Subchapter G—Contract Management

Part 1642—Contract Administration

Subpart 1642.12—Novation and Change-of-Name Agreements

Sec. 1642.1201 Definitions.
1642.1204 Agreement to recognize a successor in interest (novation agreement).
1642.1205 Agreement to recognize carrier’s change of name.

Subpart 1642.70—Management Agreement (In Lieu of Novation Agreement)

1642.7001 Management agreement.


Source: 59 FR 14765, Mar. 30, 1994, unless otherwise noted.

Subpart 1642.12—Novation and Change-of-Name Agreements

1642.1201 Definitions.

The definitions at (FAR) 48 CFR 42.1201 shall have the same meaning for this subpart.

1642.1204 Agreement to recognize a successor in interest (novation agreement).

(a) (FAR) 48 CFR 42.1204 shall be implemented as provided in this section. The contracting officer shall insert the following agreement in all FEHBP contracts for use when the contractor’s assets or the entire portion of the assets pertinent to the performance of the contract, as determined by the Government, are transferred.

NOVATION AGREEMENT

The (insert corporate name) (Transferor), a corporation duly organized and existing under the laws of (insert State) with its principal office in (insert city, state); the (insert corporate name) (Transferee), (if appropriate add “formerly known as the Corporation”) a corporation duly organized and existing under the laws of (insert State) with its principal office in (insert city); and the UNITED STATES OF AMERICA (Government) enter into this Agreement effective (insert date transfer of assets became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number (insert contract number) with the Transferor. The term contract, as used in this Agreement, means the contract cited in this paragraph and all other contracts and purchase orders, including any and all amendments and modifications made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) As of (insert date transfer of assets became effective under applicable State law), the Transferor has transferred to the Transferee all the assets of the Transferor, or the entire portion of the Transferor’s assets pertinent to performing the contract, as determined by OPM, by virtue of a(an) (insert term describing the legal transaction involved) between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor, or the entire portion of the Transferor’s assets pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(4) The Transferee has assumed all obligations and liabilities of the Transferor pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(5) The Transferee is in a position to fully perform all obligations that may exist under the contract.

(6) It is consistent with the Government’s interest to recognize the Transferee as the successor party to the contract.

(7) Evidence of the transfer in paragraph (a)(1) has been filed with the Government.

(8) [If applicable] A certificate dated (insert date) signed by the Secretary of State of (insert state) to the effect that the corporate name of (insert old corporate name) was changed to (insert new corporate name) on (insert date) has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government or the Federal Employees Health Benefits Fund that it now has or may have in the future in connection with the contract.
(2) The Transferee agrees to be bound by and to perform the contract in accordance with the conditions contained in the contract. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor pertinent to the contract, as determined by OPM, as if the Transferee were the original party to the contract.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor’s successor in interest in and to the contract. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contract as if the Transferee were the original party to the contract. Following the effective date of this Agreement, the terms Carrier and Contractor as used in the contract, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contract, shall be considered to have discharged those parts of the Government’s obligations under the contract. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government’s obligations under the contract, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contract.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should this contract be modified under its terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement effective (insert the date transfer of assets became effective under applicable State law).

UNITED STATES OF AMERICA, By

____________________________
Date
Title
(Enter Transferor’s name)

____________________________
Date
Title
(Corporate Seal)
(Enter Transferee’s name)

CERTIFICATE
I, _____________ , certify that I am the Secretary of (insert name of Transferor); that _____________ , who signed this Agreement for this corporation, was then _____________ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this ______ day of ______, 19__.

By
(Corporate Seal)

CERTIFICATE
I, _____________ , certify that I am the Secretary of (insert name of Transferee); that _____________ , who signed this Agreement for this corporation, was then _____________ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this ______ day of ______, 19__.

By
(Corporate Seal)

(End of agreement)

(b) Failure to submit the properly completed and signed Novation Agreement in a timely manner shall be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249-70.

(c) The Contracting Officer shall terminate the contract if it is determined
Office of Personnel Management

1642.7001

not to be in the Government’s interest to recognize a successor in interest to
the contract. The effective date will be decided by the Contracting Officer
after considering the best interests of
FEHBP enrollees.

1642.1205 Agreement to recognize carrier’s change of name.

(a) (FAR) 42.1205 shall be imple-
mented as provided in this section. The
Contracting Officer shall insert the fol-
lowing Agreement in all FEHBP con-
tracts for use when the carrier changes
its name and the Government’s and
contractor’s rights and obligations re-
main unaffected.

CHANGE-OF-NAME AGREEMENT

The (insert new Carrier name), a corpora-
tion duly organized and existing under the
laws of (insert State), and the UNITED
STATES OF AMERICA (Government), enter
into this Agreement effective (insert date
when the change of name became effective
under applicable State law).

(a) THE PARTIES AGREE TO THE FOL-
LOWING FACTS:

(1) The Government, represented by var-
ious Contracting Officers of the Office of
Personnel Management (OPM), has entered
into Contract Number
lllllll
with the
(insert old Carrier name). The term con-
tracts as used in this Agreement means the con-
tract cited in this paragraph and all other
contracts and purchase orders and all modi-
fications thereto made by the Government
and the Contractor before the effective date
of this Agreement (whether or not perform-
ance and payment have been completed and
releases executed if the OPM or the Carrier
has any remaining rights, duties, or obliga-
tions under these contracts and purchase or-
ders).

(2) The (insert old Carrier name), by an
amendment to its certificate of incorpora-
tion, dated
lllllllllllllllll
, 19
ll
, has
changed its corporate name to (insert new Car-
rier name). The term contracts as used in this Agreement means the con-
tract cited in this paragraph and all other
contracts and purchase orders and all modi-
fications thereto made by the Government
and the Contractor before the effective date
of this Agreement (whether or not perform-
ance and payment have been completed and
releases executed if the OPM or the Carrier
has any remaining rights, duties, or obliga-
tions under these contracts and purchase or-
ders).

(b) IN CONSIDERATION OF THESE
FACTS, THE PARTIES AGREE THAT:

(1) The contract is amended by sub-
stituting the name “(insert new Carrier
name)” for the name “(insert old Carrier
name)” wherever it appears in the contract; and

(2) Each party has executed this Agree-
ment effective the day and year stated in
paragraph (a)(2).

UNITED STATES OF AMERICA,

Title
(Enter new Carrier name)

By
(Corporate Seal)

CERTIFICATE

I,

, certify that I am the Secretary of (insert new Car-
rier name); that

, who
signed this Agreement for this corporation,
was then (insert position held) of this cor-
poration; and that this Agreement was duly
signed for and on behalf of this corporation
by authority of its governing body and with-
in the scope of its corporate powers.

Witness my hand and the seal of this cor-
poration this

day of

19

.

By
(Corporate Seal)

(End of agreement)

(b) Failure to submit the properly
completed and signed Change-of-Name
Agreement in a timely manner may be
cause for termination of the contract
by OPM in accordance with FEHBPAR
1652.249-70.

Subpart 1642.70—Management
Agreement (in Lieu of Nova-
tion Agreement)

1642.7001 Management agreement.

When it is in the best interest of
FEHBP enrollees to continue a con-
tract for an interim period after the
carrier discontinues its operations and
has entered into a Purchase and Sale
Agreement (or other descriptive term),
but before a successor in interest has
been recognized by OPM, the carrier
may submit for OPM approval a Man-
agement Agreement that enables it to
continue a contract through an agree-
ment with a third party to administer
the day-to-day performance of the con-
tact. Examples of situations in which
a Management Agreement may be ac-
cepted by OPM are:

145