**NOVATION AGREEMENT**

**DATED:**

**[Name of the current contractor]**

and

**[Name of new contractor]**

and

**THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD**

**THIS NOVATION AGREEMENT is made on the day of 20[20]**

**BETWEEN:**

1. **[Insert name(s) of current contractor(s)]** [who together in partnership comprise the current contractor, the **[insert name of partnership]**] operating from the [insert practice name]at [insert address] (“**Current Contractor**”);
2. **[Insert company name] Limited** a company incorporated in England and Wales under company number [insert number] whose registered office is at [insert address] (“**New Contractor”**); and
3. **THE NHS COMMISSIONING BOARD** known as NHS England of [address] (“**NHS England**”).

**RECITALS**

1. The Current Contractor intends to novate the Contract (as defined below) to the New Contractor in accordance with the terms of this Agreement and this Agreement is supplemental to the Contract.
2. [Insert brief background to why the novation is happening.]
3. NHS England agrees and consents to the New Contractor assuming all liability and obligations in the place of the Current Contractor in respect of the Contract from the Effective Date (as defined below).

**IT IS AGREED** as follows:

1. **DEFINITIONS** 
   1. In this Agreement, the following words have the following meanings:

‘**Contract**’ means the [general medical services/personal medical services/alternative provider medical services] contract between the Current Contractor and NHS England, dated [insert date], in relation to the delivery of primary medical services at [name and address of practice], a copy of which is attached as the schedule to this Agreement.

‘**Effective Date**’ means [insert date].

1. **NOVATION**
   1. As of the Effective Date:
      1. the Current Contractor transfers to the New Contractor all of its rights and obligations under the Contract;
      2. the New Contractor agrees to perform and comply with the Contract and to be bound by its terms in every way as if the New Contractor were the original party to the Contract in place of the Current Contractor;
      3. NHS England agrees to perform the Contract and be bound by its terms in every way as if the New Contractor were the original party to it in place of the Current Contractor and accepts the liability of the New Contractor under the Contract in place of the liability of the Current Contractor; and
      4. all references to the Current Contractor in the Contract shall be read as references to the New Contractor.
2. **RELEASE OF OBLIGATIONS AND LIABILITIES**
   1. From the Effective Date NHS England and the Current Contractor release and discharge each other from all future obligations to the other under the Contract.
   2. Nothing in this Agreement shall affect or prejudice any claim or demand that NHS England may have against the Current Contractor with respect to matters occurring prior to the Effective Date.
3. **PAYMENTS FALLING DUE**
   1. NHS England shall pay to the Current Contractor any sums under the Contract falling due for payment before the Effective Date in accordance with the payment terms set out in the Contract.
   2. NHS England shall pay to the New Contractor any sums under the Contract falling due for payment on or after the Effective Date in accordance with the payment terms set out in the Contract.
   3. For the avoidance of doubt, the due date in respect of any payment referred to in clauses 4.1 and 4.2 above shall be determined in accordance with the terms of the Contract. Any apportionment of such monies shall be a matter to be determined by the Current Contractor and the New Contractor with those parties making any such balancing payments to each other as they may consider necessary. NHS England shall have no involvement in such arrangements.
4. **CHANGE OF CONTROL AND SALE OF THE PRACTICE** 
   1. The New Contractor shall not effect a change to the shareholders in the New Contractor without the prior written consent of NHS England, such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, this clause takes precedence over the terms of the Contract and constitutes a variation to the Contract.
5. **[GUARANTEE][[1]](#footnote-1)**
   1. [In consideration for NHS England agreeing to the novation, the Current Contractor agrees that if the New Contractor (unless relieved from the performance of any clause of the Contract 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 Contract, 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 Contractor in performing and observing the agreements, obligations and provisions on its part contained in the Contract.
   2. Where the Current Contractor comprises two or more individuals practising in partnership their liability pursuant to clause 6.1 shall be joint and several.
   3. The liability of the Current Contractor under this clause 6 shall not be reduced, discharged or otherwise adversely affected by any termination, amendment, variation, novation or supplement of or to the Contract.
   4. No delay or failure to exercise any right under this guarantee shall operate as a waiver of that right.]
6. **THIRD PARTIES**
   1. 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 of remedy of a third party which exists or is available apart from that Act.
7. **GENERAL**
   1. No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of each of the parties.
   2. The parties shall pay their own costs and expenses in relation to the preparation, execution and carrying into effect of this Agreement.
   3. If at any time any provision of this Agreement becomes invalid, illegal or unenforceable in any respect, such provision shall be deemed to be severed from this Agreement but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired.
   4. A failure by any party to exercise, and any delay, forbearance or indulgence by any party in exercising any right, power or remedy under this Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time or on any subsequent occasion. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.
   5. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and which together shall constitute one and the same agreement.
   6. This Agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
   7. If at any time after the Effective Date, any further action is necessary or desirable to carry out the purposes of this Agreement, each of the parties will take such further action (including the execution and delivery of such further instruments and documents) as the other(s) may reasonably request, all at the sole cost and expense of the requesting party.
8. **NOTICES**
   1. Any notice or other communication required to be given under this Agreement shall be in writing, signed by (or by some person duly authorised by) the person giving it and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication at the address set out in this Agreement or as otherwise specified by the relevant party by notice in writing to the party or parties.
   2. Any notice or other communication shall be deemed to have been duly received:
      1. if delivered personally, when left at the address and for the contact referred to in this clause;
      2. if sent by pre-paid first class post or recorded delivery, at 9.00am on the second business day after posting; or
      3. if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed.

For the purposes of this clause, “**business day**” means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open for business in the city of London.

1. **LAW AND JURISDICTION**
   1. 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.

**IN WITNESS WHEREOF** the parties have signed this Agreement on the date first shown above.

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| --- | --- | --- |
| Signed by:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
| *(print name)* | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| for and on behalf of NHS Commissioning Board (**NHS** **England**) | *(signature)* |
| Signed by:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| (print name) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| the **Current Contractor[[2]](#footnote-2)** | (signature) |

|  |  |  |
| --- | --- | --- |
| Signed by:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
| *(print name)* | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| For and on behalf of [*company name*] Ltd (the **New Contractor)** | *(signature)* |

**Schedule**

The Contract

[insert copy here]

1. Commissioner to determine whether it requires the existing contractor to guarantee the performance of the new contractor – see PGM and seek legal advice if necessary. [↑](#footnote-ref-1)
2. If the current contractor is a partnership, each partner must sign. [↑](#footnote-ref-2)