

## **GUIDELINES FOR SERVICE PROVIDER SALE OF BUSINESS**

**Provided for information to guide LHINs and contracted service providers – November 2017.**

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### **A. OVERVIEW**

A LHIN (or more than one LHIN) may be notified by a service provider that the service provider is selling all or a portion of its business. Typically, this is highly confidential information that should not be shared with other LHINs without the consent of the service provider.

There are two types of sale that will impact the LHIN, a sale of assets owned by the service provider or a sale of the majority of the shares of the service provider. Under the 2007 Clinical Services Template Agreement and the 2009 Equipment and Supplies Template Agreement, prior to completing a sale of business a service provider under contract with a LHIN must i) obtain written consent from the LHIN(s) to an assignment of the contract to the purchaser (in an asset sale) or ii) obtain written consent from the LHIN(s) to the change of control of the service provider (in a sale of shares).

There is standard consent documentation that is to be used for each of these processes. Each process (asset sale and share sale) requires a different type of consent document. The LHIN should note that the current service provider, buyer and the LHIN will need to sign the documentation. Generally this will require the assistance of legal counsel and the legal services are often paid for by the service provider or the purchaser. In addition, the LHIN will need to conduct financial and other due diligence on the purchaser before giving consent. HSSOntario will assist in the due diligence exercise where current information on the buyer and/or seller exists as a result of the prequalification process. Consent is often conditional upon the service provider retaining the staff that are in existence at the time of the sale.

### **B. PROCESS**

Generally, senior managers are first contacted about the sale of a business and any work that is to be completed by the LHIN is done by the contract managers. We recommend that the following process be followed when a LHIN is contacted about the sale of business of one of its service providers:

- 1) Find out as much information about the transaction as possible from the service provider. Ask the following questions:
  - It is a share purchase or an asset purchase?
  - When is the anticipated closing date for the transaction?
  - Who is the purchaser?
- 2) Contact Director, Quality and Education at Health Shared Services Ontario who will assist with coordination across all LHINs involved and, engage LHIN Legal on behalf of the LHINs.
- 3) The LHIN will want to request financial information, experience information and legal information from the purchaser prior to approving the transaction. Refer to the attached checklist as an example of information to be requested. The checklist lists information that is similar to the information obtained from applicants in HSSOntario's central prequalification process. Note that the checklist is only a basic list and

- additional information may be necessary depending on the transaction. Request this information from the service provider as soon as possible and review all disclosed information.
- 4) LHIN legal will work with the LHINs to draft the appropriate consents. The following information will be required from each LHIN:
    - A list of each of the contracts (including any all contracts in effect and any amendments and extensions to such contracts) that a LHIN has with the service provider.
    - Name of the individual(s) at the LHIN who will sign the consent (signing authority).
  - 5) Once the LHIN has signed off on the language of the consent, LHIN legal will circulate the consents to counsel for the service provider.
  - 6) Once finalized through any negotiation, the consents are signed by the LHIN. Note, execution of consents may occur concurrently (ie: LHIN may not be the last to sign the document; however, execution of the consents must occur prior to closing of the transaction.

### **C. PREQUALIFIED ENTITIES**

If the buyer has been prequalified as part of HSSOntario's prequalification process for providers of clinical services and medical equipment and supplies, some of the due diligence information may not be required. This information may have already been submitted and reviewed by HSSOntario as part of the prequalification process (for example, with respect to previous experience, the buyer will have an experience rating from HSSOntario). If the buyer has been prequalified, HSSOntario will recommend to the LHINs what, if any, due diligence material will not be required from the buyer.

The LHIN and any prequalified service provider should be aware that if a sale of business transaction results in a significant change to a Service Provider that, immediately prior to the transaction, is prequalified, (such as, for example, all of the assets are transferred out of the entity, the entity is dissolved, etc.), the entity's prequalification status may be adversely affected by the transaction and the Service Provider will need to apply to the HSS Ontario for prequalification prior to participating in any subsequent RFP process initiated by a LHIN.

Questions may be forwarded to [prequalification@hssontario.ca](mailto:prequalification@hssontario.ca) or call 416-750-1720.

## **Due Diligence Checklist**

**Note:** The following are due diligence questions that would be appropriate to ask a buyer.

### **FINANCIAL**

1. Most recent audited financial statements of the buyer (in the case of an asset sale) or the buyer and the target company (in the case of a share sale).
2. Any proforma balance sheet prepared for the post-transaction entity.
3. If the buyer is not a current LHIN provider, audited financial statements for its two fiscal years immediately prior to the closing date of the transaction, and if the most recent audited statement will be more than 6 months old as of the closing date of the transaction, any interim financial statements produced since the audited financial statements.

### **EXPERIENCE**

#### *Asset Sale*

1. Does the buyer have any other current contracts with a LHIN? What is the value (in dollars and, if applicable, hours or visits) of all current LHIN contracts?
2. Does the buyer have any equivalent experience (hospital, clinic, hospice, long-term care home or retirement home) and if so what is the value of the contract (in dollars and, if applicable, hours or visits).
3. What is the buyer's intention regarding the service provider's current staff.
4. If a buyer does not have a LHIN contract or equivalent experience, what is the buyer's plan for delivery the services?

#### *Share Sale*

1. Does the buyer have any current contract(s) with a LHIN? What is the value (in dollars and, if applicable, hours or visits) of all current LHIN contracts?
2. What is the buyer's intention regarding transition and integration of the new business (i.e. keep as a separate business, division, integrate into existing business etc)?

### **TRANSITION**

1. What is the buyer's plan for transition?

**LEGAL**

1. The buyer should provide details regarding the following litigation matters for the three year period prior to the transaction:

Description Required		Buyer's Disclosure	
Provide details of any labour relations strikes or labour relations actions that may materially adversely affect the buyer's ability to deliver the Services as described in the Services Agreement with the LHIN.			
Provide details of any violation of wage or other fair labour practices and standards by the buyer.			
Provide details of any occurrences of default on a contract, or disqualification in a LHIN RFP process (not a simple failure to proceed in the RFP process) or being prohibited from providing services to a LHIN.			
Provide details of any contract that the buyer (or an affiliate of the buyer) has failed to complete, in which the buyer (or an affiliate of the buyer) has been terminated or in which the buyer (or an affiliate of the buyer) has received formal written notification that the buyer (or an affiliate of the buyer) has committed a material breach.  Include any Quality Improvement Notices (QIN) issued, date opened, LHIN involved, and a description of the issue(s).			
Provide details of any conviction or investigation of the buyer (or an affiliate of the buyer) for a violation of the criminal law or any other regulations or requirements relating to professional matters or any other matters relevant to its business.			
Provide details of any administrative or regulatory offences, charges or penalties imposed on the buyer and the outcome of such.			
Provide details of any insolvency, bankruptcy or similar applications by or against the buyer.			
State any complete or ongoing lawsuits, arbitrations or legal actions arising from contracts undertaken by the buyer (or an affiliate of the buyer).			
<i>Year</i>	<i>Award FOR or AGAINST Buyer (or affiliate)</i>	<i>Name of client, cause of litigation, and matter in dispute</i>	<i>Disputed amount (current value in Canadian dollars)</i>

***[Note to LHINs: If the buyer has significant operating affiliates, these entities should also provide legal disclosure.]***

2. The buyer should indicate whether any of the litigation matters disclosed is covered by insurance.