | 5 Operational Days (for Sub-Contractor to provide relevant information) | 4 Operational Days |

**SERVICE CONDITIONS**

[*refer to the NHS Standard Contract 2023/24 (Shorter Form) Service Conditions*]

**GENERAL CONDITIONS**

[*refer to the NHS Standard Contract 2023/24 (Shorter Form) General Conditions*]

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