

Policy for
incorporation of
primary dental
contracts



Incorporation for dental contracts

Policy & Corporate Procedures

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| | <p>Introduction</p> |
| | <p>From 1 April 2013, the NHS Commissioning Board adopted the name NHS England, a name that gives people a greater sense of our role, scope and ambitions - as the organisation responsible for allocating the NHS budget, working to improve outcomes for people in England and ensuring high quality care for all, now and for future generations.</p> <p>Our legal name remains the NHS Commissioning Board as set out in our establishment orders. While the NHS Commissioning Board will be known as NHS England in everything that we do, there are times when the statutory name is required for legal and contractual transactions. The following list provides some key examples of legal documentation which requires us to use our full legal name:</p> <ul style="list-style-type: none"> • Human resources contract of employment; • Any documentation involving a court of law, eg litigation claims • Contracts for directly commissioned services. <p>For ease of reference NHS England is the generic term used throughout this policy.</p> <p>This policy guidance will ensure that all requests to Incorporate or de-incorporate a dental agreement or contract follow a consistent, fair and proportionate approach.</p> |
| | <p>Policy statement</p> <p>NHS England is responsible for planning, securing and monitoring services commissioned by them in respect of primary care, offender health, military health and specialised commissioning.</p> <p>This document forms part of a suite of policies and procedures to support NHS England’s direct commissioning responsibilities in relation to primary care. The suite of documents will form the NHS England’s single operating manual. This particular policy relates to incorporation or de-incorporation of dental contracts</p> <p>The policies and procedures underpin NHS England’s commitment to a single operating model for primary care – a “do once” right approach intended to ensure consistency and eliminate duplication of effort in the</p> |

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| | <p>management of the four primary care contractor groups from 1 April 2013.</p> <p>The development process for the document reflects the principles set out in securing excellence in commissioning primary care, including the intention to build on the established good practice of predecessor organisations.</p> <p>Primary care professional bodies, representatives of patients and the public and other stakeholders were involved in the production of these documents. NHS England is grateful to all those who gave up their time to read and comment on the drafts.</p> <p>The authors and reviewers of these documents were asked to keep the following principles in mind:</p> <ul style="list-style-type: none"> • 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. <p>This suite of documents will be refined in light of feedback from users.</p> |
| 4 | <p>The aim of this policy is to ensure that all parties to the contract understand the process and procedures that must be followed when contractors request to incorporate or de-incorporate their dental agreement or contract.</p> |
| | <p>Scope</p> <p>The policy provides guidance on the management of the incorporation or de-incorporation of dental contract.</p> <p>The policy covers all General Dental Services (GDS) and Personal Dental Services (PDS) contract holders regardless of their legal entity.</p> |
| 5 | <p>Officers of the following NHS England areas are within the scope of this document:</p> |

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| | <ul style="list-style-type: none"> • NHS England: <ul style="list-style-type: none"> ○ National teams; ○ Regional teams; and ○ Area teams. • All commissioning support units; • NHS leadership academy; • NHS improving quality; • NHS sustainable development unit; • Strategic clinical networks; and • Clinical senates. |
| | Roles and responsibilities |
| 6 | The area teams will need to ensure that the Director of commissioning is made aware of the change as incorporation is deemed to be a major change. There are also aspects that may be open to legal challenge if novation is involved. The decision to permit incorporation or novation should be signed off by the director of commissioning or any other with delegated authority. |
| 7 | The payment and contract system also needs to be updated by the officer managing the transfer. |
| | Corporate level procedures |
| 8 | NHS England central and regional teams will use this policy for any audit purpose or where a challenge from a contractor arises from the implementation of this policy. |
| 9 | Distribution and implementation |
| 10 | This document will be made available to all staff via the NHS England internet and intranet sites |
| 11 | Notification of this document will be included in the all staff email bulletin. |
| 12 | A training needs analysis will be undertaken with staff affected by this document. |
| 13 | Based on the findings of that analysis appropriate training will be provided to staff as required. |

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| | Monitoring |
| 14 | Compliance with this policy will be monitored via the primary care oversight group, <i>together with independent reviews by internal and external audit on a periodic basis.</i> |
| 15 | The Primary care policy ratification a formal sub-group of the primary care oversight group will have responsibility for reviewing and updating the policy. <i>The document should be reviewed in 24 months unless guidance or legislation requires an earlier review.</i> |
| | Equality impact assessment |
| 16 | Equality and diversity are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited in under the Equality Act 2010) and those who do not share it. |
| 17 | As part of its development this document and its impact on equality has been analysed and no major impact has been identified. |
| | Associated documents |
| 18 | This policy should be read in conjunction with: Dental terminations policy Dental variations policy Framework for managing performer concerns |
| | References |
| 19 | Reference any external or NHS England documentation that may be linked in some way (eg acts of parliament) GDS Regulations 2005 PDS Regulation 2005 The Dentist Act 1984 The Dentist Act 1984 (Amendment Order) 2005 The National Health Service (England) Performers Lists Regulations 2013 NHS Act 2006 Health and Social Care Act 2012 |

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Background

Incorporation or LLP- GDS, PDS and PDS plus

1. It is the principle of NHS England that the area team does not need to agree an incorporation request unless it can show a clear benefit to the patients of and for the area team.
2. Any practice that wishes to become a dental body corporate can request to 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 General Dental Council (GDC) and that none of those directors are erased or suspended from a regulatory body's register.
3. Section 43 of the Dentist Act 2005 states:
 - a. 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.
 - b. 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.
4. The business of dentistry is defined in the Dentists Act 1984. A synopsis is given below:
5. 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.
6. It is the responsibility of NHS England to ensure that these rules are complied with prior to entering into any new contract or agreement.
7. 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 or three family members where only one

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was registered with the GDC would not meet the requirements of the Dentists Act.

8. NHS England also needs to be aware that incorporation is not classified as a minor change to the contract or agreement and could terminate the existing arrangements and require a new contract or agreement. Incorporation is also not an automatic right for the contract holder and must be considered on a case by case basis by the area team.
9. Contract holders need to be aware that if the incorporation were to terminate their existing arrangements and it were to go out to competitive tender then no assurances can be given by the area team that they would be successful in winning the new contract or agreement.

Process on receiving a request from a contract holder – GDS, PDS and PDS plus

10. On receipt of a request from the contract holder to incorporate the process is:
 - a. The area team acknowledges the request and sends the contract holder the documents in annex 2 (assessment template)
 - b. The area team to make the contractor aware of the potential implications of incorporation as outlined in paragraph 9.
 - c. The contractor returns the template to the area team within two weeks
 - d. The area team reviews the information provided and either refuses the request on specific grounds (see para 12 -22), or novates the contract or agreement with no other change/the contract or agreement value is negotiated.
 - e. On receipt of the template NHS England will review the request in the following areas:
 - i. Does the proposed dental body corporate meet the requirements of the Dentists Act 1984 as amended 2005 Section 43(1)? Are at least half of the directors registered dentists or dental care professionals?
 - f. If the request does not meet this requirement the area team must refuse the request to incorporate (annex 4).
 - g. If the request does meet this requirement then the area team will undertake a further review of the incorporation request.
11. The area team should have consideration for the following points on receipt of an application for incorporation:
 - a. Is there an opportunity for tender (taking into account
 - i. the value of the contract,
 - ii. the level of market interest,
 - iii. the potential for innovation,

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- iv. the need to protect services in the core contract,
- v. continuity of patient care.
- b. Current contract price – is the current UDA rate good value for money? This can be determined using the Area Team adjusted average rate (ie excluding all non mandatory services such as domiciliary, sedation, orthodontic, minor oral surgery etc) as a benchmark.
- c. Where there has been previous underperformance the commissioned UDAs may be reduced to a realistic and achievable level.
- d. The opening hours (including evening and weekend) and urgent access slots.
- e. Delivery of services will be at the same or a higher level (but within the same contract value) to the same population as previously covered at that location.

12. Applications will not be considered where:

- a. Company is not registered with Companies House (NB: this cannot be finalised until agreement in principle has been given by the Area Team).
- b. Any director has been disqualified from another registered company (check Insolvency Website and Companies House Disqualified Directors).
- c. An unsatisfactory Disclosure and Barring Scheme (this is part of the CQC registration check so it is not necessary for the Area Team to repeat).
- d. Contract is restricted to child/exempt only.
- e. Contract has outstanding debts which include repayment due to underperformance from previous years.
- f. Contract has received a breach or remedial notice with the exception of one breach regarding underperformance of not greater than 8% (ie, performance at least 92%).
- g. Contract is under investigation which may result in a breach or remedial notice (re-application can be made once the investigation has been completed and where no further action has been taken).
- h. Essential quality requirements under HTM 01-05 have not been achieved (latest copy of the IPS audit and action plan required with application).
- i. Has outstanding issues regarding CQC inspection or Area Team practice inspection. Re-application can be made once issues have been resolved.

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- j. Has quality issues highlighted by the Dental Assurance Framework, Exception Reports or Vital Signs Reports.

13. 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
14. 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. This was set out following *Presstext Nachrichtenagentur GmbH v Republik Osterreich* (Bund) and other case law. If these conditions are met then the contract can be **novated** (transferred) without considering a public tender then the area team can inform the contract holder of their agreement to incorporate (annex 5 and 8).
15. On receipt of the request to incorporate the area team may review the current contract service level and performance to consider if the current contract provides value for money. The area team also needs to consider if it wishes to continue with the contract or agreement in its current form, ie if the contract requesting incorporation was a 'child only' or 'exempt adult' contract.
16. If on completion of this review the area team seeks changes that would:
- a. 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
 - b. extend the scope of the contract considerably to encompass eg services not initially covered; or
 - c. 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.
17. Any of the above 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.

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18. If a material change is apparent then the area team must refuse the request on the grounds that an appropriate tender process would be required (annex 6) 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 service specification.
 - the service specification includes all technical and professional requirements
 - an award notice is placed through OJEU if appropriate.
19. 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 area team legally if they believe this was not the case.
20. 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 area team 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.
21. If the area team refuses in principle to novate or issue a new contract for the incorporated contract holder the contract holder has the option of:
22. Retaining their current contract/agreement without incorporation
23. Disputing the area team's decision via the first tier tribunal or through the civil courts; the route taken would be determined by the contractor's health body status.
- 24. Novation**
25. 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.
26. Novation can only take place if the three parties all agree to "novate" (transfer). In the case of dentistry the three parties would be:
- The area team on behalf of NHS England
 - The existing contract holder (seller)
 - The business buyer (purchaser)

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27. The model contract or agreement, 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.”

28. This statement has been interpreted by some practitioners as affecting the ‘goodwill’ of the practice and, therefore, its saleability in the future. It is the case that, dental contracts are personal contracts between NHS England and the contract holder therefore, a successor contractor cannot be assigned by the practice wishing to sell. This has been supported by NHS Litigation Authority determinations

29. The area team needs to be aware that any decision it makes to agree to a novation could be challenged on the grounds of contestability, the most common challenge would be that this would have been an opportunity for another provider to provide these services had there been a tender process.

30. The area team must also provide:

- a. The contract holder who has novated with a full financial reconciliation showing the current position of the contract; and
- b. Clear arrangements for managing any under performance by the previous contractor in terms of financial recovery, service delivery or performance concerns and details of how these will be managed going forward.

Change of control clause

31. Where the area team would support incorporation or novation of the contract or agreement then the area team can as a requirement to proceed include the following change of control clause into the contract or agreement documentation:

32. The Contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under this contract/agreement, save in accordance with the contract/agreement. The Contractor shall notify the Board in writing at least 28 days prior to any proposed change in control of the Contractor where control means:

- the ownership or control (directly or indirectly and in one transaction or as a result of successive transactions) of more than 10% of the voting share capital of the Contractor or

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- the ability to direct the casting vote of more than 10% of the votes exercisable at general meetings of the Contractor on all, or substantially all, matters or
- the right to appoint or remove directors of the Contractor, holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

33. The Board shall consider a proposed change in control and determine whether it consents to the proposal. The Board shall notify the Contractor of its decision in writing at least 14 days prior to the proposed change.

34. Should the Board not consent in writing to the change in control, and the Contractor implements the change in control, the Board shall be entitled to serve a remedial notice on the Contractor.

35. The above consent shall not be unreasonably withheld, delayed or conditioned and shall not apply in relation to the departure by reason of death, retirement or ill health of a director or shareholder of the Contractor.

36. For the avoidance of doubt, the replacement of a departed partner will remain subject to these consent provisions.

37. The Contract does not prohibit the Contractor from sub-contracting its obligations arising under the contract/agreement where such sub-contracting is expressly permitted by the contract/agreement.

38. If the contractors do not agree to the inclusion of this change of control clause then the area team are not obligated to proceed with the incorporation or novation.

39. Area teams should be aware that they may face challenge on the inclusion of the change of control clause.

Request to revert from incorporation back to a single hander or partnership

40. There may be occasions when the area team is approached by a contract holder that has incorporated to revert back to a partnership or single handed contract. As with incorporation this is considered to be a major change that would require the termination of one contract or agreement and the issuing of a new one.

41. On receipt of a request from the contract holder to incorporate the process is
The area team receives a request from the contract holder
a. The area team acknowledges the request and sends the contract holder the documents in annex 9 (letter and assessment template)

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- b. The contractor returns the template to the area team within two weeks
- c. The area team reviews the information provided and either refuses the request on specific grounds (see below) or novates the contract or agreement with no other change, or the contract value is negotiated.
- d. On receipt of the template NHS England will review the request in the following areas:
- e. Does the proposed individual/partnership meet the requirements as set out in section 28M of the NHS Act.(as per Annex 8)
- f. If they do not meet the requirements the area team must refuse their request on the basis that the proposed person(s) do not meet the eligibility criteria to hold either a PDS agreement or GDS contract (annex 10).
- g. If they meet the requirements then the area team will undertake a further review of the request to revert to a single handed or partnership contract.

42. to understand if the existing contract holder(s) will remain 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

43. 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.

44. On receipt of the request to revert to a single hander or partnership the area team may review the current contract service level and performance to consider if the current contract provides value for money. The area team also needs to consider if it wishes to continue with the contract or agreement in its current form, ie if the contract requesting incorporation was a 'child only' or 'exempt adult' contract.

45. If on completion of this review the area team seek changes that would:
- a. 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
 - b. extend the scope of the contract considerably to encompass eg services not initially covered; or

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- c. 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.
46. 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.
47. If a material change is apparent then the area team must refuse the request on the grounds that an appropriate tender process would be required (annex 6) to ensure that:
- a. fair competition is undertaken and that no potential supplier is disadvantaged by the process or requirements of the tender
 - b. the decision to award is based upon evaluation criteria that are linked (and this can be demonstrated) to the requirements of the service specification.
 - c. the service specification includes all technical and professional requirements
 - d. an award notice is placed through OJEU if appropriate.

If on completion of the review the area team find that there are minimal or no material changes to the content of the current contract or agreement then the novation route can be taken. If this is the case then please refer back to the novation section and follow the steps as set out for novation to take place.

CQC registration

48. Should the Area Team agree to incorporation in principle this will be contingent upon CQC registration for the incorporated company. The CQC cannot provide the Notification of Decision (NOD) until the date of commencement is agreed; however, the contractor should provide the Area Team with written confirmation from the CQC that they do not intend to impose any restrictions on registration (assurance letter) as the incorporated company prior before the new contract documentation is produced. The contract will only be valid if registration with the CQC takes place on or before the date of commencement, otherwise it will become null and void.

Disputes

49. Where the contractor does not agree with the outcome of the decision of the area team they may appeal the decision via the NHS Litigation Authority or civil law courts.

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NHS dental services payment system requirements

50. Following the outcome of any decisions taken by the area team, any changes to GDS contracts or PDS agreements must be made on the relevant payment and contract management systems. Please see annex 11 for further details.

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Annex 1: Abbreviations and acronyms

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| 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 |
| DBC | Dental body corporate |
| 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 |

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| 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 |
| NHSCB | NHS Commissioning Board |
| NHS CfH | NHS Connecting for Health |
| NHS DS | NHS Dental Services |
| NHS LA | NHS Litigation Authority |

| | | |
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| | |
|---------|---|
| 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 |

| | | |
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Annex 2: Acknowledgement of request to incorporate and template

[date]

Dear [Name]

Contract No [Insert contract number]

Request to become LLP/company limited by shares/incorporate [delete as applicable]

Thank you for your letter dated [insert date], informing NHS England 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 consider your request, we ask that you complete the enclosed template and return it to us at the above address within two weeks of the date of this letter [insert date].

In addition to the template we also request that you provide copies of the following documentation to support the request. We appreciate that all the documentation will not be available at the time of your request as you will only apply to Companies House and the Care Quality Commission if the Area Team agrees to your request for incorporation in principle. Those marked with * should be forwarded as soon as these become available as the contract documentation cannot be produced until these are received:

- * Companies House Certificate detailing all Directors
- Copy of GDC registration for all registered Directors
- Copy of passport for all Directors
- Professional indemnity
- Employers liability
- Public liability
- * Corporate liability
- * Copy of written confirmation from the CQC that they do not intend to impose any restrictions on registration as the incorporated company
- Copy of the latest IPS Audit (HTM 01-05) and any related action plan

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

| | | |
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Yours sincerely

[Name]

[Title]

Enc.

| | | |
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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 Current 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:

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| |
|--|
| 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 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 to 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 or Personal Dental Services 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"/> |
|-----------|--------------------------|

| | | |
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3.4 Have any of the proposed directors been convicted of any of the following offences:

- Conspiracy;
- Corruption;
- Bribery;
- Fraud
- Money laundering;
- Any other offences

Please mark 'x' in the appropriate box.

| | |
|------------|--|
| Yes | |
|------------|--|

| | |
|-----------|--|
| No | |
|-----------|--|

If YES, please provide details in the box below:

| |
|----------------|
| Details |
| |

| | | |
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3.5 Legal and regulatory status details

Please provide details of any criminal conduct of any director, officer or senior employee of the current or proposed organisation resulting in conviction or in respect of which a prosecution or investigation is pending or in progress. If none, please state 'None'.

| |
|-----------------|
| Details: |
| |

3.6 Please state whether any dental care practitioners employed by the current or proposed organisation have, during the last three years, had their professional registration removed or suspended or whether they are currently under investigation, and provide relevant details. If none, please state 'None'.

| |
|-----------------|
| Details: |
| |

3.7 Please state whether any Dental Care Practitioners employed by the current or proposed organisation have, during the last three years, had

their Professional Registration removed or suspended or whether they are currently under investigation, and provide relevant details. If none, please state 'None'.

| Details: |
|----------|
| |

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?

| | | |
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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 – 2013/14)

| | |
|---------------|--------|
| Re-attendance | % rate |
|---------------|--------|

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| | |
|------------------------------|--|
| Children - within 3 months | |
| Adults - within 3 months | |
| Children - within 3-9 months | |
| Adults – within 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: |
| |

4.6 Please provide details of how you will maintain/improve access for existing and new patients.

| |
|-----------------|
| Details: |
| |

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| |
|--|
| |
|--|

Please provide details of any other benefits to patients should the NHS England approve your application for a DBC contract. If none, please state NONE.

| |
|-----------------|
| Details: |
| |

| | | |
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Annex 3 – Incorporation Assessment Template Area Team

| | |
|--|------------------------|
| Applying Provider - | |
| | |
| Contract Number - | Date contract opened - |
| Current TCV - | Contracted UDA/UOA - |
| Additional Services - | |
| | |
| Copy of Companies House Certificate detailing all Directors | |
| Copy of GDC Registration for registered Directors (at least 50% of Directors must be registered) | |
| Insolvency Website checked for disqualified Directors | |
| Companies House checked for disqualified Directors | |
| Copy of Passport for all Directors | |
| Professional Indemnity Certificate(s) | |
| Employers Liability Certificate | |
| Public Liability Certificate | |
| Corporate Liability Certificate | |
| CQC Comfort Letter | |
| HTM 01-05 (IPS audit) + action plan | |
| | |
| Restricted contract? If so provide details | |
| Outstanding debts (provide amount) | |
| Breach/remedial notices | |
| Provider under investigation? | |
| HTM 01-05 essential requirements achieved | |
| | |
| Quality Issues :- | |
| Dental Assurance Framework – details of flags | |
| Exception Report – details of exceptions | |
| Vital Signs – details of issues | |

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Annex 4: Refusal of request to incorporate, become a company limited by shares, LLP [delete as appropriate]

[Date]

Dear [Name]

Contract No [Insert contract number]

Request to become LLP/Company limited by shares/Incorporate [delete as applicable]

Thank you for your letter dated [insert date], informing NHS England of your intention to incorporate and returning your completed dental incorporation assessment template.

Having reviewed your request, we regret to inform you that you do not meet the requirements to become a company limited by shares/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 (annex 8) of the NHS Act 2006

If you do not agree with this decision you have the right to raise your dispute through NHS Litigation Authority and further information can be found at <http://www.nhsla.com>

If you are interested in growing your business further, you may wish to look for opportunities as they arise when NHS England procures additional GDS services, these will be advertised locally in [insert where] and via OJEU www.tendersdirect.co.uk/Search/TenderSearch.aspx

Yours sincerely

[Name][Title]

| | | |
|---------------------------|------------------------------|----------------------|
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Annex 5: Agreement to Novate

[*date*]

Dear [*Name*]

Contract No [*Insert contract number*]

Novation

Thank you for your letter dated [*insert date*], informing NHS England's area team 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 confirm that we agree to novate your current NHS contract/agreement to your dental body corporate/LLP [delete as applicable].

I would ask that you complete and return both copies of the deed of novation that have 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 contract/PDS agreement has a number of clauses that are specific to dental body corporates I will be issuing you with new contract/agreement documentation with the relevant clauses reserved and the relevant schedule one completed.

Yours sincerely

[*Name*]

[*Title*]

| | | |
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Annex 6 – Full tender required

[date]

Dear [Name]

Contract No [Insert contract number]

Request to incorporate

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

On review of your paperwork it has become apparent NHS England is unable to novate your contract as it would mean that we are making a material change to that could be subject to legal 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/agreement as it stands or if it is your intention to terminate your current contract by giving three months notice (clause 296 PDS agreement or 310 of the GDS standard contracts). If you terminate your contract, NHS England may choose to 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 do not agree with this decision you have the right to raise your dispute through NHS Litigation Authority and further information can be found at <http://www.nhs.uk>

If you are interested in growing your business you may wish to look for opportunities as they arise when NHS England procures additional dental services, these will be advertised locally in [insert where] and via OJEU www.tendersdirect.co.uk/Search/TenderSearch.aspx

Yours sincerely

[Name][Title]

| | | |
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Annex 7 – Deed of Variation

Deed of novation & guarantee

DATED 20XX

[INSERT NAME OF CURRENT CONTRACTOR]

and

[INSERT NAME OF NEW DBC/LLP]

and

**NATIONAL HEALTH SERVICE ENGLAND
XXXX AREA TEAM**

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

1. Insert name of current contractor
2. Insert name of proposed dental body corporate
3. NHS ENGLAND of [insert address]

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/PDS agreement entered into between the current contractor and NHS England with effect from [insert date].
4. NHS England 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 or PDS agreement from [insert date].
5. The current contractor is willing to guarantee the new DBC's performance of the GDS contract/PDS agreement from [insert date].

NOW IT IS AGREED as follows: -

1. Definitions

In this deed of novation, the following words shall have the following meanings: -

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'Change of control' means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on the equity share capital or the control over the right to appoint or remove directors) provided that a change in control shall be deemed not to have occurred if after such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation

'Course of treatment' has the meaning given to that term in the GDS Contract/PDS Agreement.

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

'GDS contract¹/PDS agreement means the contract entered into between the current contractor and NHS England 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/PDS agreement

"Treatment plan" has the meaning given to that term in the GDS contract/PDS agreement.

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/PDS agreement ('novation'). References to the current contractor in the GDS contract/PDS agreement shall from the date be read as references to the new DBC.

2.2. The new DBC undertakes from [insert date] to perform, comply with and be responsible for the current contractor's obligations under the GDS contract/PDS agreement and to be bound by the terms of the GDS

¹ Please only retain the relevant contract or agreement type, deleting all reference to the other eg PDS or GDS.

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contract/PDS agreement in every way as if the new DBC were a party to the GDS contract/PDS agreement 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 NHS England 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/PDS agreement which accrue on or after [insert the date], and accepts the liability of the new DBC under the GDS contract/PDS agreement in place of the liability of the current contractor. The new DBC agrees from [insert the date] to be bound by the terms of the GDS contract/PDS agreement in every way as if the new DBC were named in the GDS contract/PDS agreement as a party in place of the current contractor. * If the novation is between DBCs then all shares have to be bought out by the incoming DBC

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. NHS England shall pay to the current contractor any sums under the GDS contract/PDS agreement falling due for payment before [insert the date] in accordance with the payment terms set out in the GDS contract/PDS agreement.

3.3. NHS England shall pay to the new DBC any sums under the GDS contract/PDS agreement falling due for payment after [insert the date] in accordance with the payment terms set out in the GDS contract/PDS agreement.

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/PDS agreement. 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. NHS England shall have no involvement in such arrangements.

| | | |
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4. Continuity of care

4.1. Where, at [insert 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/PDS agreement and the treatment is not complete, the new DBC shall continue and/or complete the treatment –

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 NHS England 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/PDS agreement by NHS England 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/PDS agreement, the current contractor will indemnify NHS England 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/PDS agreement.

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. In the event of the death of one of the contractors, the area team will follow the death of a dental contractor policy.

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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/PDS agreement.

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 of novation taking place.

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.

9. Change of control clause

The Contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under this contract/agreement, save in accordance with the contract/agreement. The Contractor shall notify the Board in writing at least 28 days prior to any proposed change in control of the Contractor where control means:

- the ownership or control (directly or indirectly and in one transaction or as a result of successive transactions) of more than 10% of the voting share capital of the Contractor or

| | | |
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- the ability to direct the casting vote of more than 10% of the votes exercisable at general meetings of the Contractor on all, or substantially all, matters or
- the right to appoint or remove directors of the Contractor, holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

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

Signature:

Signature:²

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
secretary³

Signature:

XXX

NATIONAL HEALTH SERVICE
ENGLAND in the
presence of:

.....
Area Director⁴

.....
Executive Director

SCHEDULE
[attach copy of the contract]

² The signature of all partners is required

³ Delete as applicable

⁴ Delete as applicable

| | | |
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Annex 8 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*

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- (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*

| | | |
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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.

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Annex 9: Acknowledgement of request to revert from an incorporation to a single hander or partnership and template

[date]

Dear [Name]

Contract No [Insert contract number]

**Request to revert from an incorporation to a single hander or partnership
[delete as applicable]**

Thank you for your letter dated [insert date], informing NHS England of your request convert your contract to a partnership/individual contract from a body corporate. Dis-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.

| | | |
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Reversion from a dental incorporation to a single handed or partnership assessment template

All directors wishing to revert to a single handed or partnership contract 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 Current status of organisation – Please mark ‘x’ in the appropriate box

| | | | |
|-------------------------------|--------------------------|-----------------------|--------------------------|
| Limited liability partnership | <input type="checkbox"/> | Dental body corporate | <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 reversion requested – Please mark ‘x’ in the appropriate box

| | | | |
|------------------------------|--------------------------|--------------------|--------------------------|
| Individual dental contractor | <input type="checkbox"/> | Dental partnership | <input type="checkbox"/> |
|------------------------------|--------------------------|--------------------|--------------------------|

1.5 Where the applicant is proposing to form either a single handed or partnership, please supply the following information:

| |
|--|
| Partnership Name/ Trading Name [delete as applicable] |
| 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 of commencement: |

2. Impact on Contract

2.1 Would the change if approved have any effect on current patient services – please mark 'x' in the appropriate box

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

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

2.2 Would the change if approved 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 Would the change if approved 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 | | | | | |
| Public liability | | | | | |

3.2 Please confirm that the eligibility criteria set out in the National Health Service (General Dental Services Contracts)OR(Personal Dental Services Contracts) Regulations 2005 – is met.

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 GDS regulations. Please mark 'x' in the appropriate box.

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

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

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Please mark 'x' in the appropriate box.

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

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

If NO, please state the reasons below.

| |
|----------------|
| Details |
| |

4.5 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 | <input type="text"/> |
| Number of other dental care practitioners working in the practice | <input type="text"/> |
| Number of new patients seen in the last financial year | <input type="text"/> |

4.5 Re-attendance rate (current year to date – 20xx/xx)

| Re-attendance | % rate |
|----------------------------|----------------------|
| Children - within 3 months | <input type="text"/> |

| | | |
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| | |
|------------------------------|--|
| Adults - within 3 months | |
| Children – within 3-9 months | |
| Adults - within 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: |
| |

4.6 Please provide details of how you will maintain/improve access for existing and new patients.

| |
|-----------------|
| Details: |
| |

| |
|--|
| |
|--|

Please provide details of any other benefits to patients should NHS England approve your application for a single handed or partnership contract. If none, please state NONE.

| |
|-----------------|
| Details: |
| |

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Annex 10: Refusal of request to revert from an incorporation to a single hander or partnership

[date]

Dear [Name]

Contract No [Insert contract number]

Request to revert from an incorporation to a single hander or partnership [delete as appropriate]

Thank you for your letter dated [insert date], informing NHS England of your request to revert from an Incorporation/LLP [delete as applicable] to a single handed or partnership contract [delete as applicable], and for returning your completed assessment template as requested.

Having reviewed your request, we regret to inform you that we are unable to agree to the reversion for the following reasons:

[insert reasons]

If you do not agree with this decision you have the right to raise your dispute through NHS Litigation Authority and further information can be found at <http://www.nhsla.com>

If you are interested in growing your business you may wish to look for opportunities as they arise when NHS England procures additional dental services, these will be advertised locally in [insert where] and via OJEU www.tendersdirect.co.uk/Search/TenderSearch.aspx

Yours sincerely

[Name]

[Title]

| | | |
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Annex 11 – NHS dental services payment system:

The following changes are also required on the NHS dental services payment system:

Although the area team must close the old agreement and start a new contract, NHS Dental Services need to handle the transfer differently. This is because, under Part 5, clause 21 of the GDS regulations and Part 5 clause 17 of the PDS regulations a contractor must ensure that no patient pays twice for the same course of treatment where a novation takes place.

- The area team will need to amend the details on the NHS dental services payment system to record the changeover from PDS to GDS and enter the new contract value.
- This change cannot take place in the middle of a processing cycle so will therefore need to take place before the end of the NHS Dental Services payment cycle.

It is also advisable to email NHS Dental Services to ensure that the contracts are linked so that free repairs and replacements and courses of treatment that are part completed are not charged for twice.

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Version control tracker

| Version Number | Date | Author Title | Status | Comment/Reason for Issue/Approving Body |
|----------------|------------|----------------------------|----------|---|
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