

Address: Health Services Category
Department for Work and Pensions
Finance Group
Commercial Directorate
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Sheffield
S1 2FD

Website: www.dwp.gov.uk

Date: 12 June 2020



(REDACTED)
Independent Assessment Services (IAS)
(REDACTED)
(REDACTED)
(REDACTED)
(REDACTED)
(REDACTED)

Dear (REDACTED),

Personal Independence Payments (PIP) Assessment Service

Lot 1 - Contract Reference: UI_DWP_100429

Lot 3 - Contract Reference: UI_DWP_100431

Contract (as amended) between (1) Department for Work and Pensions (the "Authority") and (2) Independent Assessment Services (IAS) (the "Provider") dated 31 July 2012 (the "Contract")

Provider relief due to COVID-19 in accordance with Procurement Policy Note 02/20

1. We refer to the Contract. Unless otherwise defined, terms defined in the Contract and used in this letter shall have the meaning set out in the Contract.
2. This letter, when signed by both Parties, shall form a Variation to the Contract and shall be deemed to have been made in accordance with clause F3 of the Contract.

Background

3. The purpose of this Variation is for the Authority to give relief to the Provider on the terms of this Variation. The Authority and the Provider acknowledge that the relief is given in accordance with the policy set out in PPN 02/20 and that both Parties shall act in good faith and work together towards the principles set out in PPN 02/20. The Provider acknowledges that any relief given to it is at the sole discretion of the Authority.
4. This Variation:

- 4.1. provides for payment to be made in accordance with the Interim Payment Approach during the Interim Payment Period;
 - 4.2. sets out a process for agreeing the Temporary Cost Model;
 - 4.3. provides for a reconciliation to be carried out once the Temporary Cost Model has been agreed by both Parties;
 - 4.4. provides for payment to be made in accordance with the Temporary Cost Model from the TCM Effective Date; and
 - 4.5. anticipates that a Further Variation will be agreed, which, once signed by both Parties, will supersede this Variation.
5. On 14 March 2020, the Authority issued a step-in notice to the Provider in accordance with clause F10.4 of the Contract (Step In without Provider Breach) This right to Step-In was exercised for the reason set out in clause F10.1.1 (because a serious risk exists to the health or safety of persons). The Parties agree that the provisions relating to payment of the Contract Price set out in clause F10.4.2 of the Contract shall not apply and that, instead: (i) the Authority will pay the Provider in accordance with the Interim Payment Approach from the Effective Date and for the remainder of the Interim Payment Period; and (ii) subject to the Temporary Cost Model being agreed by both Parties, the Authority will pay the Provider in accordance with the Temporary Cost Model from the TCM Effective Date and for the remainder of the Covid Relief Period.
 6. The Authority reasonably anticipates that the Procurement Regulations will apply to this Variation and the Parties shall ensure that there is lawful basis for agreeing the Variation under the Public Contracts Regulations 2015 and / or any applicable procurement rules. Due to the current COVID-19 pandemic, this may include in particular justifications under Regulation 72 and Regulation 32 of the Public Contracts Regulations 2015 or such other applicable or equivalent provisions.
 7. The Contract, including any previous variations, will remain effective and unaltered except as amended by this Variation.

Variation

8. The following terms shall have the meaning as set out below and shall be incorporated into the Contract:

“Covid Related Hardship”	means that as a result of the COVID-19 pandemic the Provider’s ability to meet its contractual obligations under the Contract have been adversely affected.
“Covid Relief Period”	means the period from the Effective Date until the Relief Expiry Date.
“Effective Date”	means 1st March 2020.
“Further Variation”	a further variation to the Contract to be agreed by the Parties in accordance with the terms set out this Variation.

“Interim Payment Approach”	means payment to the Provider of fixed monthly sums during the Interim Payment Period as set out in more detail in Schedule 1 of this Variation.
“Interim Payment Period”	means the period in respect of which payments will be made in accordance with the Interim Payment Approach, as set out in Schedule 1.
“Open Book Interim Data”	<p>means the complete and accurate financial and non-financial information which is required by the Authority to enable the Authority to understand all COVID-19 related relief, grants, interventions or other measures received by the Provider from the Government and to verify the cost of providing the Services during the Covid Relief Period, including but not limited to:</p> <ol style="list-style-type: none"> a. the Provider’s costs broken down as requested by the Authority, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; b. operating expenditure relating to the provision of the Services including an analysis showing: <ol style="list-style-type: none"> i. the unit costs and quantity of consumable and bought-in services; ii. staff costs broken down into the number and grade / role of all Provider Staff together with a list of agreed rates against each manpower grade; iii. pass through costs; c. reimbursable expenses; d. overheads; e. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; f. full details of the payment of Staff wages; and g. full details of the payment of Sub-contractors.
“Procurement Regulations”	means the Public Contracts Regulations 2015.
“PPN 02/20”	means Procurement Policy Note 02/20(as updated or amended from time to time) setting out information and guidance for public bodies on how they may amend payment provisions in contracts or consider other contractual relief in order to assist suppliers combat the impact of COVID-19.
“Relief Expiry Date”	means 30 June 2020, or such other date as may be notified by the Authority to the Provider prior to or on 30 June 2020.

“TCM Effective Date”	means the date on which the Temporary Cost Model is agreed in writing by both Parties.
“TCM Target Date”	means 30 June 2020 (or such earlier or later date as the Authority shall notify to the Provider in writing).
“Temporary Cost Model”	means a transparent cost model supported by open book cost data which, once agreed in writing by both Parties, will apply from the TCM Effective Date for the remainder of the Covid Relief Period.
“Temporary Service Specification”	means a specification of revised Services that, once the Parties have agreed such specification, the Provider will provide under the Contract as varied by the Further Variation.
“Variation”	means the terms set out in this Variation.
“Variation Date”	means the date the second party signs this Variation.

9. Notwithstanding any other term of the Contract, the Parties agree to vary the Contract by incorporating the following terms into the Contract:

Interim Payment Approach

- 9.1. The purpose of this Variation is to provide interim relief and support to the Provider in relation to Covid Related Hardship affecting the Provider during the Covid Relief Period, pursuant to the aims and principles set out in PPN 02/20.
- 9.2. The Provider shall receive payment in accordance with:
- 9.2.1. the Interim Payment Approach from the Effective Date and for the remainder of the Interim Payment Period; and
 - 9.2.2. the Temporary Cost Model from the TCM Effective Date until the end of the Covid Relief Period.

Agreement of the Temporary Cost Model

- 9.3. The Authority and the Provider shall work together in good faith to agree, by no later than the TCM Target Date, the Temporary Cost Model. The Temporary Cost Model will be developed using open book cost data. On receipt of a draft Temporary Cost Model from the Provider, the Authority will consider and either reject or approve the draft Temporary Cost Model. If approved, the Parties shall agree in writing the Temporary Cost Model and the TCM Effective Date. Where the Authority rejects the draft Temporary Cost Model, the Provider shall submit an updated draft Temporary Cost Model, such updated draft to take into account any changes reasonably requested by the Authority. The Provider shall not unreasonably refuse to make changes that have been reasonably requested by the Authority. Subject to paragraph 9.4 below, the process set out in this paragraph 9.3 shall be repeated until the Temporary Cost Model and the TCM Effective Date are agreed by the Parties in writing.

- 9.4. If the Parties have not agreed the Temporary Cost Model by the TCM Target Date, the Parties shall refer the issue for resolution by good faith negotiations and/or mediation under the Dispute Resolution Procedure set out in clause I.2 of the Contract. In these circumstances, in the Authority's discretion, either:
- 9.4.1. the Interim Payment Approach will continue to apply for the remainder of the Covid Relief Period or until the Temporary Cost Model and TCM Effective Date have been agreed (whichever is earlier) and the definition of "Interim Payment Period" shall be deemed to be varied accordingly; or
 - 9.4.2. the Parties shall apply the Temporary Cost Model suggested by the Authority pending resolution of the issue under the Dispute Resolution Procedure (in line with the principle in clause F3.4 of the Contract).

Service Levels and relief from Service Credits

- 9.5. The Provider will have relief from all Service Credits under the Contract for March, April, May and June 2020. However, the Parties will continue to monitor performance against the Service Levels during this period for information purposes and the Provider acknowledges that the Authority may issue revised Service Levels at any time.
- 9.6. The Parties shall discuss in good faith and agree any revision to the existing Service Levels, Service Credits and other performance measures and obligations that may be appropriate in the context of the Temporary Cost Model and Temporary Service Specification and agree these as part of the Further Variation in accordance with paragraph 9.10 below.

Reconciliation

- 9.7. Once the Temporary Cost Model has been agreed by both Parties in writing (irrespective of whether the remainder of the Further Variation has been agreed at that point), the Parties will carry out and agree a reconciliation between:
- 9.7.1. the payments actually made to the Provider during the Interim Payment Period under the Interim Payment Approach ("**A**"); and
 - 9.7.2. the sums that would have been paid to the Provider during the Interim Payment Period had the Temporary Cost Model been applied during the Interim Payment Period ("**B**")

In the event that A exceeds B, the Provider shall refund to the Authority a sum equal to the difference between A and B, such payment to be made within 30 days following the date on which the reconciliation has been agreed.

In the event that B exceeds A, the Authority shall pay to the Provider a sum equal to the difference between B and A, such payment to be made within 30 days following the date on which the reconciliation has been agreed. Neither Party shall unreasonably withhold or delay its agreement to the Temporary Cost Model and both Parties accept that the principle set out in this clause 9.7 shall be applied.

- 9.8. If the Parties are unable to agree the reconciliation referred to in paragraph 9.7 within 30 days following the date on which the Temporary Cost Model has been agreed, the Parties shall refer the issue for resolution by good faith negotiations and/or mediation under the Dispute Resolution Procedure set out in clause 1.2 of the Contract.

Application of the Temporary Cost Model

- 9.9. With effect from the TCM Effective Date, the Parties shall cease to apply the Interim Payment Approach and, instead, will apply the Temporary Cost Model.

Agreement of Further Variation

- 9.10. From the Effective Date of this Variation, the Parties shall work together in good faith to agree the Further Variation. The Further Variation will incorporate the Temporary Cost Model (which may already have been agreed in accordance with this Variation), the Temporary Service Specification and any revision to the existing Service Levels, Service Credits and other performance measures and obligations agreed in accordance with paragraph 9.6 above.
- 9.11. Once agreed in writing, the Further Variation will supersede and replace this Variation.

General

- 9.12. The Provider shall:
- 9.12.1. ensure that the payments agreed under the Interim Payment Approach (or, once agreed, the Temporary Cost Model) are promptly and solely applied to the purposes for which they are paid, which may include payments to the Provider's Staff and the Provider's supply chain who are working on deliverables to be provided under or in connection with the Contract so as to reduce the adverse effect of Covid Related Hardship;
 - 9.12.2. make available to the Authority upon request any information and/or evidence (including the Open Book Interim Data) which the Authority may reasonably require in order to:
 - 9.12.2.1. verify and assure that the Provider has applied the monies as agreed in the Interim Payment Approach (or, once agreed, the Temporary Cost Model), including copies of accounts, ledgers, cash-flow forecasts and statements, balance sheets, profit and loss accounts and any other documentary evidence;
 - 9.12.2.2. verify and assure that monies intended for the Provider's Staff performing the Contract have been properly and promptly paid;
 - 9.12.2.3. verify the number of health professionals seconded by the Provider to the NHS (and, in respect of such seconded health professionals, the Provider will work with the Authority in good faith to help manage cost recovery from the Department of Health and Social Care); and

9.12.2.4. pay invoices submitted by the Provider's Sub-contractors and supply chain immediately on receipt;

9.12.3. ensure that all invoices clearly set out which elements of the invoice are attributable to the Interim Payment Approach (or, once agreed, the Temporary Cost Model) and which elements are business as usual; and

9.12.4. maintain full records and a written audit trail of all Interim Payment Approach (or, once agreed, the Temporary Cost Model) activity in accordance with the general financial records provisions in the Contract (and such records shall be made available promptly to the Authority on reasonable request).

9.13. The Provider shall not be entitled to:

9.13.1. include any profit in the Interim Payment Approach (or, once agreed, the Temporary Cost Model) to the extent that such profit relates to elements of the Contract and the Services that are undelivered by the Provider during the Covid Relief Period; or

9.13.2. combine the Interim Payment Approach (or, once agreed, the Temporary Cost Model) with any other government / public sector COVID-19 related relief, grant, intervention or other measure which results in the Provider receiving more than one benefit / relief for the same underlying cash-flow issue.

10. If, in the reasonable opinion of the Authority, the Provider:

10.1. fails to meet any obligation set out in this Variation;

10.2. receives any payment and fails to apply it to meet any proposal in the Interim Payment Approach (or, once agreed, the Temporary Cost Model);

10.3. takes undue advantage of any relief; or

10.4. fails to act transparently and with integrity

the Authority may take all action necessary to recover any payments made to the Provider during the Covid Relief Period, including without limitation retaining or setting-off payment of any amount it owes to the Provider at any time under the Contract or any other contract, to the extent that sub-paragraphs 10.1– 10.4 apply to such payments.

Miscellaneous

11. The terms of this Variation shall come into force on the Variation Date but shall be deemed to be effective from the Effective Date.

12. Except to the extent set out in this Variation, this Variation shall not constitute a waiver of any right or remedy of the Authority or the Provider arising before, during or after this Variation.

13. The Authority and the Provider agree that any event arising from COVID-19 shall not give rise to any force majeure or frustration rights set out in the Contract to the extent that such rights are mitigated by the Interim Payment Approach or Temporary Cost Model.

14. If there is an inconsistency between any of the provisions of this Variation and the provisions of the Contract, the provisions of this Variation shall prevail.

Please confirm your acceptance of the Variation by countersigning this letter, returning a scanned copy to (REDACTED) and filing a copy on Bravo.

If you have any queries, please contact the team on (REDACTED).

Yours Sincerely

For and on behalf of the Authority

We hereby acknowledge receipt and accept the terms of this Variation.

Signed: _____(REDACTED)_____

For and on behalf of the Provider

Position: [Director / Authorised Signatory]

Date:

Schedule 1

Interim Payment Approach

The Interim Payment Approach set out in this schedule shall apply during the Interim Payment Period.

Interim Payment Period

The **Interim Payment Period** commences on the Effective Date and (subject to variation in writing by the Parties) ends on the earlier of: (i) the TCM Effective Date; and (ii) the TCM Target Date.

Monthly Sums and FME Payments

During the Interim Payment Period, the Authority shall pay the Provider:

- a monthly sum of (REDACTED) per month (the “**Monthly Sum**”); and
- This **includes** FME which will then be reconciled against actual FME costs

The Provider shall invoice and the Authority shall pay the Monthly Sum Payment in accordance with the current payment provisions.

The Monthly Sum is the only sum payable by the Authority to the Provider under or in connection with the Contract during the Interim Payment Period and replace any sums that would otherwise be payable to the Provider during that period.

Basis of calculation of the Monthly Sum

The Parties acknowledge that the Monthly Sum has been calculated on the basis of the average invoicing under the Contract (**including** FME) for the period from the beginning of December 2019 to the end of February 2020.