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NHS template sub-contract 2024/25 for the Provision of Clinical Services

For use with the NHS Standard
Contract 2024/25 (Full Length and
Shorter Form versions)

Guidance

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1. Introduction

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

- 1.1.1 Healthcare providers deliver NHS-funded clinical services under the terms of the NHS Standard Contract. It is becoming increasingly common for a provider (the “Head Provider”) to sub-contract delivery of certain clinical services to a third party (the “Sub-Contractor”). This sub-contracting can take many forms. It can be the sub-contracting of an entire service or of delivery of part of a care pathway. It can be an isolated sub-contracting by the Head Provider (or multiple Head Providers) to a single Sub-Contractor, or the sub-contracting of a range of services to multiple Sub-Contractors (each being awarded a separate sub-contract) under a prime contractor/lead provider (these terms are interchangeable) commissioning model.
- 1.1.2 The template sub-contract for use with the full length version of the NHS Standard Contract is referred to in this guidance as the **Full Length Sub-Contract**, and the template for use with the shorter form version of the NHS Standard Contract is referred to as the **Shorter Form Sub-Contract**. When referring here to both the Full Length Sub-Contract and the Shorter Form Sub-Contract, we use the term **Template Sub-Contract**.
- 1.1.3 The Template Sub-Contract has now been revised in line the 2024/25 edition of the [NHS Standard Contract](#). The Template Sub-Contract remains a non-mandatory model, but:
- (a) where Head Providers choose to use it when entering into new sub-contracts commencing 1 April 2024 onwards, they should use the 2024/25 version of the Template Sub-Contract; and
 - (b) where an existing sub-contract based on the Template Sub-Contract runs beyond 31 March 2024, Head Providers should update that existing sub-contract in parallel with entering into the National Variation with Commissioners to vary/re-state the terms of their NHS Standard Contract. This will ensure that the changes to the NHS Standard Contract and local content ‘flow down’ to sub-contract level.
- 1.1.4 The purpose of the Template Sub-Contract is to save time and effort for Head Providers and to reduce their risk, and that of Commissioners, by ensuring consistency of the Template Sub-Contract with the NHS Standard Contract.
- 1.1.5 Although use of the Template Sub-Contract is not mandatory, its use is recommended because it is consistent with the NHS Standard Contract, and its widespread use will result in a higher degree of contracting consistency and less negotiation for the parties involved, which will in turn lead to cost savings and risk reduction. **Note however that it is vital that the appropriate form of Template Sub-Contract is used: the Full Length Sub-Contract ONLY with the full length version of the NHS Standard Contract, and the Shorter Form Sub-Contract ONLY with the shorter form version of the NHS Standard Contract.**

1.1.6 Note that the Template Sub-Contract is designed for use when sub-contracting clinical services. When providers of clinical services are outsourcing provision of non-clinical support services such as catering, cleaning, portering etc., the [NHS terms and conditions for the procurement of non-clinical services](#) will be a more appropriate template.

1.2 The Template Sub-Contract in use

1.2.1 The following principles underpin the form of the Template Sub-Contract.

- (i) The structure reflects the structure of the NHS Standard Contract, ensuring consistency of approach and familiarity for users. This approach ensures ease of updating the Template Sub-Contract in line with the annually revised NHS Standard Contract.
- (ii) The Service Conditions and General Conditions of the NHS Standard Contract form part of the Template Sub-Contract, where appropriate. This approach ensures that obligations on the Head Provider under the NHS Standard Contract pass to the Sub-Contractor in the Template Sub-Contract minimising exposure of the Head Provider. Similarly where the Commissioner has rights under the NHS Standard Contract in relation to sub-contractors, these rights flow down into the Template Sub-Contract.
- (iii) Application of the NHS Standard Contract Service Conditions and General Conditions into the Template Sub-Contract is made by reference rather than by a full repetition. This approach ensures users can at a glance see where the Template Sub-Contract differs from the NHS Standard Contract.
- (iv) Users only have to complete the Sub-Contract Particulars and Schedules, as with the NHS Standard Contract.
- (v) The Template Sub-Contract is appropriate for use in a variety of contracting arrangements and in circumstances where there is one Sub-Contractor, or where there are a number of Sub-Contractors (each being awarded a separate sub-contract based on this template). The Template Sub-Contract is appropriate for use where there are multiple Commissioners under one Head Contract. A version of the Template Sub-Contract has also been published for use where there are multiple Head Contracts and a Sub-Contractor is being appointed to provide services which contribute to the delivery of several or all of the services (for example, when a number of Trusts collaborate to sub-contract services to a single Sub-Contractor).
- (vi) The Template Sub-Contract is suitable for use whatever the nature of the sub-contractor organisation: whether NHS, social enterprise, charity, private sector provider.

1.2.2 Differences between the Full Length Sub-Contract and the Shorter-Form Sub-Contract are shown in red below.

1.3 Scope of this Guidance

1.3.1 This Guidance contains:

- (i) an overview of the structure and use of the Template Sub-Contract;
- (ii) a practical overview of how to read the Sub-Contract Service Conditions and Sub-Contract General Conditions;
- (iii) detail on how timelines and notice periods are approached in the Template Sub-Contract; and
- (iv) an overview of how some of the key topics in the NHS Standard Contract are addressed in the Template Sub-Contract.

1.3.2 It is assumed that users of the Template Sub-Contract have a working knowledge of and are familiar with the NHS Standard Contract. This Guidance does not therefore describe each condition of the Template Sub-Contract. For further information on the NHS Standard Contract, please refer to the [Contract Technical Guidance](#).

1.3.3 Guidance notes on completion have been added to the Template Sub-Contract and should be deleted before it is issued to the Sub-Contractor.

1.3.4 Head Providers will be familiar with their rights and obligations as set out in the NHS Standard Contract as a service provider. However, the Head Provider is stepping into the shoes of the Commissioner for the purposes of the Template Sub-Contract. It is therefore advisable that the Head Provider reviews the relevant version of the NHS Standard Contract paying particular attention to how the rights and obligations of the Commissioner under that contract will be reflected in the Head Provider's rights and obligations in its Template Sub-Contract role as recipient of the sub-contracted service.

2. Structure and use of the Template Sub-Contract

2.1 Structure of the Template Sub-Contract

2.1.1 There are 4 parts to the Template Sub-Contract:

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

2.1.2 The structure of the Template Sub-Contract reflects that of the NHS Standard Contract.

2.2 Sub-Contract Particulars and Schedules

- 2.2.1 There is only one element of the Template Sub-Contract that requires local input: the Sub-Contract Particulars and Schedules.
- 2.2.2 The Sub-Contract Particulars and Schedules must be completed for each Template Sub-Contract on a case-by-case basis. It reflects the relevant version of the NHS Standard Contract (full length or shorter form) where appropriate in a sub-contract context. It is important to ensure consistency between the Particulars and Schedules of the Template Sub-Contract and those of the Head Contract.
- 2.2.3 The Head Provider must ensure that it has included the following in the Sub-Contract Schedules:
- (i) all the details and requirements set out in the Head Contract Schedules which relate to the services to be provided by the Sub-Contractor;
and
 - (ii) any additional requirements that apply to the Sub-Contractor (this is particularly relevant where there are multiple Sub-Contracts supporting the same NHS Standard Contract).

Some Schedules in the NHS Standard Contract are not required in the context of the Template Sub-Contract, and so have been omitted, unless doing so would disturb the numbering - in which case the words “Not Used” have been inserted against the Schedule in question. **In the Shorter Form Sub-Contract, as the numbering of the Schedules reflects that used in the shorter form NHS Standard Contract, some Schedules are intentionally omitted altogether.**

2.3 Varying any other elements of the Template Sub-Contract

- 2.3.1 Unlike the NHS Standard Contract, there are no parts of the Template Sub-Contract that are mandatory. Users may vary or delete the provisions of the Template Sub-Contract to suit local requirements. The Template Sub-Contract should not, however, be amended or varied unless essential to do so for the particular circumstances of a Sub-Contract. Each version of the Template Sub-Contract has been structured in such a manner so that all Service Conditions and General Conditions of the relevant version of the NHS Standard Contract apply where appropriate and have been varied or supplemented where essential to do so for sub-contracting arrangements. This ensures the rights and obligations of the Parties are back-to-back with the NHS Standard Contract, that the obligations on the Head Provider flow down into the Template Sub-Contract and the rights of Commissioners in relation to Sub-Contractors are also incorporated into the Template Sub-Contract.

2.4 Execution of the Template Sub-Contract

- 2.4.1 NHS bodies using the Template Sub-Contract are advised to review their Standing Orders, Standing Financial Instruments and Scheme of Delegation to ensure the method of signing and proposed signatory is consistent with their governing documents. It is also good practice to ensure the proposed signatory

of the other party has authority to do so. Depending on the required approach to execution, amendments may be required to the signature blocks.

2.4.2 Further guidance on signing the Template Sub-Contract and, particularly, the use and acceptance of electronic signatures, is provided in s21 of the [NHS Standard Contract Technical Guidance](#).

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

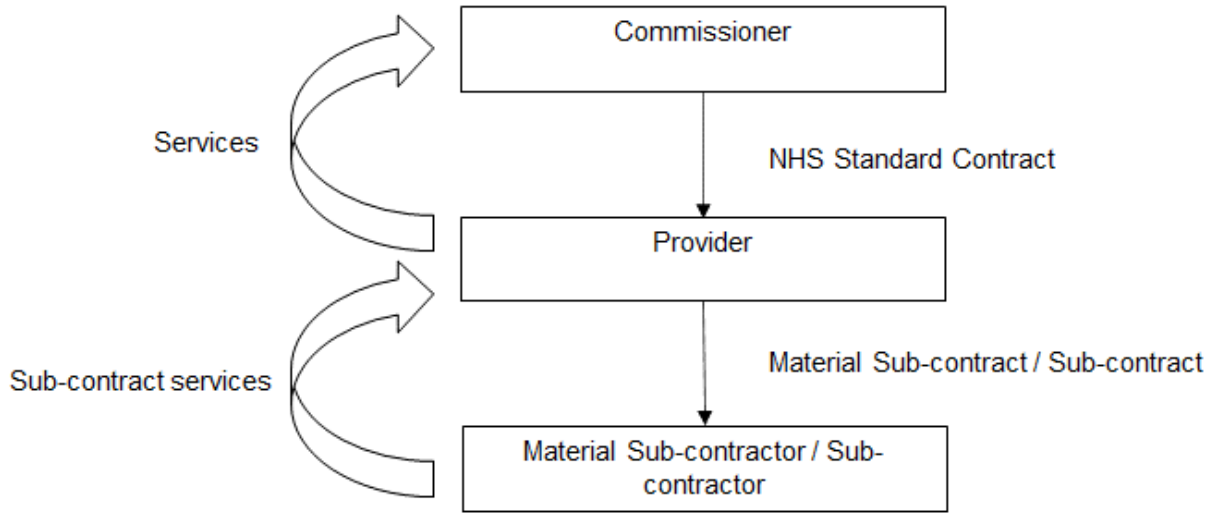
2.5.1 The Service Conditions, General Conditions and Definitions of the NHS Standard Contract apply in the Template Sub-Contract wherever possible. This ensures that the obligations on the Head Provider under the NHS Standard Contract flow down to and are incorporated into the Template Sub-Contract and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

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

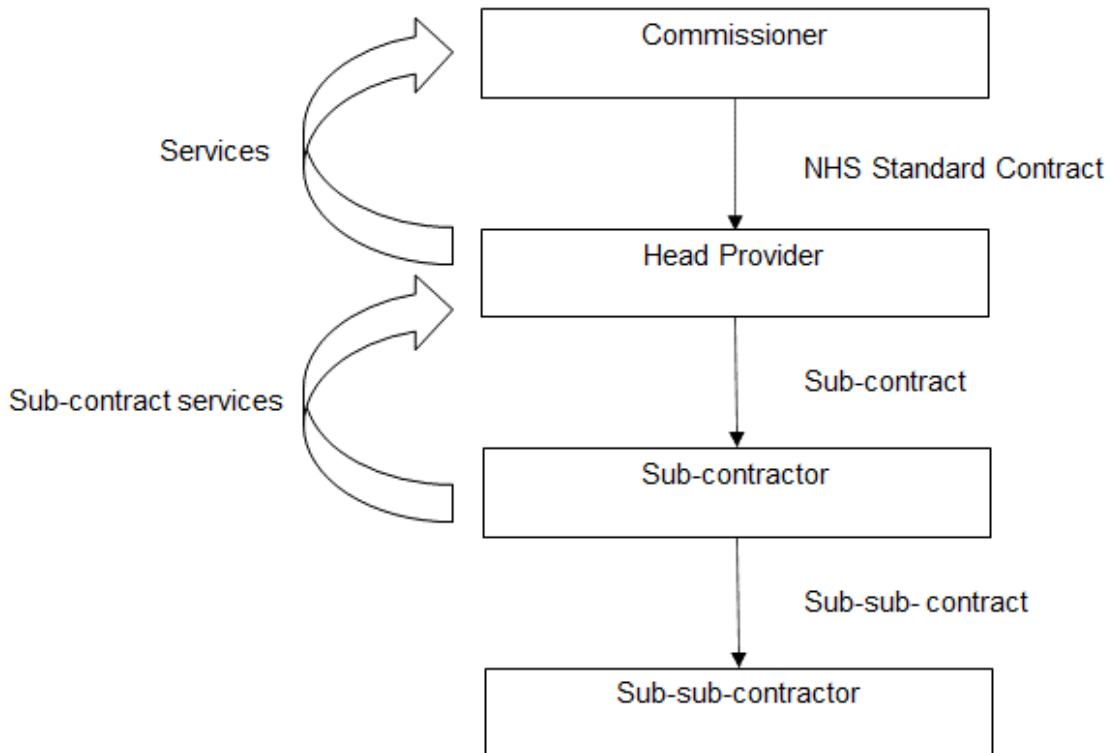
2.5.3 The way to read the Service Conditions, General Conditions and Definitions in the NHS Standard Contract is through word substitution. The core word substitutions used in the flow-down of terms are set out in Condition 2 of the Sub-Contract Conditions. They adopt a common sense approach. For example:

- (i) Wherever Commissioner is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Head Provider for the purpose of the Template Sub-Contract.
- (ii) Wherever Provider is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Sub-Contractor for the purpose of the Template Sub-Contract.
- (iii) Wherever Contract is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Sub-Contract for the purpose of the Template Sub-Contract.
- (iv) Wherever Services is used in the NHS Standard Contract Service Conditions and General Conditions this is read as Sub-Contract Services for the purpose of the Template Sub-Contract.

2.6 Terminology under the NHS Standard Contract is as follows:



2.7 Terminology under the Template Sub-Contract is as follows:



2.8 Worked example

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

SC1 – Compliance with the Law and the NHS Constitution

1.1 The Provider must provide the Services in accordance with the Fundamental Standards of Care and the Service Specifications. The Provider must perform all of its obligations under this Contract in accordance with:

1.1.1 the terms of this Contract;

1.1.2 the Law; and

1.1.3 Good Practice

and having regard to the CQC Statements. The Provider must, when requested by the Co-ordinating Commissioner, provide evidence of the development and updating of its clinical process and procedures to reflect Good Practice.

1.2 The Commissioners must perform all of their obligations under this Contract in accordance with:

1.2.1 the terms of this Contract;

1.2.2 the Law; and

1.2.3 Good Practice

and having regard to the CQC Statements.

1.3 The Parties must abide by and promote awareness of the NHS Constitution, including the rights and pledges set out in it. The Provider must ensure that all Sub-Contractors and all Staff abide by the NHS Constitution.

1.4 The Provider must:

1.4.1 (if it is an NHS Trust or an NHS Foundation Trust) comply with the Fit and Proper Person Test Framework; and

1.4.2 comply with the requirements of regulations 4 – 7 of the 2014 Regulations as appropriate to the Provider; and

1.4.3 (whether or not it is required to be CQC registered for the purpose of the Services) identify and give notice to the Coordinating Commissioner of the name, address and position in the Provider of the Nominated Individual.

1.5 In performing their respective obligations under this Contract, each Party must have due regard to the Armed Forces Covenant and the Armed Forces Duty Statutory Guidance.

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

- 1.1 The **Sub-Contractor** must provide the **Sub-Contract Services** in accordance with the Fundamental Standards of Care and the **Sub-Contract Service Specifications**. The **Sub-Contractor** must perform all of its obligations under this **Sub-Contract** in accordance with:
- 1.1.1 the terms of this **Sub-Contract**,
 - 1.1.2 the Law; and
 - 1.1.3 Good Practice,
- and having regard to the CQC Statements. The **Sub-Contractor** must, when requested by the **Head Provider**, provide evidence of the development and updating of its clinical process and procedures to reflect Good Practice.
- 1.2 The **Head Provider** must perform all of *its* obligations under this **Sub-Contract** in accordance with:
- 1.2.1 the terms of this **Sub-Contract**,
 - 1.2.2 the Law; and
 - 1.2.3 Good Practice
- and having regard to the CQC Statements.
- 1.3 The Parties must abide by and promote awareness of the NHS Constitution, including the rights and pledges set out in it. The **Sub-Contractor** must ensure that all **Sub-Sub-Contractors** and all Staff abide by the NHS Constitution.
- 1.4 The **Sub-Contractor** must:
- 1.4.1 (if it is an NHS Trust or an NHS Foundation Trust) comply with the Fit and Proper Person Test Framework; and
 - 1.4.2 comply with the requirements of regulations 4 – 7 of the 2014 Regulations as appropriate to the **Sub-Contractor**; and
 - 1.4.3 (whether or not it is required to be CQC registered for the purpose of the **Sub-Contract Services**) identify and give notice to the **Head Provider** of the name, address and position in the **Sub-Contractor** of the Nominated Individual.
- 1.5 In performing their respective obligations under this **Sub-Contract**, each Party must have due regard to the Armed Forces Covenant and the Armed Forces Duty Statutory Guidance.

2.9 Sub-Contract Conditions

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

- (i) while the basic rule is that definitions in the NHS Standard Contract apply to the Template Sub-Contract, a few of the definitions in the NHS Standard Contract need rewording in the context of the Template Sub-Contract and are therefore presented as new or amended: see Sub-Contract Condition 2;
- (ii) a few of the Service Conditions and General Conditions in the NHS Standard Contract do not apply as they are not relevant to the Template Sub-Contract: see Sub-Contract Condition 6.1. If the NHS Standard Contract Service Condition or General Condition applies, then it should be read using the rules of construction (i.e. word substitution) summarised above;
- (iii) a few of the Service Conditions and General Conditions in the NHS Standard Contract are extended to give rights to the Commissioner as well as, or instead of, the Head Provider: see Sub-Contract Condition 6.2;
- (iv) several of the Service Conditions and General Conditions are amended or have been added to: see Sub-Contract Condition 6.3. If there are any variations or additions, these should be read alongside the NHS Standard Contract Service Condition or General Condition. They can be easily identified as the row headings in Sub-Contract Condition 6.3 signpost the corresponding provision in the NHS Standard Contract; and
- (v) if the NHS Standard Contract Service Condition or General Condition does not apply to the Template Sub-Contract, check Condition 6.3 in any event to see if any Sub-Contract Service Condition or General Condition applies instead of the corresponding NHS Standard Contract Service Condition or General Condition.

3. Timeframes and notice periods

3.1 Approach to timeframes and notice periods – Template Sub-Contract

- 3.1.1 There are a number of obligations in the NHS Standard Contract that must be met within a specified number of days, weeks or months. If the same timeframes flowed down into the Template Sub-Contract, the Head Provider could be in breach of its Head Contract. A similar issue arises regarding notice periods.
- 3.1.2 For example, the Commissioner requests certain information under the NHS Standard Contract and the deadline for providing the information is 10 operational days. Two days after receipt of the request for information the Head Provider realises this is information that the Sub-Contractor holds. The Head Provider then requests the information from the Sub-Contractor. If the timeframes within the NHS Standard Contract applied, then the Sub-Contractor would have 10 operational days to provide the information to the Head Provider. If the Sub-Contractor does not provide the information until the 10th day, the Head Provider would then be delivering the information to the Commissioner on

the 12th day under the Head Contract and would therefore be in breach of the Head Contract.

3.1.3 To ensure consistency with the Head Contract and to enable the Head Provider to comply with its obligations under the Head Contract the time frames and notice periods set out in the NHS Standard Contract have, with some exceptions, in the Template Sub-Contract been reduced or extended (as appropriate) by 20% and are set out in Sub-Contract Condition 6.4.

3.2 A few points of clarification – Template Sub-Contract

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

3.2.2 These revised timeframes and notice periods apply irrespective of whether the matter relates to the Head Contract, to avoid uncertainty between the parties.

3.2.3 There are some timeframes and notice periods where it is not appropriate to apply the 20% rule. This is primarily because the timescales apply to both parties acting together and it is not possible therefore to amend the provision. If a timeframe or notice period has not been amended in Sub-Contract Condition 6.4, then the timeframe or notice period in the NHS Standard Contract will apply.

3.2.4 The timeframes and notice periods rule only applies as between the Head Provider and the Sub-Contractor. So where obligations are in respect of a third party only, the timeframe will be as set out in the NHS Standard Contract Service Condition or General Condition (e.g. SC7.3.1 of the Full Length Sub-Contract where the obligation is to inform the Service User, Carer or Legal Guardian and GC12.6.1 which ensures payment of Sub-Sub-Contractors by the Sub-Contractor within 30 days).

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

3.2.6 All references to 'before the start of the Contract Year' and 'during the Contract Year' will be read as drafted.

3.2.7 18 Weeks Information and 18 Weeks Referral-to-Treatment Standard remain as drafted. Similarly all waiting times and treatment times in the Quality Requirements will remain as set out in the NHS Standard Contract (unless the specific Sub-Contract specifies otherwise).

3.2.8 Any timeframes and notice periods specified in any part of the Template Sub-Contract will be as set out in that Sub-Contract. The 20% construction rule only applies to timeframes and notice periods in the NHS Standard Contract Service

Conditions, General Conditions and Definitions as incorporated into the Template Sub-Contract.

4. Key topics in the NHS Standard Contract

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

| Approach in the NHS Standard Contract | Approach in the Template Sub-Contract | Some issues to consider when preparing the Template Sub-Contract |
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| Service Specifications | | |
| <p>A non-mandatory model template for local determination and population is provided in the Full Length and Shorter Form NHS Standard Contract.</p> <p>In both, the parties have total flexibility as to the content.</p> | <p>The same approach is taken in the Sub-Contract.</p> | <p>Schedule 2 of the Full Length Sub-Contract includes guidance notes for consideration when preparing the Sub-Contract Services Specifications.</p> <p>There are no guidance notes in the Shorter Form Sub-Contract.</p> <p>The Contract Technical Guidance also sets out a process for developing the services specification.</p> |
| Quality Requirements | | |
| <p>National Quality Requirements - apply according to service category and are mandatory. They are set out in Annex A to the Service Conditions.</p> | <p>National Quality Requirements in the Head Contract apply to the Sub-Contract according to service category but may be varied in Schedule 4A.</p> | <p>National Quality Requirements should be flowed down to the Sub-Contractor according to service category but in some cases the Parties may want to vary these, particularly where a Head Provider has appointed multiple Sub-Contractors.</p> |
| <p>Local Quality Requirements – for local determination between Commissioner(s) and Head Provider.</p> | <p>Local Quality Requirements – for local determination between Head Provider(s) and Sub-Contractor.</p> | <p>The Head Provider will want to ensure that these mirror those in the Head Contract, as appropriate to the Sub-Contract Services, and should consider any other Local Quality</p> |

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| | | Requirements that may be relevant to the individual Sub-Contractor or which should apply across multiple Sub-Contractors. |
| CQUINs | | |
| <p>National CQUIN goals apply (subject to NHS Payment Scheme API rules) in the Full Length NHS Standard Contract</p> <p>CQUIN does not apply to the Shorter Form NHS Standard Contract.</p> <p>(Note that NHS England is considering a “pause” to the nationally mandated CQUIN incentive scheme for 2024/25.)</p> | <p>National CQUINs are not incorporated into the Template Sub-Contract.</p> | |
| Managing Activity and Referrals | | |
| <p>Activity planning: prior to the start of each contract year, the Parties are expected to agree an Indicative Activity Plan and (under the Full Length NHS Standard Contract) the Commissioner has the option to set Activity Planning Assumptions.</p> | <p>The same approach to the Indicative Activity Plan and (in the case of the Full Length Sub-Contract) Activity Planning Assumptions are taken in the Template Sub-Contract although it will be the Head Provider setting the Activity Planning Assumptions, if required.</p> | <p>Activity planning will not be relevant to all Sub-Contracts and in these circumstances ‘not applicable’ should be stated in Schedule 2B (and in the case of the Full Length Sub-Contract Schedule 2C) of the Template Sub-Contract. The associated NHS Standard Contract Service Conditions as incorporated into the Template Sub-Contract will then not apply.</p> |
| <p>Activity management: either party must give early warning of any unexpected or unusual patterns of activity or referrals. Under the Full Length NHS Standard Contract this is then addressed through a range of mechanisms: Activity Query Notice, Joint</p> | <p>The same approach to managing activity is adopted in the Template Sub-Contract, irrespective of whether a Template Sub-Contract sets out an Indicative Activity Plan or Activity Planning Assumptions.</p> | |

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| <p>Activity Review and Activity Management Plan.</p> | | |
| <p>Prior approval schemes: the Full Length NHS Standard Contract sets out a process for those treatments or services that require Commissioner prior approval.</p> <p>The Shorter Form NHS Standard Contract does not include references to a prior approval scheme.</p> | <p>If there are any Prior Approval Schemes in the Head Contract that apply to the Sub-Contract Services, then they will form part of the Full Length Sub-Contract.</p> | <p>Consideration should be given to how a Prior Approval Scheme will work in practice.</p> |
| <p>Reporting Requirements</p> | | |
| <p>Schedule 6A has three sections: National Requirements Reported Centrally, National Requirements Reported Locally and Local Requirements Reported Locally. The first two elements are mandated. The third element is for local agreement.</p> | <p>Parties have total flexibility to agree appropriate reporting requirements on a contract-by-contract basis and the requirements need to be set out in Schedule 6A of the Template Sub-Contract.</p> | <p>The Head Provider should consider all the information it will require both to performance manage the Template Sub-Contract and to be able to report fully under the Head Contract. If the Sub-Contractor is to submit any reports centrally then this must be stated in Schedule 6A of the Template Sub-Contract.</p> |
| <p>Price and Payment</p> | | |
| <p>Prices are payable in accordance with the NHS Payment Scheme which may specify or mandate a Unit Price Locally Agreed Adjustments may be permitted in certain circumstances by the NHS Payment Scheme.</p> | <p>The NHS Payment Scheme does not apply to the Template Sub-Contract and the Head Provider and Sub-Contractor agree their own pricing mechanism.</p> <p>The price can always be linked to an NHS Payment Scheme Unit Price if that is seen as appropriate.</p> <p>Note however that sub-contracts awarded under the Increasing Capacity Framework must provide for pricing in accordance with the rules of that Framework.</p> | |

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| <p>Local Prices agreed where the NHS Payment Scheme does not specify or mandate an NHS Payment Scheme Unit Price</p> | <p>Parties have total flexibility to negotiate the pricing structure for all Sub-Contracted Services and this is then set out in Schedule 3 of the Template Sub-Contract.</p> <p>Note however that sub-contracts awarded under the Increasing Capacity Framework must provide for pricing in accordance with the rules of that Framework.</p> | <p>The Parties should consider how the price under the Head Contract might change from year to year and set out a mechanism to vary the price under the Template Sub-Contract. This is particularly important for the Head Provider where the price under the Head Contract could decrease to reflect required efficiency savings.</p> |
| <p>Invoicing and payment monthly of 1/12 of Expected Annual Contract Value (EACV).</p> <p>Reconciliation process.</p> <p>Invoicing and payment monthly in arrears where there is no EACV.</p> | <p>The concept of EACV is not used in the Template Sub-Contract.</p> <p>Invoicing is monthly in arrears within 10 days of end of the relevant month.</p> <p>Payment of undisputed invoices within 30 days of their receipt.</p> | <p>Set out the information the Head Provider will require with each invoice, particularly if there is more than one Commissioner.</p> <p>Do NOT extend the 10 days within which the Sub-Contractor must submit invoices as this could have a detrimental impact on a Head Provider's ability to provide required information to the Commissioner and to comply with reconciliation obligations.</p> <p>If payment is made on the basis of an EACV and therefore there will need to be a reconciliation process, insert appropriate provisions in the Sub-Contract Service Conditions and check the related Definitions in the NHS Standard Contract to ensure they work in the Template Sub-Contract.</p> |
| <p><i>Directly Bookable Services</i></p> | | |
| <p>Under the Full Length NHS Standard Contract, the Provider must describe and publish all relevant</p> | <p>There is no obligation on the Sub-Contractor to produce a Directory of Services or to enable the</p> | <p>It may be appropriate in some sub-contracting arrangements, particularly for larger value contracts,</p> |

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| <p>services and associated appointment slots in a Directory of Services and ensure services are directly bookable as required by guidance.</p> <p>There is no such obligation in the Shorter Form Standard Contract.</p> | <p>Sub-Contract Services to be directly bookable.</p> <p>There is, however, an obligation on the Sub-Contractor to provide all information the Head Provider requires regarding appointment slots.</p> | <p>for the Sub-Contractor to comply with all NHS e-Referral Service requirements. In these circumstances in Sub-Contract Service Condition 6.1 remove reference to SC6.2, SC6.3, SC6.4, SC6.5, SC6.6, SC6.7, SC6.8, SC6.9 and SC6.10. By doing this NHS Standard Contract Service Conditions 6.2, SC6.3, SC6.4, SC6.5, SC6.6, SC6.7, SC6.8, SC6.9 and SC6.10 then apply in the Full Length Sub-Contract.</p> |
| <p><i>Term and extensions</i></p> | | |
| <p>Commissioners may determine locally the duration of each contract. There is a right to extend the contract provided the contract is clear at the time it is entered into that there is a provision to so extend.</p> | <p>The Template Sub-Contract takes the same approach to duration and extension.</p> | <p>When considering the duration of the Template Sub-Contract the Head Provider should bear in mind:</p> <p>(a) there is a right to terminate the Template Sub-Contract if the Head Contract is terminated or not extended;</p> <p>(b) any changes to the NHS Standard Contract during the term of the Template Sub-Contract are only incorporated into the Template Sub-Contract if the Service Conditions and General Conditions are amended; and</p> <p>(c) any changes to the Template Sub-Contract during the term of a signed Sub-Contract will not apply.</p> <p>If the Head Provider is subject to the PSR Regulations (for example, if it is an NHS Trust or an NHS Foundation Trust), care should be taken to</p> |

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| | | ensure the approach is consistent with the Head Provider’s obligations under the PSR Regulations and with the limitations on “modifications” under regulations 13 and 14 of the PSR Regulations. |
| <i>Transfer of Staff</i> | | |
| The Head Provider and any Sub-Contractor must comply with their respective obligations under TUPE if staff are to transfer to them at the start of the contract and if staff transfer to a new provider at the end of the contract. As staff will not transfer either from or to the Commissioner, the TUPE provisions are limited in their scope. | <p>The TUPE provisions in the NHS Standard Contract are incorporated into the Template Sub-Contract.</p> <p>The Standard Sub-Contract has additional provisions regarding staff which apply if:</p> <p>(a) employees of the Head Provider transfer to either the Sub-Contractor or a Sub Sub-Contractor at the start of the Template Sub-Contract; and</p> <p>(b) employees of the Sub-Contractor or a Sub-Sub-Contractor transfer to the Head Provider at the end of the Template Sub-Contract.</p> <p>(TUPE provisions are provided separately for the Shorter Form Sub-Contract, for inclusion if necessary, at https://www.england.nhs.uk/nhs-standard-contract/)</p> | |
| <i>Data Processing and UK GDPR</i> | | |
| Data Processing Agreement provisions are now included in Annex B to the Service Conditions. Where the Head Provider is processing personal | Schedule 6E to the Sub-Contract applies only where the Sub-Contractor is appointed to act as a data processor or sub-processor under the Sub-Contract. | Schedule 6E includes guidance notes on its use and how to complete Annex B. Further information is also provided in the NHS |

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| <p>data, the Parties must complete Schedule 6E.</p> <p>In the Shorter-Form Standard Contract, the Data Processing Agreement and Data Processing Services should be included in Schedule 6E where the Head Provider is processing personal data.</p> | <p>Where the Head Provider is acting as data controller under the Head Contract, the Head Provider may appoint the Sub-Contractor to act as a data processor in relation to the relevant data.</p> <p>Where the Head Provider is 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 sub-processor under the Sub-Contract.</p> <p>Schedule 6E should be populated if and as applicable.</p> <p>(Schedule 6E is provided separately for the Shorter Form Sub-Contract, for inclusion if necessary, at https://www.england.nhs.uk/nhs-standard-contract/)</p> | <p>Standard Contract Technical Guidance.</p> |
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5. Advice and Support

- 5.1 For more information on sub-contracting under the NHS Standard Contract, please see the [Contract Technical Guidance](#).
- 5.2 The NHS Standard Contract Team provides a helpdesk service for email queries. Please contact england.contractshelp@nhs.net if you have questions about this Guidance or the operation of the NHS Standard Contract in general.
- 5.3 If you would like to be added to our stakeholder list to receive updates on the NHS Standard Contract, please email your contact details to england.contractengagement@nhs.net.
- 5.4 We have shared the slides and recording from our webinar 'Sub-Contracting under the NHS Standard Contract' on our page on the [FutureNHS platform](#), and these provide a useful introduction to the topic.

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This publication can be made available in a number of alternative formats on request.

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