

5 November 2012

## Developing agreements with CSUs: A quick reference guide for CCGs

### Purpose

This is a short factsheet to support CCGs to put in place provisional service level agreements (SLAs) with NHS Commissioning Support Units (CSUs) whilst they prepare to formally procure their commissioning support requirements as soon as they are ready to do so.

Whilst local agreements are likely to include a variety of clauses to reflect the different needs of CCGs, this document describes some of the key minimum clauses that the NHS Commissioning Board would expect to see within any standard SLA, including:

1. Services
2. Payment Mechanism
3. Term and Termination
4. Variations
5. Disputes
6. Confidentiality
7. Intellectual Property

During the period of NHS hosting for CSUs, agreements between CCGs and their CSU will be NHS contracts and as such will not be legally binding.

### Context

The NHS Commissioning Board (NHS CB) has asked clinical commissioning groups (CCGs) to ensure they are clear about their commissioning support requirements and what level of resource they will commit to their NHS CSU for the period 2013/14 by the end of October 2012, with the aim of putting in place signed SLAs by 30 November 2012. This will enable both CCGs and CSUs to finalise their staffing structures and recruit in line with the national HR transition process.

### What is an SLA?

An SLA is simply a document that sets out an agreement between two or more parties, describing the expectations and requirements of each party. An SLA for commissioning support might describe a level of service expected by a customer (in this case the CCG or NHSCB) from a supplier (CSU), the metrics used to measure the services, the obligations of the customer (eg in making payments or providing information), and what will happen if either party does not do what it has agreed to. It is also likely to describe the communications and reporting lines between the parties and the roles and responsibilities of each.

### Important Clauses to Include

#### 1. Services

A full description of the services to be provided set against a corresponding set of client requirements will form the backbone of any agreement. Identifying the scope of each service – what is included and equally what is not – will provide additional clarity around responsibilities. Likewise, responsibilities for elements of delivery should be captured, particularly in cases where something is required of the

client to enable service delivery. The service methodologies and prices should be allocated against each service.

## 2. Payment Mechanism

For each service, the agreement should describe the payment mechanism. This should include the payment frequency, terms, penalties for late payment, VAT handling, and so on. There should also be a mechanism for monitoring quality, performance and improvement against pre-agreed standards and key performance indicators and the consequences of not meeting these should be set out, including escalation procedures and, ultimately, deduction mechanisms where appropriate.

## 3. Term and Termination

Once established as statutory bodies, CCGs will be subject to the procurement rules and processes that govern public sector bodies, which means that they will need to formally procure their commissioning support at the earliest opportunity. Legal advice suggests that to minimise any risk of challenge to CCGs, agreements should be limited to 18-months to allow time for CCGs to procure their support. Termination rights should be granted to both parties under any agreement and a suitable notice period agreed.

## 4. Variations

Variations can be proposed by either party and should follow an agreed process. Proposed variation to certain clauses, such as Term, may be subject to approval by the NHS CB given the associated risks to both CCGs and the NHS CB. A change request mechanism to be managed by the NHS CB as host will be developed and communicated in due course.

## 5. Disputes

Where disputes arise, the parties in the first instance should seek to negotiate a compromise to resolve the dispute. If this is not possible then a plan for resolution should be invoked. Typically one would expect to see a series of time-bound steps to include involvement of a mediator (the cost of which should be shared by both parties) at some stage of the process. The role (if any) of the NHS CB in disputes will be communicated in due course.

## 6. Confidentiality

In the course of conducting business, it is likely that confidential information will be passed between client and provider. Any material marked as commercial in confidence should be treated appropriately for the duration of any agreement, and at the expiry or earlier termination of the agreement either returned to its rightful owner or destroyed. The drafting of the confidentiality clause should be comprehensive given the level of commerciality inherent within the developing market.

## 7. Intellectual Property (IP)

IP is something that requires consideration at a local level, and will be specific to the services that each CSU is intending to deliver to its clients. It is recommended that as a default position, neither party should acquire the IP of the other upon conclusion of the agreement, and during the term of the agreement all IP is shared between the parties in order to benefit the overall service delivery. Any variation to this position should be explicitly stated in the agreement.

## **Questions / Comments?**

If there are any questions relating to the SLAs please contact [commissioningsupport@dh.gsi.gov.uk](mailto:commissioningsupport@dh.gsi.gov.uk).