



THIS VARIATION is made on the date the Variation is digitally signed by the Contractor on the “Manage Your Education and Skills Funding Service” and shall be effective from 1 July 2020 (“the Variation Date”) unless the Variation is signed after 1 July 2020 in which case the Variation Date will be the date the Variation is digitally signed.

BETWEEN: -

- (1) **THE SECRETARY OF STATE FOR EDUCATION** acting through the Education and Skills Funding Agency an Executive Agency of the Department for Education of Cheylesmore House, Quinton Road, Coventry, CV1 2WT (“**the ESFA**”); and
- (2) **Provider name company no (if applicable)** whose registered office is situated at «L3» «L4» «L6» **legal address** (“**the Contractor**”).

RECITALS: -

- (A) The ESFA and the Contractor entered into a Contract for Services with the ESFA’s reference number of **ESFA-XXXX** (“**Original Contract**”) for the delivery of Education and Training.
- (B) The ESFA and the Contractor have agreed to vary the terms of the Original Contract as set out in this Variation.
- (C) The ESFA's reference number for this Variation is **X**.

IT IS AGREED as follows: -

1. CONSIDERATION

In consideration of each of the Parties entering into this Variation (such consideration being agreed by the Parties to be good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and agreed), the Parties have agreed to vary the Original Contract in accordance with clause 40.2 of the Original Contract.

2. VARIATION OF THE ORIGINAL CONTRACT

- 2.1 The Parties agree with effect from the Variation Date the Original Contract shall be varied as set out in Annex 1 attached.
- 2.2 Subject to Annex 1, the Original Contract as amended by the previous variations shall continue in full force and effect in all respects.

- 2.3 In addition to the amendments set out in Annex 1, the Original Contract shall be construed and interpreted with such further consequential amendments as are necessary to give effect to the amendments set out in Annex 1 of this Variation, as if such further amendments were also expressly set out in Annex 1.
- 2.4 Except as expressly provided for in Clause 2.3 and Annex 1, the Parties agree that no other liabilities, financial or otherwise, shall accrue to the ESFA because of this Variation.

3. SEVERABILITY

The provisions of this Variation are intended by the Parties to be severable in the event that any part of it is held to be illegal or unenforceable (in whole or in part) and such part shall not affect the validity and enforceability of the remaining provisions or the remainder of the affected provision under this Variation.

4. AUTHORITY AND COSTS

Each Party undertakes that it has full power and authority to enter into and shall be responsible for its own costs arising in relation to this Variation.

5. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 5.1 Subject to Clause 5.2 below, this Variation is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person who is not a party to this Variation. Accordingly, the Parties confirm that no term of this Variation is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Variation.
- 5.2 It is the intention of the Parties that any other department, officer or agency of the Crown, may as required from time to time act as the ESFA's agent in enforcing the ESFA's rights under this Variation.

6. GOVERNING LAW AND JURISDICTION

The Parties agree that this Variation and any dispute arising under or in any way connected with the subject matter of this Variation (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with the laws of England, and the parties submit to the jurisdiction of the English Courts.

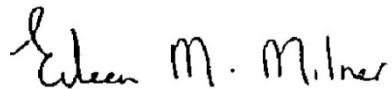
7. ACCEPTANCE BY THE CONTRACTOR

The person that accepts this Variation via the “Manage Your Education and Skills Funding Service” on behalf of the Contractor represents and warrants to the ESFA that the Contractor has read and understood this Variation, that the Contractor agrees to be bound by this Variation and that he/she is duly authorised to enter into this Variation and legally bind the Contractor.

This Variation is made on the date the Variation is digitally signed by the Contractor on the “Manage Your Education and Skills Funding Service”.

SIGNED FOR AND ON BEHALF OF THE SECRETARY OF STATE FOR EDUCATION

acting through the Education and Skills Funding Agency
by Eileen Milner, Chief Executive of the Education and Skills Funding Agency

A handwritten signature in black ink that reads "Eileen M. Milner". The signature is written in a cursive style with a large initial 'E'.

ANNEX 1

VARIATIONS TO ORIGINAL CONTRACT

Insert a new Schedule 4 into the Original Contract after Schedule 3 as follows:

SCHEDULE 4 POST 16 PROVIDER COVID-19 RELIEF SCHEME 2

1. Unless otherwise defined, terms defined in the Original Contract and used in this Schedule 4 shall have the meaning set out in the Original Contract.

Background

2. The purpose of this Variation is for the ESFA to give relief to the Contractor for Covid Related Hardship on the terms as set out in this Variation. The ESFA and the Contractor acknowledge that the relief is given in accordance with the policy set out in PPN 04/20 and that both Parties shall act in good faith and work together towards the principles set out in PPN 04/20. The Contractor acknowledges that any relief given to it is at the sole discretion of the ESFA.
3. The ESFA 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 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 Original 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 Original Contract

“Actual Eligible Costs”	means the Eligible Costs that the Contractor can evidence as having been incurred during Covid Relief Period 2.
“Approved Eligible Costs”	means the monthly total of the Contractor’s Eligible Costs that have been accepted by the ESFA during the application process for the Post 16 Provider Relief for Covid-19 Scheme 2 as reasonable and necessary expenditure arising on a monthly basis from or in connection with the delivery of the Services.
“Certificate of Costs”	means a final claim of the Eligible Costs incurred during Covid Relief Period 2 prepared by the Contractor in accordance with Paragraph 6.9.

“Covid Related Hardship”	means the adverse effect the COVID-19 pandemic has had on the Contractor’s ability to meet its contractual obligations under the Original Contract.
“Covid Relief Period”	means any period excluding Covid Relief Period 2 when support from the ESFA is available to the Contractor for Covid Related Hardship.
“Covid Relief Period 2”	means the period from the Variation Date until the Relief Scheme 2 Expiry Date.
“Eligible Costs”	means the Contractor’s costs that come within the cost headings set out in Paragraph 5.9 of the ESFA Post 16 Provider Relief Scheme 2 Covid-19 Response (July to October 2020) – Application Guidance Document.
“Evidence”	means the supporting information set out at paragraph 6 Evidence Requirements of the ESFA Post 16 Provider Relief Scheme 2 Covid-19 Response (July to October 2020) – Application Guidance Document.
“Ineligible Cost”	means the cost headings set out in paragraph 5.15 of the ESFA Post 16 Provider Relief Scheme 2 Covid-19 Response (July to October 2020) – Application Guidance Document.
“Interim Payment Cap”	means the average of sums paid under the Original Contract to the Contractor over a period determined by the ESFA as a result of it submitting Learner Data to the ESFA in accordance with clause 17 (Submission of Learner Data) of the Original Contract stated as a monthly amount or 25% of the April 2020 to March 2021 Contract value, whichever is the lower.
“Open Book Interim Data”	<p>means the complete and accurate financial and non-financial information which is required by the ESFA to enable the ESFA to understand all COVID-19 related, grants, interventions or other measures received by the Contractor from the Government and to verify the Approved Eligible Costs paid or the Approved Eligible Costs which would have been paid during Covid Relief Period 2, including operating expenditure relating to the provision of the Services including an analysis showing:</p> <ul style="list-style-type: none"> a. staffing costs for both teaching and non-teaching Contractor Personnel broken down into the number and grade/role of all Contractor Personnel together with a list of agreed rates against each manpower grade; b. Eligible Costs; c. all interest, expenses and any other third-party financing costs incurred in relation to the provision of the Services; d. full details of the payment of Sub-contractors

“Post 16 Provider Relief for Covid-19 Scheme 2”	The scheme put in place by the ESFA to relieve Covid Related Hardship during Covid Relief Period 2 as set out in the Schedule 4.
“Procurement Regulations”	means the Public Contracts Regulations 2015 and the Defence and Security Public Contracts Regulations 2011.
“PPN 04/20”	means Procurement Policy Note 04/20 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 as they plan and transition towards resuming business as usual. which can be found at: https://www.gov.uk/government/publications/procurement-policy-note-0420-recovery-and-transition-from-covid-19
“Relief Period 2 Payment for Services”	has the meaning given to it in Paragraph 6.3
“Relief Scheme 2 Expiry Date”	means 31 October 2020, or such other date as may be notified by the ESFA to the Contractor prior to or on 31 October 2020.
“Sub-contractor”	means a person or organisation engaged by the Contractor through a contract to deliver on its behalf the Services or some of the Services.
“Transition Plan”	the plan set out at Question 11 in Part 2 of Appendix 1 to this Schedule which specifies how and when the Contractor will transition to a new and sustainable operating model for delivering the Services and exit from the Post 16 Provider Relief for Covid-19 Scheme 2.
“Variation”	means the terms set out in this Schedule 4.
“Variation Date”	Means 1 July 2020 unless the Variation is signed after 1 July 2020 in which case the date the Variation is digitally signed will be the Variation Date.

6. The Post 16 Provider Relief for Covid 19 Scheme 2 will operate as follows:

- 6.1. The Contractor must continue to deliver the Services itself and /or through its Sub-contractors during Covid Relief Period 2 and to submit Learner Data in accordance with clause 17 of the Original Contract which shall include the ILR and the Earnings Adjustment Statement.

- 6.2. The provisions set out in Paragraphs 6.3 to 6.10 will apply to the calculation of the payment due to the Contractor during Covid Relief Period 2.
- 6.3. The ESFA will calculate and pay in accordance with clause 13 and Appendix 1 of the Original Contract and the Funding Rules, the amount due to the Contractor in respect of the Services that have been delivered during the relevant month in the Covid Relief Period 2 ("Relief Period 2 Payment for Services").
- 6.4. The ESFA will pay to the Contractor such an amount of the Approved Eligible Costs that when added to the Relief Period 2 Payment for Services does not exceed the Interim Payment Cap.
- 6.5. The ESFA will pay any Approved Eligible Costs that are due to the Contractor by BACS transfer on a monthly basis on the 20th Working Day of the calendar month following the month in which the Services were delivered to which it relates.
- 6.6. The Contractor undertakes to pay promptly the wages and salaries of its Contractor Personnel.
- 6.7. The Contractor further undertakes to pay promptly its Sub-contractors and suppliers.
- 6.8. The Contractor will comply with the provisions set out in Part 1 of Appendix 1 of this Schedule 4 with regards to the implementation of its Transition Plan.
- 6.9. Within 60 days of the end of the Covid Relief Period 2, the Contractor must submit a Certificate of Costs setting out the Actual Eligible Costs incurred during Covid Relief Period 2 and must confirm that the Actual Eligible Costs were incurred in delivering the Services in accordance with the Funding Rules. If the Contractor fails to submit the Certificate of Costs within 60 days of the end of the Covid Relief Period 2, the ESFA reserves the right to recover all Approved Eligible Costs made to the Contractor during Covid Relief Period 2.
- 6.10. The ESFA will use the Certificate of Costs to reconcile the Actual Eligible Costs incurred by the Contractor during Covid Relief Period 2 against the Approved Eligible Costs paid to the Contractor during Covid Relief Period 2. Where the total of the Approved Eligible Costs exceeds the Actual Eligible Costs incurred by the Contractor in the Covid Relief Period 2, the Contractor will repay the excess Approved Eligible Costs to the ESFA over a period to be agreed with the ESFA. The ESFA will seek repayment through the direct settlement of an invoice by the Contractor or at the ESFA's discretion, by the setting off the repayment against the monthly payment to the Contractor that is generated through the submission of Learner Data in accordance with clause 17 of the Original Contract.
- 6.11. The ESFA may take the Contractor's earnings from the final data submissions for the 2019 to 2020 funding year (R13 and/or R14) as calculated in

accordance with Paragraph 6.3 into account when reconciling the payment of Approved Eligible Costs for July 2020.

6.12. The Contractor shall:

- 6.12.1. at the ESFA's request and in any event in accordance with Paragraph 6.9 promptly provide a Certificate of Costs which sets out the Contractor's actual costs, expenses, cash flow and profits of providing the Services during Covid Relief Period 2;
- 6.12.2. ensure that the payments of Approved Eligible Costs are promptly and solely applied to the purposes for which they are being paid, which will include making payments of wages and salary to Contractor Personnel and paying the Sub-contractors who are working on the Services to be provided under or in connection with the Original Contract so as to reduce the adverse effect of Covid Related Hardship;
- 6.12.3. make available to the ESFA upon request any information and/or Evidence (including the Open Book Interim Data) which the ESFA may reasonably require in order to:
 - 6.12.3.1. verify and assure that the Contractor has applied the payments it has received of Approved Eligible Costs in deferring Eligible Costs, including copies of accounts, ledgers, cash-flow forecasts and statements, balance sheets, profit and loss accounts and any other documentary Evidence;
 - 6.12.3.2. verify and assure that monies intended for Contractor Personnel performing the Original Contract have been properly and promptly paid; and
 - 6.12.3.3. pay invoices submitted by the Contractor's Sub-contractors and supply chain immediately on receipt;
- 6.12.4. maintain full records and a written audit trail of information as required by clause 12 (Access and Monitoring) of the Original Contract and such full records and audit trail shall be made available promptly to the ESFA on request;

6.13. The Contractor shall not be entitled:

- 6.13.1. to claim as an Eligible Cost profit to the extent that such profit might apply to elements of the Original Contract that are undelivered by the Contractor during Covid Relief Period 2; or
- 6.13.2. to combine its ability to claim payment of the Approved Eligible Costs under the Post 16 Provider Relief for Covid-19 Scheme 2 with

any other government COVID-19 related relief, grant, intervention or other measure which would result in the Contractor receiving more than one benefit or relief for the same underlying cash-flow issue.

- 6.14. The ESFA may at any time and in its sole discretion designate one or more additional Covid Relief Periods by notice to the Contractor 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.
 - 6.15. The Contractor must continue to return Learner Data as set out in clause 17 (Submission of Learner Data) of the Original Contract during Covid Relief Period 2. Where the Contractor is unable to provide Evidence that it is continuing to deliver the Services to the ESFA's reasonable satisfaction, the ESFA may cease the payment of Approved Eligible Costs and reclaim any payments of Approved Eligible Costs that have already been paid.
 - 6.16. The final amount of any Approved Eligible Costs payments received by the Contractor during Covid Relief Period 2 and reconciled in accordance with Paragraphs 6.9 and 6.10 will be deducted from the maximum value of the Original Contract as set out in Appendix 1 to the Original Contract.
7. If in the reasonable opinion of the ESFA, the Contractor:
- 7.1. fails to meet any obligation set out in this Variation;
 - 7.2. applies a payment of Approved Eligible Costs to defray Ineligible Costs;
 - 7.3. takes undue advantage of any relief including but not limited to delaying submitting the Learner Data with the effect that the Approved Eligible Costs payment that is assessed as being due is incorrect;
 - 7.4. fails to act transparently and with integrity; or
 - 7.5. has provided incorrect, inaccurate or misleading information or declarations in its application for the Post 16 Provider Relief for Covid-19 Scheme 2 as set out in Part 2 to Appendix 1 of this Schedule 4,

the ESFA may take all action necessary under the Original Contract to recover any payment including any payment of Approved Eligible Costs made to the Contractor during Covid Relief Period 2, including without limitation suspending payments under the Original Contract, terminating the Original Contract, retaining or setting-off payment of any amount it owes to the Contractor at any time under the Original Contract or any other contract that the ESFA has with the Contractor.

Miscellaneous

8. The terms of this Variation shall be effective from the Variation Date and shall expire on the Relief Scheme 2 Expiry 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 ESFA or the Contractor arising before, during or after this Variation.
10. The ESFA and the Contractor agree that any event arising from COVID-19 shall not give rise to any force majeure or frustration right set out in the Original Contract to the extent that such rights are mitigated by the payment of Approved Eligible Costs.
11. If there is an inconsistency between any of the provisions relating to the Post 16 Provider Relief for Covid-19 Scheme 2 in this Variation and the provisions of the Original Contract, the provisions of this Variation shall prevail.

Schedule 4 Appendix 1

Part 1: Transition Plan

1. The Contractor will actively manage the implementation of its Transition Plan as set out below at Question 11 in Part 2 of Appendix 1 to this Schedule. If the implementation of the Transition Plan departs in a material respect from what is set out in the Transition Plan as set out below, the Contractor will promptly notify the ESFA of this. The ESFA reserves the right to request that the Contractor puts forward proposals to get the implementation of the Transition Plan back on track.
2. The Contractor will comply with any requests that the ESFA makes for further information within 24 hours of the request being made.
3. If during Covid Relief Period 2 the Contractor considers that the Transition Plan needs to be amended, it will put its request in writing including a draft of the amended Transition Plan that clearly identifies the proposed amendments that must be in line with the Post 16 Provider Relief for Covid-19 Scheme 2 and the PPN 04/20 together with the Contractor's reasons for why the amendments are necessary. The Contractor will respond within 24 hours to any requests for further information that the ESFA might have. The ESFA will promptly notify the Contractor of its decision as to whether or not it consents to the proposed amendments to the Transition Plan. If the ESFA does not give its consent, it will give its reasons for not doing so and the Transition Plan will remain in force.
4. Where the ESFA considers that the Transition Plan is not achievable or is no longer suitable the ESFA may request the Contractor make amendments to the Transition Plan that must be in line with the Post 16 Provider Relief for Covid-19 Scheme 2 and the PPN 04/20.
5. Where the Contractor fails to implement the Transition Plan to a material degree including where the end date as set out in the Transition Plan is missed, the ESFA reserves the right to recover any Post 16 Provider Relief Scheme 2 payments that have been made by the ESFA to the Contractor.

Part 2: Post 16 Provider Relief for Covid-19 Scheme - Contractor Application