

ASSURANCE FRAMEWORK

SUB-CONTRACTING OF CLINICAL SERVICES UNDER GMS CONTRACTS

Annex B – Mandatory terms regarding sub-contracting

| Mandatory terms regarding sub-contracting | GMS | PMS | APMS |
|---|-----------------|-----------------|-----------------|
| Restrictions on sub-contracting of clinical matters apply. | ✓ ¹ | ✓ ² | ~ ³ |
| Contractor may not sub-contract its obligations to provide clinical services unless it is satisfied that the sub-contractor has in force in relation to it an indemnity arrangement which provides appropriate cover. | ✓ ⁴ | ✓ ⁵ | ✓ ⁶ |
| Contractor must not sub-contract any of its rights or duties under the contract in relation to clinical matters to any person unless it has taken reasonable steps to satisfy itself that: <ul style="list-style-type: none"> it is reasonable in all the circumstances to sub-contract clinical matters; and the person to whom clinical matters are sub-contracted is qualified and competent to provide the service. | ✓ ⁷ | ✓ ⁸ | |
| Contractor must give notice in writing of its intention to sub-contract as soon as reasonably practicable [before the date on which the proposed sub-contract is intended to come into effect]. | ✓ ¹ | ~ ⁹ | |
| Contractor may not proceed if, within 28 days of the commissioner receiving the contractor's notice, the commissioner gives notice in writing of its objection to the sub-contract on the grounds that the sub-contract would: <ul style="list-style-type: none"> put the safety of the contractor's patients at serious risk, or put NHS England at risk of material financial loss. | ✓ ¹⁰ | | |
| Contractor may not proceed if the sub-contractor would be unable to meet the contractor's obligations under the contract. | ✓ ¹⁰ | ~ ¹¹ | ~ ¹¹ |
| Where the commissioner does not give notice of an objection, the parties to the contract are deemed to have agreed a variation of the contract which has the effect of adding to the list of practice premises any premises the address of which was notified to by the contractor to the commissioner in its notice in writing of its intention to sub-contract. | ✓ ¹² | ✓ ¹³ | |
| Sub-contract entered into by a contractor must prohibit the sub-contractor from sub-contracting any of the clinical services that it has agreed with the contractor to provide under the sub-contract. | ✓ ¹⁴ | ✓ ¹⁵ | |
| Contractor must not sub-contract any of its rights or duties under the contract in relation to the provision of essential services to a company or firm which is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of goodwill of a medical practice. | ✓ ¹⁶ | ✓ ¹⁷ | ✓ ¹⁸ |

NB – In the footnotes, statutory references are to The National Health Service (General Medical Services Contracts) Regulations 2015, The National Health Service (Personal Medical Services Agreements) Regulations 2015 or The Alternative Provider Medical Services Directions 2016, as the context requires.

¹ Reg. 28.

² Reg. 23.

³ The APMS contract must specify the circumstances (if any) in which any obligations under the APMS contract may be sub-contracted (Direction 6(1)(d)). The *NHS England Standard APMS Contract 2017/18* states that the contract shall not sub-contract without the prior written authorisation of the commissioner and subject to such conditions as the commissioner in its absolute discretion may impose (clause 54.1). However, some APMS contracts may contain different terms and should always be checked.

⁴ Reg. 91(2).

⁵ Reg. 83(2) and Sch. 2, para. 43(1).

⁶ Direction 7(1)(s).

⁷ Schedule 3, para. 44(1).

⁸ Sch. 2, para. 43(1).

⁹ The contractor must inform the commissioner of the sub-contract as soon as reasonably practicable, but this does not necessarily have to be before the date on which the proposed sub-contract is intended to come into force (Sch. 2, para. 43(2)).

¹⁰ Sch. 3, para. 44(5).

¹¹ There is no explicit requirement. However, doing so would place the contractor in breach of contract.

¹² Sch. 3, para. 44(8).

¹³ Sch. 2, para 43(3).

¹⁴ Sch. 3, para. 44(9).

¹⁵ Sch. 2, para 43(4).

¹⁶ Sch. 3, para. 44(10)-(11). Commissioner must terminate contract if this condition is breached, unless the contractor complies with the commissioner's instructions to terminate the sub-contract. (Sch. 3, para. 69).

¹⁷ Sch. 2, para. 43(5)-(6). Commissioner must terminate contract if this condition is breached, unless the contractor complies with the commissioner's instructions to terminate the sub-contract. (Sch. 2, para. 60).

¹⁸ Direction 7(2)(g).