



Guidance notes on Model Interim Payment Terms - Procurement Policy Note 02/20

Before reviewing the Model Interim Payment Terms, please read:

- Procurement Policy Note 01/20 – Responding to COVID-19
- Procurement Policy Note 02/20 – Supplier relief due to COVID-19

Purpose of the Model Interim Payment Terms

The purpose of the Model Interim Payment Terms is to provide a set of terms that contracting authorities can use to implement PPN02/20 in providing contractual relief to suppliers who have been affected by COVID-19. This includes preventing a supplier claiming separate relief from another source of Government financial support on COVID-19, to the effect that the supplier gains an undue advantage by claiming relief twice for the same hardship

Who should use the Model Interim Payment Terms?

All contracting authorities to which PPN 02/20 applies should consider using these terms.

What contracts are the Model Interim Payment Terms designed for?

The Model Interim Payment Terms are designed for public contracts for the delivery of goods and services. Authorities should seek legal advice to ensure that the Model Interim Payment Terms are consistent with the contract which they seek to vary. Should an authority wish to vary a contract for works, legal advice should be sought.

How do the Model Interim Payment Terms work?

- The Model Interim Payment Terms allows a supplier, which the authority has identified as at risk because of COVID-19, to set out to the authority the contractual relief that it requires to deal with business disruption because of COVID-19.
- The request for an interim payment structure is set out by the supplier in an Interim Payment Proposal. This process is available after the supplier and authority have considered whether other forms of relief from contractual controls might be more appropriate (for example. performance indicator/service credit relief).
- When the supplier sets out the interim payment relief it requires, it also sets out why it needs the relief (eg staff wages or sub-contractor payment). This process allows the supplier to set out to the authority exactly what it needs and why.
- The clauses around open book transparency and supplier provision of supporting information allows the authority to check that the proposals that the supplier put forward are complied with when relief is given.
- If the supplier does not spend any interim payments in line with what it said it required the payments for, fails to act transparently and with integrity, or takes an undue advantage of the relief, the authority can take action necessary to recover any interim payments.
- The Model Interim Payment Terms prevents a supplier claiming contractual relief from an authority and claiming separate relief from the Government to the effect that the supplier gains an undue advantage by claiming relief twice for the same hardship.

[AUTHORITY LETTERHEAD]

Insert Supplier Name
Address

Xx/Month/Year

Dear

Contract (as amended) between (1) [Authority] (the “Authority) and (2) [Supplier] (the “Supplier”) dated [Date] (the “Contract”)
Supplier 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.

Background

2. The purpose of this Variation is for the Authority to give relief to the Supplier on the terms of this Variation. The Authority and the Supplier 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 Supplier acknowledges that any relief given to it is at the sole discretion of the Authority.
3. 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 provision.
4. The Contract, including any previous variations, will remain effective and unaltered except as amended by this Variation.

Variation

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

[Drafting note: Authorities should crosscheck definitions between this Variation and the Contract.]

Terms highlighted in green are not defined in this Variation and their definition should be crosschecked in the Contract.]

“Covid Related Hardship” means that as a result of the COVID-19 pandemic the Supplier’s ability to meet its contractual obligations under the Contract have been adversely affected.

| | |
|-----------------------------------|---|
| “Covid Relief Period” | means the period from the Variation Date until the Relief Expiry Date. |
| “Interim Payment Proposal” | means a proposal for any interim payment structure pursuant to paragraph 6 of this Variation. |
| “Open Book Interim Data” | 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 Supplier from the Government and to verify the [Charges] paid or the [Charges] which would have been paid during the Covid Relief Period, including: <ul style="list-style-type: none">a. the Supplier’s [Costs] broken down against each [Deliverable], 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 [Good] or [Services] including an analysis showing:<ul style="list-style-type: none">a. the unit costs and quantity of consumables and bought-in services;b. staff costs broken down into the number and grade/role of all [Supplier Personnel] together with a list of agreed rates against each manpower grade; andc. [Reimbursable Expenses];c. [Overheads];d. all interest, expenses and any other third party financing costs incurred in relation to the provision of the [Services];e. full details of the payment of employee wages; andf. full details of the payment of [Sub-contractors]. |
| “Procurement Regulations” | means the Public Contracts Regulations 2015 and the Defence and Security Public Contracts Regulations 2011. |
| “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 to 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 Supplier prior to or on 30 June 2020. |
| “Variation” | means the terms set out in this variation. |
| “Variation Date” | means the date the second party signs this Variation |

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

6.1. Where the Supplier is subject to Covid Related Hardship, the Supplier may at any time during the Covid Relief Period, propose a change to the Contract which has the aim of providing interim relief and support to the Supplier, pursuant to the aims and principles set out in PPN 02/20.

6.2. Pursuant to the aims and principles set out in PPN 02/20 and subject to this Variation, the Supplier shall prepare and deliver to the Authority in writing, an Interim Payment Proposal which sets out details of the Supplier's proposals to vary the payment profile and/or other terms of the Contract to support its cash flow position during the Covid Relief Period, including:

6.2.1. details of any proposed interim payment structure to be put in place, which may include (but not be limited to):

6.2.1.1. [advance payment or advance interim payment for **Goods** or **Services** prior to their delivery by the Supplier];

6.2.1.2. [proposals to amend contract milestone delivery and payment profiles (including extending, delaying, cancelling or consolidating milestone activity and payments)];

6.2.1.3. [continued payment notwithstanding reduced or non-performance];

6.2.1.4. [bringing forward Authority orders and associate payments];

[Drafting note: Authorities should consider which details are appropriate for each specific contract]

and the Interim Payment Proposal shall include details of the proposed amounts payable, the timescales for payment and any other information reasonably required by the Authority to enable the proposal to be considered by the Authority and implemented by the Parties; and

6.2.2. details of how any interim payment structure proposed by the Supplier (in total and each specific payment) is to be used and how it will provide the Supplier with relief and help reduce the adverse effect of Covid Related Hardship.

6.3. The Authority shall within [three] [3] **Working Days** of receipt of an Interim Payment Proposal, consider and either reject or approve the Interim Payment Proposal. If approved, the Parties shall agree in writing the effective date of the Interim Payment Proposal, which shall be dealt with under the Contract as an agreed change. Where the Authority rejects the proposal, the Supplier shall be entitled to resubmit the Interim Payment Proposal but shall amend the proposal to take into account any changes reasonably requested by the Authority.

6.4. The Parties shall use reasonable endeavours to avoid the use of the Interim Payment Proposal mechanism by identifying and utilising existing contractual mechanisms and provisions under the Contract to reduce the adverse impact of Covid Related Hardship on the Supplier, which may include:

6.4.1. relief against performance indicators;

6.4.2. relief and/or changes to delivery dates;

6.4.3. relief and/or delays to service credits; or

- 6.4.4. waiver or delay by the Authority of its remedies and rights under the Contract in whole or in part.
- 6.5. Where the Parties agree and implement an Interim Payment Proposal, the Supplier shall
 - 6.5.1. [at the Authority's request, promptly provide a **Certificate of Costs** which sets out the Supplier's actual costs, expenses, cash flow and profits of providing the **Goods** and/or **Services** over the [3 months] prior to the effective date of the Interim Payment Proposal];
 - 6.5.2. ensure that the payments agreed under the Interim Payment Proposal are promptly and solely applied to the purposes for which they are paid, which may include payments to [Supplier Staff] and the Supplier's Contract 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;
 - 6.5.3. make available to the Authority upon request any information and/or evidence (including the Open Interim Book Data) which the Authority may reasonably require in order to:
 - 6.5.3.1. verify and assure that the Supplier has applied the monies as agreed in the Interim Payment Proposal, including copies of accounts, ledgers, cash-flow forecasts and statements, balance sheets, profit and loss accounts and any other documentary evidence;
 - 6.5.3.2. verify and assure that monies intended for **Supplier Staff** performing the Contract have been properly and promptly paid; and
 - 6.5.3.3. pay invoices submitted by the Supplier's **Sub-contractors** and supply chain immediately on receipt;
 - 6.5.4. ensure that all invoices clearly set out which elements of the invoice that are attributable to the Interim Payment Proposal and which elements are business as usual; and
 - 6.5.5. maintain full records and a written audit trail of all Interim Payment Proposal 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);
- 6.6. The Supplier shall not be entitled:
 - 6.6.1. to include any profit in the Interim Payment Proposals to the extent that such profit might apply to elements of the Contract that are undelivered by the Supplier during the Covid Relief Period;
 - 6.6.2. to include any payments in the Interim Payment Proposals where there is no contractual volume commitment under the Contract;
 - 6.6.3. to any payments to the extent that the Supplier has been underperforming under the Contract and is subject to a current improvement plan or other remedial performance measure under the Contract; or
 - 6.6.4. to combine the Interim Payment Proposal with any other [government][public sector] COVID-19 related relief, grant, intervention or other measure which results in the Supplier receiving more than one benefit/relief for the same underlying cash-flow issue.
- 6.7. The Authority may at any time and in its sole discretion designate one or more additional Covid Relief Periods by notice to the Supplier from time to time. Any such notice shall specify which, if any, PPN contains the applicable rules and principles for the relevant Covid Relief Period.

6.8. ***[Drafting note: Authorities may need to make additional amendments to the contract.]***

7. If, in the reasonable opinion of the Authority, the Supplier:

- 7.1. fails to meet any obligation set out in this Variation;
- 7.2. receives any payment and fails to apply it to meet any proposal in the relevant Interim Payment Proposal;
- 7.3. takes undue advantage of any relief; or
- 7.4. fails to act transparently and with integrity,

the Authority may take all action necessary to recover any payments made to the Supplier during the relevant Covid Relief Period, including without limitation retaining or setting-off payment of any amount it owes to the Supplier at any time under this Contract or any other contract, to the extent that sub-paragraphs 7.1 – 7.4 apply to such payments.

Miscellaneous

- 8. The terms of this Variation shall be effective from the Variation Date.
- 9. 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 Supplier arising before, during or after this Variation.
- 10. The Authority and the Supplier 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 any Interim Payment Proposal.
- 11. 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 countersigning this letter and returning a scanned copy to **[Authority email address]**.

If you have any queries, please contact the team on **[Authority's email address]**.

Yours faithfully,

[Insert name]

[Insert role]

For and on behalf of the Authority

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

Signed: _____

For and on behalf of the Supplier

Position: [Director]/[Authorised Signatory]

Date: