

Dated

2021

(1) LANCASHIRE COUNTY COUNCIL

(2) [NAME OF SUPPLIER]

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Supplier Participation Agreement (variation to payment terms)  
– *Supplier Incentive Scheme*

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**THIS AGREEMENT** is made on 2021  
**BETWEEN**

- (1) LANCASHIRE COUNTY COUNCIL of PO Box 78, County Hall, Preston PR1 8XJ (the "**Council**"); and
- (2) [NAME OF SUPPLIER] [trading as [TRADING NAME]] (registered number [COMPANY NUMBER]) whose registered office is at [ADDRESS] (the "**Supplier**").

## **BACKGROUND**

- (A) The parties have entered into one or more contracts for goods, services and/or works, in accordance with which the Council is the beneficiary of those goods, services and/or works and the Supplier is the provider of those goods, services and/or works.
- (B) The Council has introduced a programme, the "Supplier Incentive Scheme" of improvements in the Council's purchase-to-pay processes, enhanced supplier relationships and the opportunity to benefit from the early payment of their invoices.
- (C) The Supplier has agreed to participate in the Council's Supplier Incentive Scheme and accordingly to operate on varied payment terms in respect of those various contracts on the terms and conditions as set out in this Agreement.

## **OPERATIVE PROVISIONS**

### **1. DEFINITIONS AND INTERPRETATION**

In this Agreement:

the following words and expressions have the following meanings unless the context otherwise requires:

<b>"Contracts"</b>	all contracts that have been entered into between the Council and the Supplier, including those which are created via the issue of a purchase order, or otherwise entered into before, on or after the Effective Date. Any exemptions to this Agreement are to be identified in Schedule 1;
<b>"Effective Date"</b>	[the date of this Agreement/[DATE]];
<b>"Invoiced Debt"</b>	the gross amount (including, without limitation, all fees, charges, expenses and other sums invoiced, including any applicable VAT and other taxes), that:  (a) has been invoiced to the Council by the Supplier but remains unpaid as at the Effective Date; or  (b) is invoiced to the Council by the Supplier on or after the Effective Date;
<b>"Rebate"</b>	shall have the definition given to it in clause 3.1.1.

**1.1** the background section and all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement.

**1.2** any reference to writing or written includes e-mail.

### **2. TERM AND TERMINATION**

- 2.1** This Agreement will commence on the Effective Date and shall continue for a minimum period of two (2) years and will continue thereafter unless and until terminated by either party giving not less than six (6) months' written notice to that effect to the other party, such termination to be effective no earlier than the date that is two (2) years from the Effective Date.
- 2.2** This Agreement will terminate in the case of each individual Contract where that Contract naturally expires or is the subject of earlier termination.

**3. PARTICIPATION IN SUPPLIER INCENTIVE SCHEME – STANDARD GOODS AND SERVICES CONTRACTS**

**3.1** Notwithstanding the terms of the Contracts, the parties agree to vary, for the duration of the term of this Agreement, those terms of the Contracts which relate to payments (and the timing of payments) as follows:

**3.1.1** the Supplier acknowledges and agrees that in consideration of the Council paying an Invoiced Debt owed to the Supplier under or in connection with a Contract prior to the date by which such payment would otherwise be required to be made under the terms of that Contract, the Council shall be entitled to deduct and retain from that Invoiced Debt, for its own benefit, such percentage of that Invoiced Debt (the "**Rebate**") that is calculated in accordance with Schedule 2.

**3.1.2** for the avoidance of doubt, nothing in this Agreement shall:

**3.1.2.1** affect the date by which payment of an Invoiced Debt is required to be made by the Council; or

**3.1.2.2** require the Council to make early payment to the Supplier in respect of any Invoiced Debt; and

**3.1.3** the Contracts will continue in full force and effect as amended by this Agreement.

**3.1.4** where there is any conflict or inconsistency between the provisions of this Agreement and the Contracts, the provisions of this Agreement shall take precedence.

**3.2** On termination of this Agreement:

**3.2.1** to the extent that any provisions of a Contract have been varied by the operation of clause 3.1, such provisions shall be deemed to be further varied so as to revert to the language existing immediately prior to the operation of this Agreement; and

**3.2.2** in respect of any Invoiced Debts that remain unpaid as at the date of termination of this Agreement, the terms of this Agreement shall survive termination in respect of such Invoiced Debts until payment has been effected.

**3.3** This Agreement does not release any party to it from any breaches of a Contract existing at the date of this Agreement, or in the future, or affect any existing rights that have accrued under a Contract prior to the date of this Agreement.

**3.4** This Agreement shall continue to apply to all Invoiced Debts that remain unpaid up to and including the date of expiry or termination of this Agreement (including where a Contract has terminated or expired).

#### **4. INCORRECT APPLICATION OF REBATES**

**4.1** In the event the Supplier, acting reasonably, considers that the Council has incorrectly applied a Rebate it shall raise a query in respect of that Rebate with the Council's accounts payable team (whose details will be provided to the Supplier by the Council, as updated from time to time) within seven (7) days of the relevant payment being received by the Supplier.

**4.2** If the Supplier does not raise a genuine query under clause 4.1 within seven (7) days of the relevant Rebate being applied, the Council shall be deemed to have applied the Rebate correctly in that instance and shall be entitled to retain that Rebate.

**4.3** The parties shall use reasonable endeavors to resolve any query raised in accordance with clause 4.1 in a timely manner, including making relevant personnel available for the purpose.

#### **E-Invoicing**

**4.4** The Council may make proposals to implement e-invoicing with the Supplier and the Supplier agrees to consider such proposals in good faith and not refuse reasonable amendments to this Agreement to reflect such proposals

#### **5. SET OFF**

The Council may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under a Contract

#### **6. FREEDOM OF INFORMATION**

**6.1** The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with information disclosure requirements under the FOIA or EIR.

**6.2** The Council shall be responsible for determining at its absolute discretion whether any information in connection with this Agreement is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and/or is to be disclosed in response to a request for information.

#### **7. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement.

#### **8. RIGHTS OF THIRD PARTIES**

The parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

#### **9. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of England.

**10. JURISDICTION**

The courts of England shall have jurisdiction to determine any dispute arising out of or in connection with this Agreement, including in relation to any non-contractual obligations.

**SIGNED BY** or on behalf of the parties on the date stated at the beginning of this Agreement.

Signed by

for and on behalf of  
**Lancashire County Council**

.....  
Signature of director/officer

Signed by

for and on behalf of  
**[NAME OF SUPPLIER]**

.....  
Signature of director/officer

## **SCHEDULE 1**

### **Exempt Contracts**

N/A

## SCHEDULE 2

### Supplier Incentive Scheme

Rebates which the Council may deduct and retain – standard goods and services contracts

Number of days elapsed between the Calculation Trigger Date and the Invoice Payment Date	% of the amount owed that may be deducted and retained by the Council as the Rebate
0	[●]%
1	[●]%
2	[●]%
3	[●]%
4	[●]%
5	[●]%
6	[●]%
7	[●]%
8	[●]%
9	[●]%
10	[●]%
11	[●]%
12	[●]%
13	[●]%
14	[●]%
15	[●]%
16	[●]%
17	[●]%
18	[●]%
19	[●]%
20	[●]%
21	[●]%
22	[●]%
23	[●]%
24	[●]%
25	[●]%
26	[●]%
27	[●]%
28	[●]%
29	[●]%
30	[●]%

1. For any undisputed Invoiced Debt, the Calculation Trigger Date shall be the date the relevant invoice is received by the Council, such date being the date recorded in the Council's accounts payable system as the registration date. For any disputed Invoiced Debt, the Calculation Trigger Date shall be the date on which the dispute has been resolved to the mutual satisfaction of the parties.

2. The Invoice Payment Date shall be the date on which the Council executes its payment run in respect of the relevant Invoice Debt.
3. Calculation of the Rebate
  - a. The Rebate is calculated by establishing the number of days that have elapsed between the Calculation Trigger Date and the Invoice Payment Date and comparing the number of days elapsed within the first column of the table above to determine the Rebate to be applied to the invoiced amounts. The Rebate percentage (%) is calculated to 14 decimal places and it is this value that is applied in all calculations. However, for simplicity, the Rebate % displayed in the table above has been rounded to 2 decimal places.
  - b. Rebates applied to invoices are calculated at an invoice line item level. Rebates are applied in the manner described at 3(a) above, against the value of each line item. The result of this calculation is rounded to the nearest pence. Once the Rebates for all line items have been calculated, they are aggregated to provide the total Rebate value to be deducted from the Supplier's invoice on early payment of the invoice.
4. The Council shall issue a debit note indicating the value of the Rebate that has been applied.