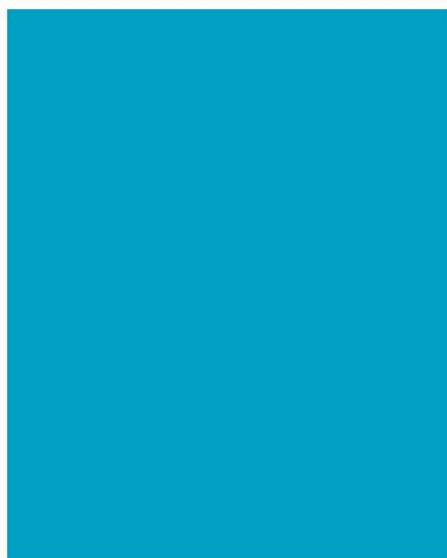


**Standard
operating policies
and procedures
for primary care**



**Incorporation for
primary care
contracts**



Incorporation for primary care contracts

Standard operating policies and procedures for primary care

First published: 27 March 2013

Prepared by Primary Care Commissioning (PCC)

Contents

Contents.....	3
Purpose of policy.....	4
Policy aims and objectives	5
Background.....	5
Scope of the policy	5
Incorporation or LLP- GDS.....	6
Process on receiving a request from a contract holder – GDS & PDS.....	8
Novation.....	11
Annex 1: Abbreviations and Acronyms	13
Annex 2: Acknowledgement of request to incorporate and template	16
Annex 3: Refusal of request to Incorporate, become a Qualifying body, LLP [delete as appropriate].....	32
Annex 4: Agreement to Novate	33
Annex 5 – Full tender required.....	34
Annex 6 – Deed of Variation	35
Annex 7 Regulations 4 and 5	41

Purpose of policy

- 1) The NHS Commissioning Board (NHS CB) is responsible for direct commissioning of services beyond the remit of clinical commissioning groups, namely primary care, offender health, military health and specialised services.
- 2) This document forms part of a suite of policies and procedures to support commissioning of primary care. They have been produced by Primary Care Commissioning (PCC) for use by NHS CB's area teams (ATs).
- 3) The policies and procedures underpin NHS CB's commitment to a single operating model for primary care – a “do once” approach intended to ensure consistency and eliminate duplication of effort in the management of the four primary care contractor groups from 1 April 2013.
- 4) All policies and procedures have been designed to support the principle of proportionality. By applying these policies and procedures, Area Teams are responding to local issues within a national framework, and our way of working across the NHS CB is to be proportionate in our actions.
- 5) The development process for the document reflects the principles set out in *Securing excellence in commissioning primary care*¹, including the intention to build on the established good practice of predecessor organisations.
- 6) Primary care professional bodies, representatives of patients and the public and other stakeholders were involved in the production of these documents. NHS CB is grateful to all those who gave up their time to read and comment on the drafts.
- 7) The authors and reviewers of these documents were asked to keep the following principles in mind:
 - Wherever possible to enable improvement of primary care
 - To balance consistency and local flexibility
 - Alignment with policy and compliance with legislation
 - Compliance with the Equality Act 2010
 - A realistic balance between attention to detail and practical application
 - A reasonable, proportionate and consistent approach across the four primary care contractor groups.
- 8) This suite of documents will be refined in light of feedback from users.

¹ *Securing excellence in commissioning primary care* <http://bit.ly/MJwrfA>

Policy aims and objectives

This policy provides guidance on and the process for NHS CB when dealing with requests to incorporate

This guidance has specific sections for general dental services (GDS) contracts and personal dental services (PDS) agreements as the approaches are slightly different due to the regulations.

Background

On 31 July 2006, The Dentists Act 1984 amendment order 2005 – SI 2005/2011 came into force, this relaxed the previous restrictions on setting up new dental bodies corporate.

This means that dental practices now have the option of becoming a dental body corporate (DBC) or limited liability partnership (LLP) if they hold a GDS contract.

Scope of the policy

To provide a consistent decision making tool for NHS CB when managing requests to incorporate or novate under the GDS & PDS regulations.

Incorporation or LLP- GDS

Any practice which wishes to become a dental body corporate can now do so provided it satisfies the relevant requirements. The requirement is that at least half of the directors of a dental body corporate are dentists or dental care professionals registered with the GDC and that none of those directors is erased or suspended from a regulatory body's register.

Section 43 of the Dentist Act 2005 states

*(1) a body corporate commits an offence if it carries on the business of dentistry at a time when a majority of its directors **are not** persons who are either registered dentists or registered dental care professionals.*

(2) Where a person is the subject of a decision erasing his name from, or suspending him from, a register kept by any of the regulatory bodies listed in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, that person commits an offence if he is a director of a body corporate carrying on the business of dentistry at any time when such an erasure or suspension remains in effect.

The business of dentistry is defined in the Dentists Act 1984. A synopsis is given below:

The practice of dentistry includes the performance of any such operation and giving of any such treatment, advice or attendance as is usually performed or given by dentists. A person shall be treated as carrying on the business of dentistry if he or a partnership of which he is a member receives payment for services rendered in the course of the practice dentistry by him, a partner or employee.

It is the responsibility of NHS CB to ensure that these rules are complied with prior to entering into any new agreement.

For example an application for incorporation where the sole directors are a husband and wife, with only one of them being registered with the GDC would be an appropriate dental body corporate. However, a request where the directors consisted of three friends where only one was registered with the GDC would not meet the requirements of the Dentists Act.

NHS CB also needs to be aware that incorporation is not classified as a minor change to the contract and could terminate the existing contract and require a new contract. Incorporation is also not an automatic right for the contract

holder and must be considered on a case by case basis. Both the contractor and NHS CB need to be aware that incorporation can also affect entry to or continuing to be permitted as a member of the NHS pension scheme. In general, however, performer-providers who have incorporated remain eligible to be a member of the scheme, as do non-provider performers working in a practice where the business is incorporated. Non-provider performers who have incorporated are not eligible.

Process on receiving a request from a contract holder – GDS & PDS

- The AT receives a request from the contract holder
- The AT acknowledges the request and sends the contract holder the documents in Annex 1 (Assessment template)
- The Contractor returns the template to the Area Team (AT) within two weeks
- The AT reviews the information provided and refuses the request on specific grounds (see below), novates the contract or agreement with no other change, or the contract value is negotiated.

On receipt of the template NHS CB will review the request in the following areas:

1. Does the proposed dental body corporate meet the requirements of the Dentists Act 1984 as amended 2005 Section 43(1)? That is, are at least half of the directors registered dentists or dental care professionals?

If they do not meet these requirements the AT must refuse their request to incorporate (annex 2).

If they meet this requirement then the AT will undertake a further review of the incorporation request.

2. to understand if the existing contract holder(s) will remain the sole shareholders in the new legal entity and that they are the person(s) who controls and gives instructions to comply with contractual obligations ie the company must be owned and controlled by the original contractor and the original contractor must remain liable under the contract (new or as varied) and
3. that the material change to the contract is minimal (contract value or activity level) and does not change the essential conditions of the original contract.

Following *Presstext Nachrichtenagentur GmbH v Republik Österreich* (Bund) and other case law, if these conditions are met then the contract can be **novated** (transferred) without considering a public tender and the AT can inform the contract holder of their agreement to incorporate (Annex 3 & 6).

On receipt of the request to incorporate the AT may review the current contract service level and performance to consider if the current contract gives best value for money that the AT would wish to continue with, ie if the contract requesting incorporation was a 'child only' or 'exempt adult' contract. If on this review the AT seek changes that would:

- introduce conditions which, had they been part of the initial award procedure, would have allowed for the admission of tenderers other than those initially admitted or would have allowed for the acceptance of a tender other than the one initially accepted
- extend the scope of the contract considerably to encompass eg services not initially covered; or
- alter the economic balance of the contract in favour of the contractor in a manner which was not provided for in the terms of the initial contract.

This would be seen as material change and depending on the contract value would require appropriate processes to be followed such as local tender, tender arrangements through supply to health, or full OJEU procurement. therefore the AT must refuse the request on the grounds that an appropriate tender process would be required (Annex 4) to ensure that

- fair competition is undertaken and that no potential supplier is disadvantaged by the process or requirements of the tender
- the decision to award is based upon evaluation criteria that are linked (and this can be demonstrated) to the requirements of the specification.
- the specification includes all technical and professional requirements
- an award notice is placed through OJEU.

Though the full EU tender process does not have to be applied the principles of fairness and open competition must be - any unsuccessful suppliers may challenge the PCT legally if they believe this was not the case

It should be noted that the process of inviting tenders in these circumstances would be difficult to implement as a contractor is unlikely to terminate his / her contract until assurance has been received that the AT will commission an equivalent (or mutually agreed) level of activity from them. In reality it is likely that the contractor would retain their contract on the original terms and not pursue the incorporation.

If the AT refuses in principle to novate or issue a new contract for the incorporated contract holder the contract holder has the option of:

- a) Retaining current contract without incorporation
- b) Disputing the AT's decision via first tier tribunal or through the civil courts; the route would depend on the contractor's health body status.

Novation

Novation is used where a company is selling its business and as part of the sale it is transferring its contracts and its customers to the buyer. The contracts are assigned and the buyer agrees to take over the seller's responsibilities for performing the contracts and takes on any associated debts and obligations.

Novation can only take place if the 3 parties all agree to "Novate" (transfer). In the case of dentistry the three parties would be:

- AT for the NHS Commissioning Board
- The existing contract holder (Seller)
- The business buyer

The model contract, Part 2, Clause 12 states:

"The contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under this contract, save in accordance in with contract. The contract does not prohibit the contractor from sub-contracting its obligations arising under the contract where such sub-contracting is expressly permitted by the contract."

This statement has been interpreted by some practitioners as affecting the 'goodwill' of the practice and, therefore, its saleability in the future. This is not strictly true. However, it is the case that, because dental contracts are personal contracts between the parties, a successor contractor cannot be assigned by the practice wishing to sell. This has been supported by NHSLA determinations. Instead, a PCT should end one contract and decide whether to issue a new one in order to replace the lost capacity (this may be at a different level and location to the previous contract depending on local needs and priorities)

The AT should always consider whether any decision it makes to agree to a novation could be challenged on the grounds of contestability, most common challenge would be that this would have been an opportunity for another provider to provide these services

When agreeing to novate and before contracting with the new provider the AT must ensure the new contract holder has received CQC registration under the new company. All providers must have the relevant CQC registration to provide services; therefore, the AT can delay the issuing of the new contract until CQC registration has been proven.

The AT must also:

- Provide the contract holder who has novated with full financial reconciliation; and
- Clear arrangements for managing any under performance by the old contractor in terms of either financial recovery, delivery or performance concerns and how these will be managed going forward.

A deed of novation is included in Annex 6

Annex 1: abbreviations and acronyms

A&E	accident and emergency
APHO	Association of Public Health Observatories (now known as the Network of Public Health Observatories)
APMS	Alternative Provider Medical Services
AT	area team (of the NHS Commissioning Board)
AUR	appliance use reviews
BDA	British Dental Association
BMA	British Medical Association
CCG	clinical commissioning group
CD	controlled drug
CDAO	controlled drug accountable officer
CGST	NHS Clinical Governance Support Team
CIC	community interest company
CMO	chief medical officer
COT	course of treatment
CPAF	community pharmacy assurance framework
CQC	Care Quality Commission
CQRS	Calculating Quality Reporting Service (replacement for QMAS)
DAC	dispensing appliance contractor
Days	calendar days unless working days is specifically stated
DBS	Disclosure and Barring Service
DDA	Disability Discrimination Act
DES	directed enhanced service
DH	Department of Health
EEA	European Economic Area
ePACT	electronic prescribing analysis and costs
ESPLPS	essential small pharmacy local pharmaceutical services
EU	European Union
FHS	family health services
FHS AU	family health services appeals unit
FHSS	family health shared services
FPC	family practitioner committee
FTA	failed to attend
FTT	first-tier tribunal
GDP	general dental practitioner
GDS	General Dental Services
GMC	General Medical Council
GMS	General Medical Services
GP	general practitioner

GPES	GP Extraction Service
GPhC	General Pharmaceutical Council
GSMP	global sum monthly payment
HR	human resources
HSE	Health and Safety Executive
HWB	health and wellbeing board
IC	NHS Information Centre
IELTS	International English Language Testing System
KPIs	key performance indicators
LA	local authority
LDC	local dental committee
LETB	local education and training board
LIN	local intelligence network
LLP	limited liability partnership
LMC	local medical committee
LOC	local optical committee
LPC	local pharmaceutical committee
LPN	local professional network
LPS	local pharmaceutical services
LRC	local representative committee
MDO	medical defence organisation
MHRA	Medicines and Healthcare Products Regulatory Agency
MIS	management information system
MPIG	minimum practice income guarantee
MUR	medicines use review and prescription intervention services
NACV	negotiated annual contract value
NCAS	National Clinical Assessment Service
NDRI	National Duplicate Registration Initiative
NHAIS	National Health Authority Information System (also known as Exeter)
NHS Act	National Health Service Act 2006
NHS BSA	NHS Business Services Authority
NHS CB	NHS Commissioning Board
NHS CfH	NHS Connecting for Health
NHS DS	NHS Dental Services
NHS LA	NHS Litigation Authority
NMS	new medicine service
NPE	net pensionable earnings
NPSA	National Patient Safety Agency
OJEU	Official Journal of the European Union
OMP	ophthalmic medical practitioner
ONS	Office of National Statistics
OOH	out of hours
PAF	postcode address file
PALS	patient advice and liaison service

PAM	professions allied to medicine
PCC	Primary Care Commissioning
PCT	primary care trust
PDS	personal dental services
PDS NBO	Personal Demographic Service National Back Office
PGD	patient group direction
PHE	Public Health England
PLDP	performers' list decision panel
PMC	primary medical contract
PMS	Personal Medical Services
PNA	pharmaceutical needs assessment
POL	payments online
PPD	prescription pricing division (part of NHS BSA)
PSG	performance screening group
PSNC	Pharmaceutical Services Negotiating Committee
QOF	quality and outcomes framework
RCGP	Royal College of General Practitioners
RO	responsible officer
SEO	social enterprise organisation
SFE	statement of financial entitlements
SI	statutory instrument
SMART	specific, measurable, achievable, realistic, timely
SOA	super output area
SOP	standard operating procedure
SPMS	Specialist Personal Medical Services
SUI	serious untoward incident
UDA	unit of dental activity
UOA	unit of orthodontic activity

Annex 2: Acknowledgement of request to incorporate and template

[date]

Dear [Name]

Contract No [Insert contract number]

Request to become LLP/qualifying body/incorporate [delete as applicable]

Thank you for your letter dated [insert date], informing the NHS Commissioning Board's AT of your request to incorporate. Incorporation is not considered to be a minor contractual change, so further enquiries and consideration needs to take place.

In order for us to further consider your request, we would ask that you complete the enclosed template and return to us at the above address within two weeks of the date of this letter.

If we do not receive the completed template within this timeframe we will assume that you no longer wish to progress.

Yours sincerely

[Name]

[Title]

Enc.

Dental Incorporation Assessment Template

All Contractors/Partnerships wishing to Incorporate must complete the details requested below.

Please note **ALL** questions must be answered in full. If a question is not applicable please write N/A in the box provided.

1. Details of the Applicant

- 1.1 Please provide the name and other required contact details of the Applicant (person for contact purposes with this application).

Applicant Name:	
Address:	
Telephone:	
Fax:	
E-mail:	

- 1.2 Status of Organisation – Please mark 'x' in the appropriate box

Individual Dental Contractor	<input type="checkbox"/>	Dental Partnership	<input type="checkbox"/>
------------------------------	--------------------------	--------------------	--------------------------

- 1.3 Current Contract Type – Please mark 'x' in the appropriate box

GDS	<input type="checkbox"/>	PDS	<input type="checkbox"/>	PDS+	<input type="checkbox"/>
-----	--------------------------	-----	--------------------------	------	--------------------------

- 1.4 Please state the nature of the incorporation – Please mark 'x' in the appropriate box

Dental Body Corporate	<input type="checkbox"/>	Limited Liability Partnership	<input type="checkbox"/>
-----------------------	--------------------------	-------------------------------	--------------------------

1.5 Where the Applicant is proposing to form an LLP, please supply the following:

Partnership Name:
Current Trading Name:
Previous Trading Name (if different)
Address and telephone details if different to 1.1
CQC registration
Total Number of members:
Member details
Proposed date LLP to commence:

1.6 Please provide details of the proposed Incorporated Body

Name of Incorporated Body:		
Trading Name:		
Previous Trading Name (if different)		
Registered Address:		
Total Number of proposed Directors:		
CQC registration		
Details of proposed Directors, including full Name, and professional registration numbers:	Name (please print)	GDC Registration Numbers
	(1)	
	(2)	
	(3)	
	(4)	
	(5)	
	(6)	
	(7)	
Proposed date of incorporation:		

2. Impact on Contract

2.1 Will the process of incorporation will have any effect on current patient services – Please mark 'x' in the appropriate box

Yes	<input type="checkbox"/>
------------	--------------------------

No	<input type="checkbox"/>
-----------	--------------------------

2.2 Will the process of incorporation have any effect on the location of current service provision – Please mark 'x' in the appropriate box.

Yes	<input type="checkbox"/>
------------	--------------------------

No	<input type="checkbox"/>
-----------	--------------------------

2.3 Will the process of incorporation have any effect on the current range of services provided – Please mark 'x' in the appropriate box

Yes	<input type="checkbox"/>
------------	--------------------------

No	<input type="checkbox"/>
-----------	--------------------------

2.4 Will there be any change in the practitioners providing the service – Please mark 'x' in the appropriate box.

Yes	<input type="checkbox"/>
------------	--------------------------

No	<input type="checkbox"/>
-----------	--------------------------

If any of these questions receives a YES response, please provide details of the effect:

Details

3. Legal and Regulatory Status

3.1 Please confirm you have or will have (for the proposed new entity) all relevant insurance and indemnity requirements in place prior to contract signature – Please mark 'x' in the appropriate box

Insurance category:	Name of insurance company	Policy no.	Expiry Date	Amount of cover (£)	Name of staff member
Professional indemnity					
Employers liability					N/A
Public liability					N/A
Corporate liability					

3.2 Please confirm that your proposed Board of Directors meet the eligibility criteria set out in the National health Service (General Dental Services Contracts) Regulations 2005 – that at least half are registered dentists or registered dental care professionals. Please mark 'x' in the appropriate box.

Yes	<input type="checkbox"/>
------------	--------------------------

No	<input type="checkbox"/>
-----------	--------------------------

3.3 Please confirm that all practitioners will be covered by GDC Regulations Please mark 'x' in the appropriate box.

Yes	<input type="checkbox"/>
------------	--------------------------

No	<input type="checkbox"/>
-----------	--------------------------

4. Practice Profile and Performance

4.1 Current Opening Times

Day	AM	PM
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		

4.2 Is the practice currently accepting new patients?

Please mark 'x' in the appropriate box.

Yes	<input type="checkbox"/>
------------	--------------------------

No	<input type="checkbox"/>
-----------	--------------------------

If NO, please confirm the reasons below.

Details

4.3 What is the current acceptance policy of your practice

All NHS Patients	<input type="checkbox"/>
Children Only	<input type="checkbox"/>
Exempt Patients Only	<input type="checkbox"/>

4.4 Practice Demographics

Indicator	
Number of Dentists working in the Practice	
Number of other Dental Care Practitioners working in the Practice	
Number of new patients seen in the last financial year	

4.5 Re-attendance rate (current year to date – 2011/12)

Re-attendance	% rate
Children - Within 3 months	
Adults - Within 3 months	
Children - 3-9 months	
Adults - 3-9 months	

4.5 Please provide details of any complaints received by the practice relating to the provision of service and actions taken as a result of the complaint. If none, please state NONE

Details:

5. Statement of Good Standing and Applicant's Declaration

Statement of Good Standing

While we acknowledge that the Commissioners will not be bound by the requirements of the Public Contracts Regulations 2006 (except those that relate to Part B services), we confirm that, to the best of our knowledge, the Applicant is not in breach of the provisions of Regulation 23 of the Public Contracts Regulations 2006 and in particular that:

Grounds for obligatory exclusion (ineligibility)

1. The Applicant or its directors or any other person who has powers of representation, decision or control of the Applicant has not been convicted of any of the following offences:

(a) conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of Council Joint Action 98/733/JHA;

(b) corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

(c) the offence of bribery;

(d) fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of:

(i) the offence of cheating the Revenue;

(ii) the offence of conspiracy to defraud;

(iii) fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;

(iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985;

(v) defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;

(vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or

(vii) destroying defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;

(e) money laundering within the meaning of the Money Laundering Regulations 2003; or

(f) any other offence within the meaning of Article 45(1) of the Public Sector Directive.

Grounds for rejection:

2. The Applicant confirms that it:

(a) being an individual is not bankrupt or has not had a receiving order or administration order or bankruptcy restrictions order made against him or has not made any composition or arrangement with or for the benefit of his creditors or has not made any conveyance or assignment for the benefit of his creditors or does not appear unable to pay or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986, or article 242 of the Insolvency (Northern Ireland) Order 1989, or in Scotland has not granted a trust deed for creditors or become otherwise apparently insolvent, or is not the subject of a petition presented for sequestration of his estate, or is not the subject of any similar procedure under the law of any other state; or

(b) being a partnership constituted under Scots law has not granted a trust deed or become otherwise apparently insolvent, or is not the subject of a petition presented for sequestration of its estate; or

(c) being a company or any other entity within the meaning of section 255 of the Enterprise Act 2002 has not passed a resolution or is not the subject of an order by the court for the company's winding up otherwise than for the purpose of bona fide reconstruction or amalgamation, or has not had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is not the subject of the above procedures or is not the subject of similar procedures under the law of any other state,

(i) has not been convicted of a criminal offence relating to the conduct of his business or profession;

(ii) has not committed an act of grave misconduct in the course of his business or profession;

(iii) has fulfilled obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the relevant State in which the Applicant is established;

(iv) has fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the relevant State in which the economic operator is established;

(v) is not guilty of serious misrepresentation in providing any information required of him under this regulation;

(vi) in relation to procedures for the award of a public services contract, is licensed in the relevant State in which he is established or is a member of an organisation in that relevant State when the law of that relevant State when the law of that relevant State prohibits the provision of the services to be provided under the contract by a person who is not so licensed or who is not such a member.

Registration

3. Where applicable, the Applicant is registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annex IX B of Directive 2004/18/EC) under the conditions laid down by that member state*.

* In the UK this condition is satisfied by registration with Companies House or a declaration on oath that the Applicant is carrying on business in the trade in question in the UK at a specific place of business and under a specific trading name.

Applicant's Declaration

Expressions used in this declaration shall, unless otherwise stated, have the meanings assigned to them in this application.

We certify for ourselves and as agent for and on behalf of each Relevant Organisation that the information supplied in the application is accurate to the best of our and their knowledge and belief and that we have not collaborated with other Applicants in the completion of this questionnaire.

We understand that, by supplying this information to the NHS CB, it may become disclosable to third parties under the FOIA. We confirm that we have clearly identified any information in our submission which we (or Relevant Organisations) regard as being confidential or commercially sensitive. However, we understand that the NHS CB has the final decision regarding the disclosure of any such information in response to a Request for Information.

We understand that it is a criminal offence, punishable by imprisonment, to give or offer any gift or consideration whatsoever as an inducement or reward to any servant of a public body, therefore we hereby certify and undertake and bind and oblige ourselves that the Relevant Organisations, Connected Persons (as defined below), and advisers of all such parties, have not canvassed or solicited nor will in the future canvass or solicit any officer or employee of either the NHS or the NHS CB or any person acting as an adviser for the NHS CB in connection with the selection of Applicants and/or, proposals or bids in relation to the Procurement.

For the purposes of this declaration “Connected Persons” means any person connected with us or the Relevant Organisations or the aforementioned advisers within the meaning given by Section 839 of the Income and Corporation Taxes Act 1988 and any of the respective directors, officers, employees, solicitors, accountants, bankers or other financial or professional advisers of us, the Relevant Organisations, and/or of our or their Connected Persons.

We agree that we shall be responsible for any failure on the part of the Relevant Organisations, Connected Persons and our and each of their advisers to abide by such terms to the same extent as to such failure has been our own action or omission.

We hereby declare that we are authorised by the Relevant Organisations to provide the certification above and, at the date of signing, the information given by us, and as agents for the Relevant Organisations, is a true and accurate record.

Signed: _____

Name: _____

Authorised Signatory for and on behalf of Applicant

Date: _____

A copy of this declaration must be signed by an authorised signatory, on behalf of the Applicant

Annex 3: Refusal of request to Incorporate, become a Qualifying body, LLP [delete as appropriate]

[date]

Dear [Name]

Contract No [Insert contract number]

Request to become LLP/Qualifying body/Incorporate [delete as applicable]

Thank you for your letter dated [insert date], informing the NHS Commissioning Board's AT of your request to incorporate and your completion of the Dental Incorporation Assessment Template

Having reviewed your request, we regret to inform you that you do not meet the requirements to become a Qualifying body/Incorporate [delete as applicable] as defined by the National Health Services Act 2006.

Those being:

- a) Registered dentists or dental care professionals do not make up at least half of the number of directors
- b) A director has been removed or suspended from a regulatory body
- c) That the directors are not eligible to hold a contract under 28M of the NHS Act 2006

If you wish to dispute the above decision, please contact me where I will be happy to discuss the disputes process with you.

Yours sincerely

[Name]

[Title]

Annex 4: Agreement to Novate

[*date*]

Dear [*Name*]

Contract No [*Insert contract number*]

Novation

Thank you for your letter dated [*insert date*], informing the AT of your request to incorporate/become a LLP [*delete as applicable*].

I am pleased to inform you that we have now reviewed the documents provided to us and we confirm that we agree to novate your current NHS contract to your dental body corporate.

I would ask that you complete and return to us the two copies of the deed of novation that has been enclosed. Once this has been received by us we will then issue you with your novated contract and a new contract number. As the GDS/PDS contract has a number of clauses that are specific to dental body corporates I am issuing you a full contract with the relevant clauses reserved and the relevant schedule 1 completed.

Yours sincerely

[*Name*]

[*Title*]

Annex 5 – Full tender required

[date]

Dear [Name]

Contract No [Insert contract number]

Request to incorporate

Thank you for your letter dated [insert date], informing the AT of your request to incorporate/become an LLP [delete as applicable].

On review of your paperwork it has become apparent that AT is unable to novate your contract as it would mean that we are making a material change to the current NHS contract you hold that could be subject to challenge on the following grounds:

[insert grounds eg additional services, activity or financial]

I would therefore be grateful if you can inform me as to whether you would like to retain your existing contract as it stands. You do have an option to terminate your current contract by giving the AT 3 months notice (clause 310 of the standard model contract). If you terminate your contract, the AT may then go out to tender for a new dental contract and you will have an opportunity at that time to become a bidder in any procurement process.

If you are unhappy with this decision and wish to dispute it, please contact me where I will be happy to discuss the disputes process with you.

Yours sincerely

[Name]

[Title]

Annex 6 – Deed of Variation

DEED OF NOVATION & GUARANTEE

DATED 2012

[INSERT NAME OF CURRENT CONTRACTOR]

and

[INSERT NAME OF NEW DBC]

and

XXX NATIONAL HEALTH SERVICE COMMISSIONING BOARD

THIS DEED OF NOVATION & GUARANTEE is made the day of
20[insert year] BETWEEN:

1. [INSERT NAME OF INDIVIDUAL(S) WHO COMPRISE(S) THE CURRENT CONTRACTOR] of [insert address and post code] ('the Current Contractor');
2. [INSERT NAME OF THE NEW DBC] a [company/Limited Liability Partnership]² incorporated in England and Wales under company number [insert company registration number] and whose registered office is at [insert address as registered at Companies House] ('the New DBC'); and
3. NATIONL HEALTH SERVICE COMMISSIONING BOARD of [insert address] (NHS CB)

RECITALS

1. The Current Contractor is to sell its dental practice at [insert address of practice premises] to the New DBC.
2. All the shares in the New DBC are legally and beneficially owned by the Current Contractor.
3. The New DBC is willing to assume all of the Current Contractor's liability and obligations in regard to the GDS Contract entered into between the Current Contractor and the NHS CB with effect from the Date.
4. The NHS CB is willing to enter into this Deed of Novation to indicate that it agrees and consents to the new DBC assuming all the liability and obligations in the place of the Current Contractor in respect of the GDS Contract from the Date.
5. The Current Contractor is willing to guarantee the New DBC's performance of the GDS Contract from the Date.

NOW IT IS AGREED as follows: -

1. Definitions

In this Deed of Novation, the following words shall have the following meanings: -

² Delete as applicable.

'Course of Treatment' has the meaning given to that term in the GDS Contract.

'Date' has the meaning given to that term in Clause 3.1 to this Deed.

'GDS Contract'³ means the contract entered into between the Current Contractor and the NHS CB and dated [insert date of current contract], a copy of which is attached as the Schedule to this Deed.

'Novation' has the meaning given to that term in Clause 2.1 to this Deed.

"Orthodontic Course of Treatment" has the meaning given to that term in the GDS Contract.

"Treatment Plan" has the meaning given to that term in the GDS Contract.

2. Novation

2.1. Save as provided for in Clause 5, the Current Contractor novates and transfers to the New DBC all of its rights and obligations under the GDS Contract ('Novation'). References to the Current Contractor in the GDS Contract shall from the Date be read as references to the New DBC.

2.2. The New DBC undertakes from the Date to perform, comply with and be responsible for the Current Contractor's obligations under the GDS Contract and to be bound by the terms of the GDS Contract in every way as if the New DBC were a party to the GDS Contract in place of the Current Contractor.

2.3. In consideration of the agreement by the Current Contractor and the New DBC to comply with the obligations set out in this Deed the NHS CB consents to the said novation and transfer and, subject to Clause 5, releases and discharges the Current Contractor from all claims and demands whatever in respect of the GDS Contract which accrue on or after the Date, and accepts the liability of the new DBC under the GDS Contract in place of the liability of the Current Contractor. The New DBC agrees from the Date to be bound by the terms of the GDS Contract in every way as if the New DBC were named in the GDS Contract as a party in place of the Current Contractor.

³ If the relevant contract is a PDS Agreement it will be necessary to amend this definition and all other references to the GDS Contract in this document.

3. Effective date of Novation and payments falling due

- 3.1. The Novation will be effective from the start of business on [insert date] ('the Date').
- 3.2. The NHS CB shall pay to the Current Contractor any sums under the GDS Contract falling due for payment before the Date in accordance with the payment terms set out in the GDS Contract.
- 3.3. The NHS CB shall pay to the New DBC any sums under the GDS Contract falling due for payment after the Date in accordance with the payment terms set out in the GDS Contract.
- 3.4. For the avoidance of doubt, the due date in respect of any payment referred to in Clauses 3.2 and 3.3 above shall be determined in accordance with the terms of the GDS Contract. Any apportionment of such monies shall be a matter to be determined by the Current Contractor and the New DBC with those parties making any such balancing payments as they may consider necessary. The NHS CB shall have no involvement in such arrangements.

4. Continuity of Care

- 4.1. Where, at the Date, any Course Of Treatment or Orthodontic Course Of Treatment which the Current Contractor has commenced or has agreed with a patient that it will commence in accordance with the GDS Contract and the same is not complete, the new DBC shall continue and/or complete the same –
 - 4.1.1. within a reasonable period of time or, if sooner, within the period of time previously indicated to the patient either by means of a Treatment Plan or otherwise; and
 - 4.1.2. in accordance with the Treatment Plan or other indication previously given to the patient as to the nature, extent and cost of the Course of Treatment or Orthodontic Course of Treatment except where any variation is considered clinically necessary and agreed with the patient in advance.

5. Guarantee

- 5.1. In consideration for the NHS CB agreeing to the Novation the Current Contractor agrees that if the New DBC (unless relieved from the performance by any clause of the GDS Contract by the NHS CB or by

statute or by the decision of a tribunal of competent jurisdiction) fails in any respect to comply with its obligations under the GDS Contract, the Current Contractor will indemnify the NHS CB and its successors against all losses, costs, claims, liabilities, damages, demands and expenses (whether direct indirect or consequential) that may be incurred by it by reason of any failure on the part of the New DBC in performing and observing the agreements, obligations and provisions on its part contained in the GDS Contract.

5.2. Where the Current Contractor comprises two or more individuals practising in partnership their liability pursuant to Clause 5.1 shall be joint and several.

5.3. The liability of the Current Contractor under this Clause 5 shall not be reduced, discharged or otherwise adversely affected by any termination, amendment, variation, novation or supplement of or to the GDS Contract.

5.4. No delay or failure to exercise any right under this guarantee shall operate as a waiver of that right.

6. Shareholding

6.1. The Current Contractor warrants represents and undertakes that it legally and beneficially owns all of the shares issued in the New DBC as at the Date.

7. Third parties

Except as expressly provided for in this Agreement, this Agreement does not create any right enforceable by any person who is not a party to it ('Third Party') under the Contracts (Rights of Third Parties) Act 1999, but this clause does not affect any right or remedy of a Third Party which exists or is available apart from that Act.

8. Law and jurisdiction

The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.

Executed as a deed by all the partners of
[INSERT NAME OF CURRENT PARTNERSHIP]

Signature:

Signature:⁴

Executed as a deed by
[INSERT NAME OF THE NEW DBC]
acting by [INSERT NAME OF FIRST DIRECTOR], a director

Signature:

and [INSERT NAME OF SECOND DIRECTOR OR SECRETARY], a
director/its secretary⁵

Signature:

Executed as a Deed by the affixing
of the Common Seal of
XXX

.....
Chair/Chief Executive⁶

NATIONL HEALTH SERVICE
COMMISSIONING BOARD in the
presence of:

.....
Executive Director

SCHEDULE

[attach copy of the contract]

⁴ *The signature of all partners is required*

⁵ *Delete as applicable*

⁶ *Delete as applicable*

Annex 7 Regulations 4 and 5

General prescribed conditions relating to all contracts

4. (1) *For the purposes of section 28M of the Act (conditions upon which a general dental services contract may be entered into) the prescribed condition is that a person must not fall within paragraph (3).*

(2) *The reference to a person in paragraph (1) includes any director, chief executive or secretary of a dental corporation.*

(3) *A person falls within this paragraph if—*

(a) *he or it is the subject of a national disqualification;*

(b) *subject to paragraph (4), he or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;*

(c) *within the period of five years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed—*

(i) *he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless he has subsequently been employed by that health service body or another health service body and paragraph (5) applies to him or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court; or*

(ii) *he or it has been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act respectively[33]) unless his or its name has subsequently been included in such a list;*

(d) *he has been convicted in the United Kingdom of—*

(i) *murder; or*

(ii) *a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over six months;*

(e) *subject to paragraph (6), he has been convicted outside the United Kingdom of an offence—*

(i) *which would, if committed in England and Wales, constitute murder; or*

(ii) *committed on or after 14th December 2001, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;*

(f) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933[34] (offences against children and young persons with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995[35](offences against children under the age of 17 years to which special provisions apply) committed on or after 1st April 2006;

(g) he or it has—

(i) been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled;

(ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986[36] unless that order has ceased to have effect or has been annulled; or

(iii) made a composition or arrangement with, or granted a trust deed for, his or its creditors unless he or it has been discharged in respect of it;

(h) an administrator, administrative receiver or receiver is appointed in respect of it;

(i) he has within the period of five years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed—

(i) been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or

(ii) been removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990[37](powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or

(j) he is subject to a disqualification order under the Company Directors Disqualification Act 1986[38], the Companies (Northern Ireland) Order 1986[39] or to an order made under section 429(2)(b) of the Insolvency Act 1986[40] (failure to pay under county court administration order).

*(4) A person shall not fall within paragraph (3)(b) where the Primary Care Trust is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make the person unsuitable to be—
as the case may be.*

Additional prescribed conditions relating to contracts with dental corporations

5. (1) *Subject to paragraph (2), it is a condition in the case of a contract to be entered into with a dental corporation on or after the date of the coming into force for all purposes of article 39 of the Dentists Act Order that no—*

(a) offence has been or is being committed under section 43 of the Dentists Act; or

(b) financial penalty has been imposed under section 43B or 44 of the Dentists Act.

(2) Paragraph (1) shall not apply if the Primary Care Trust is satisfied that any offence under section 43 or penalty imposed under section 43B or 44 of the Dentists Act does not make the dental corporation unsuitable to be a contractor, whether by virtue of the time that has elapsed since any conviction or penalty was imposed, or otherwise.

© Crown copyright Year 2013

First published 27 March 2013

Published to www.commissioningboard.nhs.uk in electronic format only.