|  |
| --- |
| Dated 2019 |
| 1. NHS WALES SHARED SERVICES PARTNERSHIP
2. [NAME OF SUPPLIER]
 |
| Supplier Participation Agreement (variation to payment terms) – **Priority Supplier Programme** |
| *(Form for use with a tender process)* |

**THIS AGREEMENT** is made on 2019

**BETWEEN**

1. NHS Wales Shared Services Partnership – Procurement Services, hosted by Velindre NHS Trust on behalf of all Wales Local Health Boards and Trusts (as listed in Schedule 1) whose registered office is at 4th Floor, Companies House, Crown Way, Cardiff, CF14 3UB (the “Client”); and
2. [NAME OF SUPPLIER] [trading as [TRADING NAME]] (registered number [COMPANY NUMBER]) whose registered office is at [ADDRESS] (the **“Supplier”**).

**BACKGROUND**

1. 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.
2. The Clientl has introduced a programme, the “Priority Supplier Programme” of improvements in the Client’s purchase-to-pay processes, enhanced supplier relationships and the opportunity to benefit from the early payment of their invoices.
3. The Supplier has agreed to participate in the Client’s “Priority Supplier Programme” 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:

|  |  |
| --- | --- |
| **“Contract” or “Contracts”** | all contracts that have been entered into between NHS Wales Shared Services Partnership 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 3; |
|  |  |
| **“Effective Date”** | [the date of this Agreement/[DATE]]; |
| **“Final Date for Payment** | means the final date for payment of an amount due to the Supplier nominated in the Contract; |
| **“Final Statement”** | means the final claim for payment made in accordance with a Contract; |
| **“Invoiced Debt”** | the gross amount (including, without limitation, all fees, charges, expenses and other sums invoiced to the Client by the Supplier or which are otherwise specified in a Notice or Pay Less Notice, including any applicable VAT and other taxes but excluding any Rebate specified in a Pay Less Notice), that:(a) has been invoiced to the Client by the Supplier or specified in a Notice or Pay Less Notice but remains unpaid as at the Effective Date; or(b) is invoiced to the Client by the Supplier or specified in a Notice or Pay Less Notice on or after the Effective Date; |
| **“Notice”** | means the notice issued by or on behalf of the Client specifying the amount due to the Supplier (or, if the Client fails to issue a notice, the application for payment made by the Supplier specifying the amount due to the Supplier) as at the due date in respect of that payment and the basis on which that sum has been calculated; |
| **“Pay Less Notice”** | means the notice issued by the Client advising the Supplier of the intention to pay less than the sum stated as due to the Supplier in the Notice; |
| **“Completion”** | means the stage at which practical or substantial completion of the works is achieved in accordance with a Contract/ has the meaning given in the Contract; |
| **“Rebate”** | shall have the definition given to it in clause 3.1.2. |

* 1. the background section and all headings are for ease of reference only and will not affect the construction or interpretation of this Agreement.
	2. any reference to writing or written includes e-mail.
1. TERM

This Agreement will commence on the Effective Date and will continue for the duration of the New Contract and (for the avoidance of doubt) also including the final routine invoice payment under it, and the provisions of this Agreement shall be construed accordingly. In the event of any conflict between this Clause 2 and any other Clause of this Agreement this Clause 2 shall take priority.

1. PARTICIPATION IN PRIORITY SUPPLIER CONTRACTS – CONSTRUCTION CONTRACTS**[[1]](#footnote-1)**
	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 as follows:
		1. the Supplier acknowledges and agrees that the Client is entitled to, but is not obliged to, make payment of any amount due to the Supplier prior to the Final Date for Payment for that amount;
		2. if the Client elects to make payment of an amount due to the Supplier prior to the Final Date for Payment, the Client shall be entitled to deduct and retain from the amount due to the Supplier, for its own benefit, such percentage of the amount due in the Notice (the “**Rebate**”) that is calculated in accordance with Schedule 2;
		3. where clause 3.1.2 applies, the Client shall:
			1. issue a Pay Less Notice in accordance with the Contract; and
			2. make payment of the amount of the Pay Less Notice on the date of the Pay Less Notice; and
		4. a Pay Less Notice issued under clause 3.1.3.1:
			1. may be issued simultaneously with, or in place of, or subsequent to, the Notice; and
			2. shall state the sum due to the Supplier as at the date of issue of the Pay Less Notice (which amount shall be calculated as the amount set out in the Notice reduced in accordance with clause 3.1.2 above).
		5. [the Rebate shall not apply to Notice(s) issued in response to:
			1. an interim claim for payment by the Supplier following the achievement of Completion; and
			2. the Final Statement; and][[2]](#footnote-2)
		6. For the avoidance of doubt, the Rebate shall be applied only in accordance with this clause 3.1.6 after the valuation or assessment of amounts otherwise due in accordance with the Contract. The valuation or assessment of amounts otherwise due to the Contractor under and in accordance with this Contract shall exclude any deductions made as a result of the application of the Rebate. The Contract Sum shall not be adjusted by reason of the application of the Rebate.[[3]](#footnote-3)
		7. For the avoidance of doubt, 30 day payment terms assume that payments are made on day 28 in order to be received by the supplier in cleared funds on day 30.
		8. This agreement will apply to all contracts provided by the Supplier to the Client.
	2. For the avoidance of doubt:
		1. this clause 3 is without prejudice to any other right or remedy of the Client (including the right to issue a Pay Less Notice under the Contract) under or in connection with this Contract; and
		2. the Contracts will continue in full force and effect as amended by this Agreement; and
		3. where there is conflict or inconsistency between the provisions of this Agreement and the Contracts, the provisions of this Agreement shall take precedence.
	3. 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 the 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 the payment has been effected.

* 1. 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.
	2. This Agreement shall, subject to clause 3.1.5, continue to apply to all amounts due in any Notice(s) that remain unpaid up to and including the date of expiry or termination of this Agreement (including where a Contract has terminated or expired).

 Incorrect Application of Rebates

* 1. In the event the Supplier, acting reasonably, considers that the Client has incorrectly applied a Rebate it shall raise a query in respect of that Rebate with the Client’s accounts payable team (whose details will be provided to the Supplier by the Client, as updated from time to time) within seven (7) days of the relevant payment being received by the Supplier.
	2. If the Supplier does not raise a genuine query under clause 3.6 within seven (7) days of the relevant Rebate being applied, the Client shall be deemed to have applied the Rebate correctly in that instance and shall be entitled to retain that Rebate.
	3. The parties shall use reasonable endeavors to resolve any query raised in accordance with clause 3.6 in a timely manner, including making relevant personnel available for the purpose.
1. SET OFF

The Client 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

1. 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.

1. 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.

1. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.

1. JURISDICTION

The courts of England and Wales have exclusive 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

[NAME OF DIRECTOR/OFFICER]

for and on behalf of

**NHS WALES SHARED SERVICES PARTNERSHIP** …………………………………………….

Signature of director/officer

Signed by

[NAME OF DIRECTOR/OFFICER]

for and on behalf of

**[NAME OF SUPPLIER]** …………………………………………….

Signature of director/officer

SCHEDULE 1

NHS Wales Local Health Boards and Trusts:

* Aneurin Bevan University Health Board
* Cwm Taf Morgannwg University Health Board
* Cardiff & Vale University Health Board
* Velindre NHS Trust
* Swansea Bay University Health Board
* Hywel Dda University Health Board
* Public Health Wales NHS Trust
* Betsi Cadwaladr University Health Board;
* Powys Health Board;
* Welsh Ambulance Trust; and
* their successors in the exercise of their function.

SCHEDULE 2

**NHS Wales Shared Services Partnership: Priority Supplier Programme**

**Rebates which the Client 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 Client as the Rebate** **Rebate offered by Supplier: [delete columns below to leave rebate profile offered by supplier]** |
| **0.50%** | **1.00%** | **1.25%** | **1.50%** | **2.00%** |
| 0 | 0.750% | 1.500% | 1.875% | 2.250% | 3.000% |
| 1  | 0.725% | 1.450% | 1.812% | 2.175% | 2.900% |
| 2  | 0.700% | 1.400% | 1.750% | 2.100% | 2.800% |
| 3  | 0.675% | 1.350% | 1.688% | 2.025% | 2.700% |
| 4  | 0.650% | 1.300% | 1.625% | 1.950% | 2.600% |
| 5  | 0.625% | 1.250% | 1.563% | 1.875% | 2.500% |
| 6  | 0.600% | 1.200% | 1.500% | 1.800% | 2.400% |
| 7 | 0.575% | 1.150% | 1.438% | 1.725% | 2.300% |
| 8  | 0.550% | 1.100% | 1.375% | 1.650% | 2.200% |
| 9  | 0.525% | 1.050% | 1.313% | 1.575% | 2.100% |
| **10**  | **0.500%** | **1.000%** | **1.250%** | **1.500%** | **2.000%** |
| 11  | 0.475% | 0.950% | 1.188% | 1.425% | 1.900% |
| 12  | 0.450% | 0.900% | 1.125% | 1.350% | 1.800% |
| 13  | 0.425% | 0.850% | 1.063% | 1.275% | 1.700% |
| 14  | 0.400% | 0.800% | 1.000% | 1.200% | 1.600% |
| 15  | 0.375% | 0.750% | 0.938% | 1.125% | 1.500% |
| 16  | 0.350% | 0.700% | 0.875% | 1.050% | 1.400% |
| 17  | 0.325% | 0.650% | 0.813% | 0.975% | 1.300% |
| 18  | 0.300% | 0.600% | 0.750% | 0.900% | 1.200% |
| 19  | 0.275% | 0.550% | 0.688% | 0.825% | 1.100% |
| 20  | 0.250% | 0.500% | 0.625% | 0.750% | 1.000% |
| 21  | 0.225% | 0.450% | 0.563% | 0.675% | 0.900% |
| 22  | 0.200% | 0.400% | 0.500% | 0.600% | 0.800% |
| 23  | 0.175% | 0.350% | 0.438% | 0.525% | 0.700% |
| 24  | 0.150% | 0.300% | 0.375% | 0.450% | 0.600% |
| 25  | 0.125% | 0.250% | 0.313% | 0.375% | 0.500% |
| 26 | 0.100% | 0.200% | 0.250% | 0.300% | 0.400% |
| 27 | 0.075% | 0.150% | 0.188% | 0.225% | 0.300% |
| 28 | 0.050% | 0.100% | 0.125% | 0.150% | 0.200% |
| 29 | 0.025% | 0.050% | 0.063% | 0.075% | 0.100% |
| 30 | 0.000% | 0.000% | 0.000% | 0.000% | 0.000% |

For any undisputed Invoiced Debt, the Calculation Trigger Date shall be the date the Supplier’s application for the payment of the relevant sum is received by the Client, such date being the date recorded in the Client’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.

The Invoice Payment Date shall be the date on which the Client executes its payment run in respect of the relevant Invoice Debt.

Calculation of the Rebate

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.

Rebates applied to invoices are calculated at an invoice line item level. Rebates are applied in the manner described at (a) immediately 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.

1. The Client shall issue a debit note indicating the value of the Rebate that has been applied.
1. Assume for these purposes that the Supplier is registered with gross payment status under the Construction Industry Scheme. [↑](#footnote-ref-1)
2. This clause (and corresponding definitions) may be deleted if not applicable for this Supplier. [↑](#footnote-ref-2)
3. This clause 4.1.6 ensures the Rebate operates as a separate commercial arrangement, by preserving the existing contract sum and valuation process under the relevant construction contract. This generic clause is broadly suitable for use in both the JCT and NEC suite of contracts, but appropriate drafting will need to be considered for each form of construction contract to be amended. [↑](#footnote-ref-3)