**Associate Contract Side Agreement** (England)

For use regarding the First Quarter of the NHS contract year 2022-2023 – amended UDA targets due to COVID-19 pandemic.

This Side Agreement is made on [*INSERT DATE*] between [*PRACTICE OWNER or PRACTICE*] “the Practice Owner” and [*ASSOCIATE*] “the Associate” together referred to as “the Parties”.

# WHEREAS

1. The Parties entered into an Associate Agreement dated [*INSERT DATE*] (‘**the Associate Agreement**’) pursuant to which the Associate has been able to provide dental services at the Practice Owner’s dental practice (‘**the Practice**’); and
2. During the COVID-19 pandemic, NHS England has amended the requirements for NHS practices to meet their commercial targets for the period from 1 April 2022 to 30 June 2022.

# Background: Amended NHS Commercial TArgets

NHS England has said that, for the first quarter of the NHS contract year 2022-2023, 1 April 2022 to 30 June 2022 (‘**the First Quarter**):

* + 1. the Practice will receive its full monthly contract payments if, during the First Quarter, it provides at least 95% of its quarterly UDA target, or 23.75% of its annual contractual UDA requirement (‘**the 95% threshold**’).
    2. If, during the First Quarter, the Practice does not meet the 95% threshold, NHS England will operate the contract normally and pay the practice based on its actual UDA performance.

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| Key principles underpinning this agreement These principles are not intended to be contractual. They are set out by way of explanation and to aid interpretation of the terms of this Side Agreement.   1. Whilst NHS England will pay 100% contract value in the First Quarter if the practice meets the 95% threshold, that 95% is ***a minimum***. Practices will be in breach of their NHS contract if they stop at 95% when they could perform more UDAs with a normal level of NHS activity. 2. Whilst, under this Side Agreement, the Practice will normally pay 100% of the Associate’s NHS contract payments if the Associate provides ***at least*** 95% of their contracted UDAs, that 95% is ***a minimum***. The Associate will be in breach of their Associate Agreement if they stop at 95% when they could perform more UDAs with a normal level of NHS activity. 3. It is better for the Parties if the Practice meets at least 95% of the Practice’s pro-rata contractual UDA targets. |

# NOW IT IS HEREBY AGREED:

* 1. This Side Agreement has effect from 1 April 2022 [*or if this is a new associate position after this date, use date of the new associate agreement*] and will continue until terminated in accordance with clause 26 below. This Side Agreement supersedes any other side agreement signed by the parties in relation to the period of the Associateship Agreement and the Parties agree any such side agreement does not operate from 31 March 2022.
  2. Where there is a conflict between the terms of this Side Agreement and the terms of the Associate Agreement, the terms of this Side Agreement shall take precedence.
  3. *If applicable:* The Parties agree that the side agreement signed by the parties on [*date*] shall end on 31 March 2022.
  4. In this Side Agreement, NHS England Guidance means the letters, updates and additional guidance for dental teams published by NHS England from October 2020 (available [here](https://www.england.nhs.uk/coronavirus/publication/preparedness-letters-for-dental-care/)).

**Team effort**

* 1. Both Parties understand that
     1. it is best if the practice meets the 95% threshold; and
     2. it will be easier to comply with the requirements of the NHS contract if the Practice and the Associate work together constructively, communicating with and listening to each other effectively.
  2. Both Parties shall use reasonable endeavours to ensure the Practice meets the 95% threshold. The Practice Owner will share monthly UDA performance data with the Associate so that issues with UDA performance can be identified early and action taken. The Parties may, for example, mutually agree to amend the Associate’s UDA target during the First Quarter.
  3. The Associate shall use reasonable endeavours to help ensure the Practice Owner complies with all guidance and requirements set out in the NHS England Guidance, and with the terms of the Practice Owner’s NHS contract.
  4. The Practice Owner and Associate agree that if the Associate unreasonably refuses to comply with any reasonable requirement of the Practice Owner pursuant to clause 7 above, the Associate shall indemnify the Practice Owner against any losses and costs arising from any fines, financial penalties or other financial claims imposed or claimed by NHS England on or from the Practice Owner as a result of the Associate’s breach of this Side Agreement and to the extent that the Associate’s breach of this Side Agreement contributed to those losses and costs.

**The Normal Rate**

* 1. In relation to NHS England contract payments to the Practice in respect of work done during the First Quarter ‘**The Normal Rate**’ refers to payments where, in effect, NHS England ends up paying the Practice 1 UDA for each UDA performed. This means that if the practice meets 51% of its contractual UDA requirement, it will receive 51% of its normal NHS contract payments.
  2. In relation to NHS payments made by the Practice Owner to the Associate in respect of work done during the First Quarter ‘**The Normal Rate**’ refers to payments where the Practice Owner applies the terms of the Associate Agreement to calculate associate pay in the normal way based on the Associate’s NHS performance.

**NHS contract payments**

* 1. Each month during the term of this Side Agreement, the Practice Owner will adhere to guidance and conditions in the NHS England Guidance which relate to Associates.
  2. Save as follows, for the purposes of operating the Associate Agreement and this Side Agreement the Practice Owner shall pay the Associate as if they had achieved 100% of their normal UDA target.
  3. If the Practice Owner does pay the Associate as if they had achieved 100% of their normal UDA target in accordance with clause 12 above, or at an enhanced UDA rate in accordance with clause 22 below, the Practice Owner shall
     1. calculate the gross amount the Associate spends on laboratory fees per UDA completed ('the average lab fee');
     2. calculate the number of UDAs the Practice Owner is paying the Associate for and then subtract from that the number of UDAs the Associate actually achieved ('the presumed UDAs');
     3. multiply the average lab fee by the presumed UDAs; and
     4. add that sum to the gross lab fees attributed to the Associate for the purpose of calculating the Associate's pay.
  4. Unless otherwise agreed in writing between Parties, once the Associate has completed 95% of their UDA target for the First Quarter (normally equal to 23.75% of their annual UDA target), the Practice Owner shall be under no obligation to pay the Associate for any further UDAs performed during the First Quarter; and the Associate shall not be entitled to payment for any UDAs they perform in excess of that 95%

See explanatory note at the end of this contract.

**If The Normal Rate is or may be applicable**

* 1. As soon as reasonably practicable after the Practice Owner has the figures for the Practice NHS performance for each calendar month, the Practice Owner shall discuss with the Associate (and any other NHS performers at the Practice) how the Practice is performing and whether the Practice may end up being paid at The Normal Rate.
  2. If the Parties agree that the practice may not reach 95% of its UDA target for the quarter, the Parties should engage in constructive discussion with a view to agreeing measures to increase practice performance. Such measures could include opening the practice for additional hours and putting additional resources into NHS dental provision at the practice.
  3. If the Practice Owner reasonably believes they will be paid at the Normal Rate, then
     1. The Practice Owner shall make any remaining monthly payments for the First Quarter to the Associate at the Normal Rate;
     2. The Practice Owner shall take each payment already made to the Associate for NHS work done during the First Quarter, calculate what payment it would have made to the Associate had it instead paid at the Normal Rate, and calculate the difference between the two (‘**the Clawback Payment**’);
     3. The Practice Owner shall show those calculations and consider any representations the Associate makes in relation to them;
     4. The Associate shall pay the Clawback Payment to the Practice Owner at a timescale that may be agreed or, in the absence of such agreement, by 30 September 2022.
     5. If the Associate has not paid the Clawback Payment to the Practice Owner in compliance with paragraph (d) above, the Practice Owner may deduct any amount of the Clawback Payment owed from money due from the Practice Owner to the Associate; and the Associate consents to any such deduction.
  4. By way of guidance, the Practice Owner may form a reasonable belief that it will be paid at the Normal Rate if one or more of the following is met:
     1. If, according to Practice and NHS information systems, its NHS performance for the month of March 2022 or April 2022 was significantly below 95% of its contractual UDA level and circumstances affecting practice UDA performance cannot easily be changed;
     2. If, according to Practice information and NHS information systems, its NHS performance during the first two months of the First Quarter is significantly below the 95% threshold, and there are no clear, practicable ways to improve performance;
     3. If, according to NHS information, the Practice did not meet the 95% threshold; or
     4. If the Practice has had written confirmation from NHS England that it will be paid at the Normal Rate for the Quarter.
  5. It is up to the Practice Owner to determine whether and when, in advance of confirmation from NHS England, it reasonably believes it will be aid at the Normal Rate. Nevertheless, the Practice needs the assistance of its Associates and it will help if it shares information on Practice performance with its NHS associates and discusses the possibility of a Clawback Payment at the earliest opportunity.
  6. Unless otherwise agreed in writing, the Associate shall not be entitled to a higher, gross NHS contract payment than they would have been entitled had they met their UDA target during normal times.

**Clawback in the Associate Agreement**

* 1. In clauses 22 and 23 below, a ‘**Clawback Provision**’ refers to provision in the Associate Agreement that allows the Practice Owner to clawback money from the Associate if the Associate does not reach their UDA target.
  2. If the Practice faces no clawback in relation to its NHS performance in the First Quarter, but the Associate does not reach 95% of their UDA target for the First Quarter, the Clawback Provisions shall apply, save that – for the purposes of calculating the amount of any clawback – the Associate shall be taken to have performed 1.053 times the number of UDAs they actually performed.
  3. If the Practice is paid at the Normal Rate, all Clawback Provisions in the Associate Agreement shall operate as normal during the First Quarter.

1. ***Optional*****Adjustment to Associate’s normal UDA target due to special circumstances**
   1. *Optional:* For the period of this Side Agreement, the Associate’s UDA target (before the Multiplier is applied) shall be [*insert amount*].

**Termination**

* 1. This Side Agreement shall continue until the sooner of:
     1. 30 June 2022
     2. The date on which the Associate Agreement ends
     3. The date on which the terms set out in NHS England’s letter dated 5 April 2022 are brought to an end by NHS England (if sooner than 30 June 2022)
     4. The date on which the Parties agree in writing it shall end

**General**

* 1. This Side Agreement shall be taken as agreed by the Parties when both have either signed a written copy of it or clearly signalled their agreements to its terms using electronic means.

Signed:

Dated:

Signed:

Dated: