

Guide to Judiciary Policy

Vol 14: Procurement
Ch 7: Contract Administration

Appx 7B: Sample Novation Agreement

The _____ (i.e. ABC Corporation (Transferor)), a corporation duly organized and existing under the laws of _____ [insert State] with its principal office in _____ [insert city]; the _____ (i.e. XYZ Corporation (Transferee), [if appropriate add "formerly known as the EFG 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 (judiciary) enter into this Agreement as of _____ [insert the date transfer of assets became effective under applicable State law].

(a) The parties agree to the following facts:

- (1) The judiciary, represented by various contracting officers has entered into certain contracts with the Transferor, namely: _____ [insert contract or purchase order identifications]; [or delete "namely" and insert "as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference."]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between the judiciary and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the judiciary or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the judiciary and the Transferee, on or after the effective date of this Agreement.
- (2) As of _____, 20____, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a _____ [insert term descriptive of the legal transaction involved] between the Transferor and the Transferee.
- (3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

- (4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.
 - (5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.
 - (6) It is consistent with the judiciary's interest to recognize the Transferee as the successor party to the contracts.
 - (7) Evidence of the above transfer has been filed with the judiciary. [*When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement must be inserted (see example in paragraph (8) of this Agreement)*].
 - (8) A certificate dated _____, 20____, signed by the Secretary of State of _____ [*insert State*], to the effect that the corporate name of _____ (EFG Corporation) was changed to _____ (XYZ Corporation) on _____, 20____, has been filed with the judiciary.
- (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 judiciary that it now has or may have in the future in connection with the contracts.
 - (2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.
 - (3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.
 - (4) The judiciary recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, must refer to the Transferee.
 - (5) Except as expressly provided in this Agreement, nothing in it must be construed as a waiver of any rights of the judiciary against the Transferor.

- (6) All payments and reimbursements previously made by the judiciary to the Transferor, and all other previous actions taken by the judiciary under the contracts, must be considered to have discharged those parts of the judiciary's obligations under the contracts. All payments and reimbursements made by the judiciary after the date of this Agreement in the name of or to the Transferor must have the same force and effect as if made to the Transferee, and must constitute a complete discharge of the judiciary's obligations under the contracts, to the extent of the amounts paid or reimbursed.
- (7) The Transferor and the Transferee agree that the judiciary 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 or this Agreement, other than those that the judiciary in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.
- (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 if these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.
- (9) The contracts must remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

United States of America

By _____
 Title _____

ABC Corporation

By _____
 Title _____
 [Corporate Seal]

XYZ Corporation

By _____

Title _____
[Corporate Seal]

Certificate

I, _____, certify that I am the Secretary of _____ (ABC Corporation), 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 _____ 20 ____.

By _____
[Corporate Seal]

Certificate

I, _____, certify that I am the Secretary of _____ (XYZ Corporation), 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 _____ 20 ____.

By _____
[Corporate Seal]