

**Sub-contract for the provision of clinical services for use with the NHS
Standard Contract 2020/21 (Full Length)**

**2021-2022
Phlebotomy Service**

Between

**Coventry and Warwickshire Pathology Services,
UHCW NHS Trust (Head Provider)**

And

XXXXXXXXXX (Sub-Contractor)

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SUB-CONTRACT PARTICULARS and SCHEDULES

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

- 1. the **Sub-Contract Particulars and Schedules**
- 2. the **Sub-Contract Conditions**
- 3. the **Service Conditions** and **General Conditions**

as further defined or applied by this Sub-Contract.

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

SIGNED by

Signature

Ian Sturgess

Interim Head of Operations

for and on behalf of

Title

Coventry and Warwickshire Pathology
Services, part of University Hospitals
Coventry and Warwickshire Date

SIGNED by

Signature

XXXXXXXXXXXXX

for and on behalf of Title

XXXXXXXXXXXXX

Date

PART A: SUB-CONTRACT PARTICULARS and SCHEDULES

CONTRACT SUMMARY

| | |
|---|--|
| Sub-Contract Reference | 23-2122 |
| Head Provider | Coventry and Warwickshire Pathology Services, UHCW NHS Trust |
| Sub-Contractor | XXXXXXXXXXXXXX |
| Effective Date | 1 April 2021 |
| Expected Service Commencement Date | 1 April 2021 |
| Longstop Date | n/a |
| Service Commencement Date | 1 April 2021 |
| Sub-Contract Term | 1 year commencing on 1 April 2021 (subject to extension under Schedule 1C where applicable) |
| Expiry Date | 31 March 2022 |
| Option to extend Sub-Contract Term? | YES (see Schedule 1C) |
| Head Provider notice period (for termination under GC17.2) | 3 months |
| Head Provider Earliest Termination Date | 3 months after Service Commencement Date |
| Sub-Contractor notice period (for termination under GC17.3) | 3 months |
| Sub-Contractor Earliest Termination Date | 3 months after the Service Commencement Date |
| Details of Head Contract | Commissioner(s): C&W CCG Date: 1 April 2021 Contract Term: 1 year Services: Pathology and Phlebotomy services |

| | |
|--|------------------------------|
| | Contract Reference: XXXXXXXX |
|--|------------------------------|

SUB-CONTRACT SERVICES

| Service Categories | Indicate <u>all</u> that apply |
|---|---------------------------------------|
| Accident and Emergency Services (Type 1 and Type 2 only) (A+E) | |
| Acute Services (A) | |
| Ambulance (AM) | |
| Cancer Services (CR) | |
| Community Services (CS) | |
| Continuing Healthcare Services (including continuing care for children) (CHC) | |
| Diagnostic, Screening and/or Pathology Services (D) | X |
| 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 Treatment Centre Services (including Walk-in Centre Services/Minor Injuries Units) (U) | |

| | |
|--|--------|
| Services commissioned by NHS England | |
| Services comprise or include Specialised Services and/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-Contract Services to which 18 Weeks applies | YES /NO |
| Is the Sub-Contractor acting as a Data Processor or Sub-processor on behalf of the Head Provider for the purposes of this Sub-Contract? | YES /NO |

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 Caldicott Guardian | [] Email: [] Tel: [] |
| Sub-Contractor's Data Protection Officer (if required by Data Protection Legislation) | [] 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 Liberty Protection Safeguards 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 | <p>Head Provider: CWPS, UHCW NHS Trust</p> <p>Address: UHCW NHS Trust, Clifford Bridge Road, CV2 2DX</p> <p>Email: ruth.hallett@uhcw.nhs.uk</p> <p>Sub-Contractor: XXXXXXXXXXXXXXXX</p> |
| Frequency of Review Meetings | Ad hoc/ Monthly / Quarterly / Six Monthly |
| Head Provider Representative(s) | <p>Ruth Hallett</p> <p>Address: UHCW NHS Trust, Clifford Bridge Road, CV2 2DX</p> <p>Email: ruth.hallett@uhcw.nhs.uk</p> <p>Tel: 02476 965358</p> |
| Sub-Contractor Representative(s) | XXXXXXXXXXXXXXXXXX |

SCHEDULE 1– SERVICE COMMENCEMENT AND SUB-CONTRACT TERM

A. Conditions Precedent

The Sub-Contractor must provide the Head Provider with the following documents and complete the following actions, before the Expected Service Commencement Date, each in a form satisfactory to the Head Provider:

1. Evidence of appropriate Indemnity Arrangements

The Sub-Contractor must complete the following actions:

Not Applicable

B. Head Provider Documents

| Date | Document | Description |
|-----------------------|----------|-------------|
| Not Applicable | | |

C. Extension of Sub-Contract Term

1. 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 8 weeks before the original Expiry Date.

2. The option to extend the Sub-Contract Term may be exercised:

2.1 only on or before the date referred to in paragraph 1 above;

2.2 only in respect of all Sub-Contract Services.

3. If the Head Provider gives notice to extend the Sub-Contract Term in accordance with paragraph 1 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.

SCHEDULE 2 – THE SUB-CONTRACT SERVICES

A. Sub-Contract Service Specifications



Phlebotomy Service
Specification 2122.do

B. Indicative Activity Plan

Not Applicable

C. Activity Planning Assumptions

Not Applicable

D. Essential Services

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

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.

Not Applicable

F. Clinical Networks

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-Contract Services.

| Policy | Date | Weblink |
|-----------------------|------|---------|
| Not Applicable | | |
| | | |
| | | |
| | | |

H. Transition Arrangements

Not Applicable




I. Exit Arrangements

Not Applicable

J. Transfer of and Discharge from Care Protocols

Not Applicable

K. Safeguarding Policies and Mental Capacity Act Policies

  
Safeguarding Policy V4.0.pdf Working Together to Safeguard Children.p OPER-POL-004-10 Safeguarding Adults v

L. Provisions Applicable to Primary Medical Services

Not Applicable

SCHEDULE 3 – PRICE AND PAYMENT

The subcontractor will be paid on the basis of activity completed at a price of **XXXXX** per patient bled.

The subcontractor will invoice the head provider on a monthly basis for phlebotomy activity completed during the previous month within 10 working days following the end of the month to which the charges relate.

The invoice should be type written (not handwritten) and contain

- a unique identification number
- your company name, address and contact information
- the company name and address of the customer you're invoicing
- a clear description of what you're charging for
- the date the goods or service were provided (supply date)
- the date of the invoice
- the amount(s) being charged
- VAT amount if applicable
- the total amount owed

The template below can be used and providers ensure that the invoices contain the correct information.



Phlebotomy
INVOICE template.rtf

The Subcontractor will provide backing data for the invoice to the Head Provider to include a list of all patients bled during the preceding month.

The Subcontractor will keep a list of all patients bled during the preceding month, for a 12 month period and may be subject to audit at any time deemed acceptable by arrangement between Head Provider and Subcontractor.

The following details will be provided for each patient.

- Surname and forename ***initials only.***
- Hospital or NHS number ***if available***
- Date of birth.
- Time/Date of collection.

Comparison of the details on this list and data on the laboratory computer system will form the basis of a regular programme of audit to ensure that correct payments are being made

Invoices and backing information should be sent to

Email: accounts.payable@uhcw.nhs.uk
hemanshu.kansara@uhcw.nhs.uk

Post: Accounts Payable, FM Building, University Hospital, Clifford Bridge Road,
Coventry, CV2 2DX

Pink Bar Code Location Label

It is imperative the site specific pink bar code location label is fixed to the blood sample request form. This is a key element for the activity of subcontractors providing phlebotomy clinics to be electronically recorded. The provider will forfeit the associated service fee if this label is not provided.

The Head Provider will supply adequate numbers of Pink Bar code stickers, but in the event of supplies running out the provision of an alternative (spare) label will be supplied as a temporary measure.

The Head Provider will pay by BACS the amounts invoiced by the Sub Contractor for the services within 30 days of receipt of the invoice.

Invoices will be raised by the subcontractor within the first 10 working days following the end of the month to which the charges relate.

If the Head Provider disputes the charge for any part of the Services provided, it must provide all relevant details of the disputed charge to the subcontractor in writing.

If the Head Provider is overcharged or overpays any amounts due, the subcontractor will issue a credit note to the Head Provider within 30 days of the overcharge/overpayment being agreed by both parties.

If the Head provider disputes any part of the service provided, the subcontractor will issue a credit note to the Head Provider within 30 days of the overcharge/ overpayment being agreed by both parties.

SCHEDULE 4 – QUALITY REQUIREMENTS

For the avoidance of doubt the Operational Standards and 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 4.

A. Operational Standards

Not Applicable

B. National Quality Requirements

Not Applicable

C. 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 | Consequence of breach | Timing of application of consequence | Applicable Service Specification |
|--|---|--|---|--------------------------------------|----------------------------------|
| Waiting Time (where appointment system) | Patients to be bled within 15 minutes of appointment time. Target 85% in the first year of implementation of an appointments based service, 95% thereafter | The total number of patients bled within the timeframe as a % of total number of patients presenting to the department | Action Plan and report to CWPS Phlebotomy management team | Monthly | |
| Access (where appointment system) | 95% of all phlebotomy patients are offered an appointment within 3 working days from the point of their enquiry, or at a time they wish to book further into the future | Provider to submit audit of time between appointment request and date of appointment over one calendar week. | Action Plan and report to CWPS Phlebotomy management team | Monthly | |
| Waiting Time (where Walk in Service) | 85% of patients to be bled within 30 minutes from arrival at the department | The total number of patients bled within the timeframe as a % of total number of patients presenting to the department | Action Plan and report to CWPS Phlebotomy management team | Monthly | |
| Provide a report to summarise: The number and type of complaints received The number and nature of complaints Resulting actions and improvements Demonstration of learning from complaints and changing practice to percent recurrence | Demonstration of analysis of complaint trends and data and actions | Quarterly Report | Action plan request, or review or joint investigation by Head provider. | Quarterly | |

D. Not Used

E. Local Incentive Scheme

| |
|-----------------------|
| Not Applicable |
|-----------------------|



SCHEDULE 5 – GOVERNANCE

A. Documents Relied On

Documents supplied by Sub-Contractor

| Date | Document |
|-----------------------|----------|
| Not Applicable | |
| | |
| | |
| | |

Documents supplied by Head Provider

| Date | Document |
|--|--|
| Venepuncture SOP (PH LPR15) |  Venepuncture Network SOP (PH LPR |
| List of Tests Requiring special Treatment (PH TP15) |  16 Tests requiring special treatment_fin |
| | |
| | |

SCHEDULE 6 – CONTRACT MANAGEMENT, REPORTING AND INFORMATION REQUIREMENTS

A. Reporting Requirements

| Report Required | Reporting Period | Format of Reporting | Timing and Method for delivery of Report | Application |
|-----------------|------------------|---------------------|--|-------------|
| Not Applicable | | | | |
| | | | | |
| | | | | |
| | | | | |


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-Contract Services.

| Data Quality Indicator | Data Quality Threshold | Method of Measurement | Milestone Date | Consequence |
|------------------------|------------------------|-----------------------|----------------|-------------|
| 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-Contract Services.

| Procedures for reporting, investigating, and implementing and sharing Lessons Learned from: (1) Serious Incidents (2) Notifiable Safety Incidents (3) other Patient Safety Incidents | |
|---|---|
| NHSE Never Events Policy and List | https://www.england.nhs.uk/publication/never-events/ |
| Coventry and Warwickshire Clinical Commissioning Group Serious Incident Policy V1.0 |  CWCCG Serious-Incident-Polik |
| NHSE Serious Incident Framework | https://www.england.nhs.uk/patient-safety/serious-incident-framework/ |

| | |
|------------|--|
| March 2015 | |
|------------|--|

D. Service Development and Improvement Plan

| | Milestones | Timescales | Expected Benefit | Consequence of Achievement/Breach |
|----------------|------------|------------|------------------|---|
| Not Applicable | | | | [Subject to GC9 (<i>Contract Management</i>)] or [locally agreed] |

E. Surveys

| Type of Survey | Frequency | Method of Reporting | Method of Publication |
|----------------|-----------|---------------------|-----------------------|
| Not Applicable | | | |
| | | | |
| | | | |
| | | | |

F. Sub-Contractor Data Processing Agreement

1. Scope

- 1.1 The Head Provider appoints the Sub-Contractor as a Data Processor to perform the Data Processing Services.
- 1.2 When delivering the Data Processing Services, the Sub-Contractor must, in addition to its other obligations under this Sub-Contract, comply with the provisions of this Schedule 6F.
- 1.3 This Schedule 6F applies for so long as the Sub-Contractor acts as a Data Processor in connection with this Sub-Contract.

2. Data Protection

- 2.1 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 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 6F, 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 of that requirement before processing takes place, unless this is prohibited by Law on the grounds of public interest.
- 2.2 The Sub-Contractor must notify the Head Provider immediately if it considers that carrying out any of the Head Provider's instructions would infringe Data Protection Legislation.
- 2.3 The Sub-Contractor must provide all reasonable assistance to the Head Provider in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Head Provider, include:

Provider 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;

(f) 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 in writing of that retention giving details of the Processor Data that it must retain and the reasons for its retention; and

(g) co-operate fully with the Head Provider 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.

2.5 Subject to paragraph 2.6, the Sub-Contractor must notify the Head Provider immediately if, in relation any Personal Data processed in connection with its obligations under this Schedule 6F, it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) 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;

(d) 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);

(e) 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;

(f) becomes aware of or reasonably suspects a Data Loss Event; or

(g) becomes aware of or reasonably suspects that it has in any way caused the Head Provider or any Commissioner to breach Data Protection Legislation.

2.6 The Sub-Contractor's obligation to notify under paragraph 2.5 includes the provision of further information to the Head Provider in phases, as details become available.

2.7 The Sub-Contractor must provide whatever co-operation the Head Provider reasonably requires to remedy any issue notified to the Head Provider under paragraphs 2.5 and 2.6 as soon as reasonably practicable.

2.8 Taking into account the nature of the processing, the Sub-Contractor must provide the Head Provider 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:

(a) the Head Provider with full details and copies of the complaint, communication or request;

(b) 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;

(c) assistance as requested by the Head Provider following any Data Loss Event;

(d) assistance as requested by the Head Provider with respect to any request from the Information Commissioner's Office, or any consultation by the Head Provider with the Information Commissioner's Office.

2.9 Without prejudice to the generality of GC15 (*Governance, Transaction Records and Audit*), 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.

- 2.10 For the avoidance of doubt the provisions of GC12 (*Assignment and Sub-contracting*) apply to the delivery of any Data Processing Services.
- 2.11 Without prejudice to GC12, before allowing any Sub-processor to process any Personal Data related to this Schedule 6F, the Sub-Contractor must:
- (a) notify the Head Provider in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Head Provider;
 - (c) carry out appropriate due diligence of the Sub-processor and ensure this is documented;
 - (d) 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 GC21.16.3; and
 - (e) provide the Head Provider with such information regarding the Sub-processor as the Head Provider may reasonably require.
- 2.12 The Sub-Contractor must create and maintain a record of all categories of data processing activities carried out under this Schedule 6F, containing:
- (a) the categories of processing carried out under this Schedule 6F;
 - (b) 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;
 - (c) a general description of the Protective Measures taken to ensure the security and integrity of the Personal Data processed under this Schedule 6F; and
 - (d) 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.
- 2.13 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.
- 2.14 The Sub-Contractor must comply at all times with those obligations set out at Article 32 of the GDPR and equivalent provisions implemented into Law by DPA 2018.
- 2.15 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.
- 2.16 The Sub-Contractor must take prompt and proper remedial action regarding any Data Loss Event.
- 2.17 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 processing by the Head Provider.
2. Any such further instructions will be incorporated into this Annex.

| Description | Details |
|--|---|
| Subject matter of the processing | Details required for phlebotomy to take place |
| Duration of the processing | Duration of the contract |
| Nature and purposes of the processing | Data is processed to facilitate the taking of blood samples for testing. This may involve data in order to book appointments and held within an appointment system, and personal data is transferred on to the sample tubes, a record of those attending clinics will be stored by the phlebotomy service |
| Type of Personal Data | Name Date of Birth Hospital Number NHS Number Address Telephone No. Email Pathology tests being undertaken Limited clinical details (in some cases eg drug dosage) |
| Categories of Data Subject | Patients |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | Sub contractors will store the data for 12 months and then securely destroy data as per their own data retention policies |

SCHEDULE 7 – EMPLOYEES

Part A – Head Provider’s Employees

Not Applicable

Part B – Pensions

Not Applicable

SCHEDULE 8 – LOCAL SYSTEM PLAN OBLIGATIONS

Not Applicable

PART B: SUB-CONTRACT CONDITIONS

4. Operation of this Sub-Contract

4.1 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.

5. Interpretation

5.1 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.

5.2 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.

5.3 Definitions:

General Conditions and **Service Conditions**: the General Conditions and Service Conditions published by NHS England for the NHS Standard Contract (Full Length) 2020/21.

Head Contract: the contract between the Commissioner and the Head Provider in the form of the NHS Standard Contract (Full Length) 2020/21.

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

5.4 Except as provided expressly in this Sub-Contract, the rules of interpretation in the Head Contract will apply to this agreement.

5.5 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" | Sub-Contract |
| "Parties" | the Head Provider and the Sub-Contractor |
| "Provider" | Sub-Contractor |
| "Services" | Sub-Contract Services |
| "Sub-Contract", "Sub-Contractor", "Material Sub-Contract", "Material Sub-Contractor", etc. | Sub-Sub-Contract, Sub-Sub-Contractor, etc. |

- 5.6 The Schedules, as well as the Service Conditions and General Conditions (as amended) form part of this Sub-Contract and will have effect as if set out in full in the body of this agreement. Any reference to this Sub-Contract includes the Schedules.
- 5.7 If there is any conflict or inconsistency between the sections of this Sub-Contract, that conflict or inconsistency will be resolved according to the following order of priority:
- 5.7.1 the Sub-Contract Conditions
- 5.7.2 the Sub-Contract Particulars and Schedules
- 5.7.3 the Service Conditions and General Conditions
- 5.8 The following definitions will apply in addition to, or instead of, the definitions in the Head Contract:

| | |
|---------------------------------------|---|
| Activity Management Plan | has the meaning set out in the Head Contract but the words “in relation to the relevant Commissioners” in paragraph (i) will be deemed deleted for the purposes of this Sub-Contract. |
| Actual Annual Value | for the relevant Sub-Contract Year the aggregate of all payments made to the Sub-Contractor under this Sub-Contract in respect of the Sub-Contract Services delivered in that Sub-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-Contract 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-Contract 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. |
| Best Practice | has the meaning in the Head Contract but will also apply to best practice developed by the Sub-Contractor, whether singly or jointly with the Head Provider and/or the Commissioner. |
| 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 local security management specialist appointed by the Commissioner, the Head Provider or the Sub-Contractor (as appropriate). |
| Material Sub-Contract | has the same meaning as Sub-Sub-Contract. |
| Material Sub-Contractor | has the same meaning as Sub-Sub-Contractor. |
| National Quality Requirements | the national quality requirements set out in Schedule 4B (National Quality Requirements) of the Head Contract. |
| Operational Standards | the operational standards set out in Schedule 4A (Operational Standards) of the Head Contract. |
| 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-Contract 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 User | a patient or service user for whom the Commissioner has statutory responsibility and who receives Sub-Contract Services under this Sub-Contract. |
| Service Variation | a Variation proposed by the Head Provider which relates to a Sub-Contract 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-Contract 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-Contract Service and the Services Environment; and/or (iii) the likely impact of any transformational need and/or the reconfiguration of a |

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| | care pathway that might affect the relevant Sub-Contracted Service. |
| Sub-Contract Service Specifications | each of the service specifications set out in Schedule 2. |
| Subsequent Service Transfer Date | the point in time, if any, at which services equivalent to the Sub-Contract 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-Contract Services (either in whole or in part) which are to be undertaken by the Head Provider on and following the Subsequent Service Transfer Date. |
| Sub-Sub-Contract | any sub-contract entered into by the Sub-Contractor or any Sub-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. |
| Sub-Sub-Contractor | any sub-contractor, whether of the Sub-Contractor itself or at any further level of sub-contracting, under any Sub-Sub-Contract. |
| Suspension Event | has the meaning set out in the Head Contract and the following sub-clause (vii) will 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-Contract Services”. |
| Transferring Employees | those employees transferring from the Head Provider to the Sub-Contractor or any Sub-Sub-Contractor under TUPE and/or COSOP as listed in Schedule 7A entitled Head Provider Employees. |

6. Commencement and duration

- 6.1 This Sub-Contract comes into force on the Effective Date and will continue in force until the Expiry Date unless:
- 6.1.1 it is terminated earlier in accordance with GC17;
 - 6.1.2 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
 - 6.1.3 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.
- 6.2 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).

7. **Co-operation**

- 7.1 The Sub-Contractor must co-operate with the Head Provider and (where the Head Provider requests) 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 must endeavour to resolve those issues with the Commissioner or with the relevant sub-contractor.
- 7.2 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.

8. **Payment**

- 8.1 The Price will be calculated in accordance with Schedule 3.
- 8.2 Unless otherwise stated in Schedule 3, the Price:
- 8.2.1 will be payable with effect from the Service Commencement Date;
 - 8.2.2 will remain fixed during the Sub-Contract Term; and
 - 8.2.3 is the entire price payable by the Head Provider to the Sub-Contractor in respect of the Sub-Contract 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.
- 8.3 Unless stated otherwise in Schedule 3 or Schedule 4E, the Sub-Contractor must invoice the Head Provider, within 10 days of the end of each month, the Price in respect of the Sub-Contract Services provided in the preceding month together with any monies owed to the Sub-Contractor in respect of a Local Incentive Scheme. Each invoice must contain and be accompanied by such information and be addressed to such individual as the Head Provider may inform the Sub-Contractor from time to time.
- 8.4 The Head Provider must pay each undisputed invoice received in accordance with this section within 30 days of receipt of such invoice.
- 8.5 To avoid any doubt, the Sub-Contractor will be entitled to be paid for Sub-Contract Services delivered during the continuance of:
- 8.5.1 any Significant Incident or Emergency, except as otherwise provided or agreed under SC30 (Emergency Preparedness, Resilience and Response) or this Sub-Contract; and
 - 8.5.2 any Event of Force Majeure, except as otherwise provided or agreed under GC28 (Force Majeure).
- 8.6 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*), Schedule 4B (*National Quality Requirements*), and/or Schedule 4C (*Local Quality Requirements*) (as appropriate)
- 8.7 The Never Events will apply to this Sub-Contract and to the provision of the Sub-Contract 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.

- 8.8 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.
- 8.9 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-Contract Services, and must account to whoever the Head Provider reasonably directs in respect of those charges.
- 8.10 The Parties acknowledge the requirements and intent of the Overseas Visitor Charging Regulations and Overseas Visitor Charging Guidance, and accordingly:
- 8.10.1 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-Contract Services provided to non-EEA national Chargeable Visitors to the Department of Health;
- 8.10.2 if the Sub-Contractor has failed to take all reasonable steps to:
- 8.10.3 identify a Chargeable Overseas Visitor; or
- 8.10.4 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-Contract 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;
- 8.10.5 (subject to paragraph 5.10.2 above) 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-Contract 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;
- 8.10.6 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);
- 8.10.7 the Sub-Contractor must make full use of existing mechanisms designed to increase the rates of recovery of the cost of the Sub-Contract Services provided to overseas visitors insured by another EEA state, including the EEA reporting portal for EHIC and S2 activity; and
- 8.10.8 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-Contract 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.
- 8.11 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.

- 8.12 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.
- 8.13 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.
- 8.14 If a Party contests all or any part of any payment calculated in accordance with this Sub-Contract, the contesting Party must:
- 8.14.1 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
 - 8.14.2 any uncontested amount must be paid in accordance with this Sub-Contract by the Party from whom it is due; and
 - 8.14.3 if the matter has not been resolved within 20 Operational Days of the date of notification referred to in paragraph 5.14.1 above, 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 paragraph, insofar as any amount will 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 paragraph. For the purposes of this paragraph, the date the amount was due will be the date it would have been due had the amount not been disputed.

- 8.15 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 at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998 on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- 8.16 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.
- 8.17 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.

9. **Alterations to Service Conditions and General Conditions for the purposes of this Sub-Contract**

9.1 The following provisions are deleted:

Service Conditions (SC): 4.8; 4.9; 4.10; 6.2; 6.3; 6.4; 6.8.2; 6.13; 7.4A2; 7.4B2; 7.4C2; 7.4D2; 17.4-17.6; 19.1; 19.2, 19.3; 28.16; 29.3.1; 29.3.2; 29.6; 29.26; 36; and 38

General Conditions (GC): 1.1; 1.2; 3; 9.26; 10.1; 10.2; 12.2-12.5; 12.10; 13.2; 13.11; 14.4.1; 14.5; 14.8; 15.8.3; 15.8.7; 15.13; 17.6; 17.9; and 21.9

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

9.2 In the following provisions, references to the "Commissioner", "Commissioners" or "Co-ordinating Commissioner" (as applicable):

9.2.1 will continue to refer to the Commissioner:

Service Conditions (SC): 5.1; 13.9; 23.2; 24.3; 28.6; and 30.4

General Conditions (GC): 21.13

9.2.2 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.

9.3 The following provisions will be amended as set out or described below:

Service Conditions:

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| Service Standards (SC3) | The provisions of SC3.2A or SC3.2B (as applicable) will 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. |
| Co-operation (SC4) | SC4.8 will not apply to the Sub-Contract but the Sub-Contractor acknowledges the Head Provider's obligations under SC4.8 of the Head Contract and will provide all reasonable assistance to the Head Provider to comply with this provision. |
| Choice, Referral and Booking (SC6) | <p>The Sub-Contractor must provide all information as required by the Head Provider regarding relevant Sub-Contract Services and appointment slots in such manner to enable the Head Provider to comply with its obligations under SC6.2 and SC6.3.</p> <p>The Sub-Contractor acknowledges the provisions of SC6.8.2 of the Head Contract and will not by any act or omission cause the Head Provider to be in breach of it.</p> |
| Personalised Care Planning and Shared Decision-Making (SC10) | The Sub-Contractor must co-operate with requests relating to Education, Health and Care Needs Assessments under SC10.6 whether that request is made directly of the Sub-Contractor or indirectly via the Head Provider. |
| Service User Health Records (SC23) | The words "for whom that Commissioner is responsible" will be deemed deleted from SC23.2.1 and SC23.2.2 for the purposes of this Sub-Contract. |
| Information Requirements (SC28) | <p>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.</p> <p>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.</p> <p>Any obligations to report to SUS are outside the terms of this Sub-Contract unless expressly stated otherwise in this Sub-</p> |

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| | <p>Contract.</p> <p>The words “instruct the Commissioners to withhold or itself withhold (on behalf of all Commissioners)” in SC28.18.2 and SC28.19 will be replaced with “withhold”.</p> <p>The paragraph after SC28.22.3 will be deemed deleted for the purposes of this Sub-Contract.</p> |
| Managing Activity and Referrals (SC29) | <p>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-Contract Services and notified to the Sub-Contractor.</p> <p>The words “in relation to any Commissioner” will be deemed deleted from SC29.8 and SC29.9 for the purposes of this Sub-Contract.</p> <p>The words “in respect of each Commissioner” will be deemed deleted from SC29.11A, SC29.11B and SC29.11C for the purposes of this Sub-Contract.</p> <p>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.</p> |
| Emergency Preparedness, Resilience and Response (SC30) | <p>SC30.5.2 and SC30.8.1 will not apply if the Commissioner exercises its rights to insist that the Head Provider suspends the Sub-Contract Services.</p> |
| Duty of Candour (SC35) | <p>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 must take all reasonable actions as directed by the Head Provider.</p> |
| Local Quality Requirements and Quality Incentive Scheme (SC37) | <p>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-Contract Services.</p> <p>The text in brackets at the end of SC37.3 will be deemed deleted for the purposes of this Sub-Contract.</p> |

General Conditions:

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| Staff (GC5) | <p>Any indemnity given to the Head Provider by the Sub-Contractor pursuant to GC5.12, GC5.13 and GC5.15 of the Head Contract (as incorporated into this Sub-Contract) will also apply in favour of the Commissioner and the Sub-Contractor will be deemed to have provided an indemnity in identical terms to the Commissioner.</p> |
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| | <p>The following paragraphs 1 to 5 will only apply where any employees of the Head Provider transfer to the Sub-Contractor or a Sub-Sub-Contractor under TUPE on or before the Service Commencement Date:</p> <ol style="list-style-type: none"> 1. The Transferring Employees will transfer to the Sub-Contractor or any Sub-Sub-Contractor under TUPE and/or COSOP on the Service Commencement Date and paragraphs 2 to 5 will apply. 2. The Head Provider will on or before the Service Commencement Date: <ol style="list-style-type: none"> a) discharge all financial obligations owing to the Transferring Employees in respect of the period on or before the Service Commencement Date; b) procure that any loans or advances made by the Head Provider to the Transferring Employees before the Service Commencement Date are repaid to it; c) 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 d) 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. 3. The Head Provider will comply with its obligations under TUPE and/or 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 Sub-Sub-Contractor. 4. The Head Provider will indemnify and keep indemnified the Sub-Contractor in relation to any Losses arising out of or in connection with any claim which arises as a result of any act or omission of the Head Provider in relation to the Transferring Employees or relevant Head Provider employees transferring to the Sub-Contractor under paragraph 5 prior to the Service Commencement Date, save for where such act or omission results from complying with the instructions of the Sub-Contractor or Sub-Sub-Contractor and save for where the Sub-Contractor or Sub-Sub-Contractor fail to comply with its obligations under regulation 13 of TUPE. 5. 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 Sub-Sub-Contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, the Sub-Contractor or Sub-Sub-Contractor must employ that person in accordance with its obligations and duties under TUPE and will be responsible for all liabilities arising in respect of any such person from the Service Commencement Date unless |
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| | <p>the Head Provider offers employment to such person and the offer is accepted.</p> <p>Paragraphs 6 to 10 will only apply where any employees of the Sub-Contractor or a Sub-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.</p> <p>6. The Subsequent Transferring Employees will transfer to the Head Provider under TUPE and/or COSOP on the Subsequent Service Transfer Date and paragraphs 7 to 10 will apply.</p> <p>7. The Sub-Contractor will or will procure that a Sub-Sub-Contractor will on or before the Subsequent Service Transfer Date:</p> <ul style="list-style-type: none"> a) discharge all financial obligations owing to the Subsequent Transferring Employees in respect of the period on or before the Subsequent Service Transfer Date; b) procure that any loans or advances made by the Sub-Contractor or a Sub-Sub-Contractor to the Subsequent Transferring Employees on or before the Subsequent Service Transfer Date are repaid to it; c) 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 d) 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. <p>8. The Sub-Contractor will or will procure that a Sub-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.</p> <p>9. The Sub-Contractor will or will procure that a Sub-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 Sub-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.</p> <p>10. The Sub-Contractor will or will procure that a Sub-Sub-Contractor will indemnify and keep indemnified the Head Provider in relation to any person who is an employee of the Sub-Contractor or Sub-Sub-Contractor who is not a Subsequent Transferring Employee is found to or it is alleged</p> |
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| | to transfer to the Head Provider under TUPE and/or COSOP. |
| Contract Management (GC9) | <p>The words “Co-ordinating Commissioner may recommend the Commissioners to withhold or itself withhold (on behalf of all Commissioners)” in GC9.16 will be replaced with “Head Provider may withhold”.</p> <p>The words "instruct the Commissioners to withhold, or itself withhold (on behalf of all Commissioners)" in GC9.21.1 will be replaced with "withhold".</p> <p>The last sentence in GC9.22, GC9.24 and GC9.25 will be deemed deleted for the purposes of this Sub-Contract.</p> |
| Assignment and Sub-Contracting (GC12) | <p>The approval of any sub-sub-contracting arrangements will be subject to:</p> <ol style="list-style-type: none"> 1. the approval of the Commissioner; and 2. the approval by the Head Provider of the terms of the Sub-Sub-Contract, which must be consistent with the terms of this Sub-Contract. The Sub-Contractor confirms and agrees with the Head Provider that under the terms of any Sub-Sub-Contract, the Sub-Contractor must carry out its respective obligations, and will impose such obligations on the Sub-Sub-Contractor, in order to ensure that the Head Provider can meet all its obligations under the Head Contract to the extent they relate to the Sub-Contract Services including, without limitation, those under GC24. <p>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.</p> |
| Variations (GC13) | <p>The Sub-Contractor acknowledges that the Head Contract cannot be varied except in accordance with GC13. The Sub-Contractor agrees that:</p> <ol style="list-style-type: none"> 1. it 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-Contract 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: <ol style="list-style-type: none"> a) 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 |

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| | <p>Commissioner; and</p> <p>b) 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-Contract Services.</p> <p>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.</p> <p>The provisions of GC13.12 of the Head Contract will also apply to this Sub-Contract if a proposed Variation could have a cost implication for the Commissioner.</p> |
| Dispute Resolution (GC14) | <p>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-Contract Services:</p> <ol style="list-style-type: none"> 1. the Sub-Contractor must, 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 must provide any assistance reasonably required by the Head Provider in pursuance of a resolution of that Dispute or those Disputes; and 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 this Sub-Contract, the Sub-Contractor or the Sub-Contract Services. |
| Suspension (GC16) | <p>Where the Sub-Contractor is required to deliver to the Head Provider all materials, papers, documents and operating manuals owned by the Head Provider this will 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-Contract Services.</p> |
| Termination (GC17) | <ol style="list-style-type: none"> 1. The Sub-Contractor may terminate this Sub-Contract with immediate effect by written notice to the Head Provider: <ol style="list-style-type: none"> a. 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 paragraph and requiring payment to be made; or |

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| | <ul style="list-style-type: none"> b. 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-Contract 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 c. if the Head Provider breaches the terms of GC12 in relation to the transfer or assignment of its rights or obligations under this Sub-Contract; or d. if 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. <p>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:</p> <ul style="list-style-type: none"> a. the Head Contract terminates in whole or part for any reason whatsoever; or b. the Head Contract expires and is not renewed for any reason whatsoever; or c. 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. |
| <p>Consequence of Expiry or Termination (GC18)</p> | <p>The provisions of GC18.2 of the Head Contract will also apply to this Sub-Contract if the Commissioner procures any terminated Sub-Contract 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.</p> <p>Where the Sub-Contractor is required to return to the Head Provider materials, papers, documents and operating manuals owned by the Head Provider this will 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-Contract Services.</p> <p>The words "to the relevant Commissioners" will be deemed deleted from GC18.8.2 for the purposes of this Sub-Contract.</p> |
| <p>Confidential Information of the Parties (GC20)</p> | <p>Notwithstanding GC20, the Head Provider will be entitled to disclose information in its possession that relates to this Sub-Contract (including the Price) 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, to NHS England and/or NHS Improvement or to any member of the ICS or STP of which the Head Provider is a</p> |

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| | <p>member (to the extent reasonably required for the activities of the ICS or STP and ensuring that such members are subject to similar confidentiality obligations as described in GC20). 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.</p> |
| <p>Patient Confidentiality, Data Protection, Freedom of Information and Transparency (GC21)</p> | <p>The provisions of GC21.13 of the Head Contract will also apply to this Sub-Contract if such information is required by the Commissioner.</p> <p>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.</p> <p>GC21.18 to GC21.22 will only apply to this Sub-Contract if either the Head Provider or the Sub-Contractor is a public body.</p> |
| <p>Intellectual Property (GC22)</p> | <p>The licence of Provider Deliverables granted by the Provider under GC22.2 of the Head Contract will 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-Contract Services and performing its obligations under the Head Contract.</p> <p>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.</p> |
| <p>Third Party Rights (GC29)</p> | <p>Notwithstanding the provisions of GC29.1 of the Head Contract, the Commissioner will 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 will include all rights granted under the Head Contract to the Commissioner to the extent they are relevant to the Sub-Contract Services.</p> <p>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-Contract Services, the Commissioner will 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-Contract Services.</p> <p>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.</p> |

6.4 The following timescales 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 |
|-----------------------|---|--|
| SC7.4C | 20 Operational Days (for notice that the Sub-Contractor will stop providing a Sub-Contracted Service to a Service User) | 16 Operational Days |
| SC24.6 | 5 Operational Days (timescale in which the Sub-Contractor must allow access to its property, premises, information and Staff following a request for access) | 4 Operational Days |
| SC25.1 | 5 Operational days (for the Head Provider to provide copies of procedures and protocols implemented) 5 Operational Days (for the Sub-Contractor to provide copies of procedures and protocols implemented) | 6 Operational Days 4 Operational Days |
| SC28.11 | 6 months (for Head Provider to make change to practice) 6 months (for Sub-Contractor to make change to practice) | 32 weeks 20 weeks |
| SC28.18.2 and SC28.19 | 5 Operational Days (Sub-Contractor to rectify any Information Breaches) | 4 Operational Days |
| SC28.20 | 10 Operational days (Head Provider to pay withheld sums to the Sub-Contractor) | 12 Operational Days |
| SC29.24 | 1 month notice (for the Head Provider to replace or change the Prior Approval Scheme) | 3 weeks |
| SC30.2 | 5 Operational Days (Sub-Contractor to notify Head Provider of the activation of its Incident Response Plan etc.) | 4 Operational days |
| SC32.6 | 10 Operational Days (for Sub-Contractor to provide evidence that it is addressing safeguarding concerns) | 8 Operational Days |
| GC5.13 | 20 Operational Days (Sub-Contractor to provide information in accordance with Regulation 11(2) of TUPE) | 16 Operational Days |

| Provision | Timescale in the Service Conditions or General Conditions | Amended timescale for this Sub-Contract |
|------------------|---|--|
| GC11.4 | 5 Operational Days (Sub-Contractor proof of Indemnity Arrangements) | 4 Operational Days |
| GC11.8 | 3 months prior to expiry of, or 10 Operational Days following notice to terminate, this Sub-Contractor (Sub-Contractor evidence of continuing Indemnity Arrangements) | 14 weeks / 8 Operational Days |
| GC12.13 | 5 Operational Days (for the removal of Sub-Sub-Contractors) | 4 Operational Days |
| GC13.8 | 10 Operational Days (for the Head Provider to respond to a draft Variation Agreement) 10 Operational Days (for the Sub-Contractor to respond to a draft Variation Agreement) | 12 Operational Days 8 Operational Days |
| GC13.10 | 10 Operational Days (for the Head Provider to serve written notice) 10 Operational Days (for the Sub-Contractor to serve written notice) | 12 Operational Days 8 Operational Days |
| GC13.13 | 3 months' notice (for termination) | 10 weeks |
| GC13.14 | 3 months' notice or 6 months' notice (for termination) | 10 weeks or 20 weeks |
| GC15.4 | 10 Operational Days (for the Sub-Contractor to send results of audit etc.) | 8 Operational Days |
| GC17.4 | 3 months' notice (for termination) | 10 weeks |
| GC17.8 | 3 months' notice (for termination) | 10 weeks |
| GC 17.9.2 | 40 Operational Days (for the Sub-Contractor to terminate the Sub-Contract) | 48 Operational Days |
| GC17.10.8 | 20 Operational Days (for the Sub-Contractor to remedy a change in control breach) | 16 Operational Days |

| Provision | Timescale in the Service Conditions or General Conditions | Amended timescale for this Sub-Contract |
|------------------|--|--|
| GC17.10.9 | 30 Operational Days (timeframe for consideration by Head Provider of Change in Control Notification) | 36 Operational Days |
| GC17.10.12 | 40 Operational Days (to remedy breach) | 32 Operational Days |
| GC21.18.3 | 2 Operational Days (to provide a copy of the response) | 1 Operational Day |
| GC21.18.4 | 2 Operational Days (to transfer a request) | 1 Operational Day |
| GC21.18.6 | 5 Operational Days (to provide information) | 4 Operational Days |
| GC24.6 | 20 Operational Days (for information relating to Change in Control) | 16 Operational Days |
| GC28.3 | 5 Operational Days (to serve a more detailed notice) | 4 Operational Days |

SERVICE CONDITIONS

[refer to the NHS Standard Contract 2020/21 (Full Length) Service Conditions]
<https://www.england.nhs.uk/nhs-standard-contract/>

GENERAL CONDITIONS

[refer to the NHS Standard Contract 2020/21 (Full Length) General Conditions]
<https://www.england.nhs.uk/nhs-standard-contract/>

