

DEVON DISCOUNTS AGREEMENT
between
Devon County Council
and
Discounts4U Sample Supplier (example)

PARTIES

- (1) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, EX2 4QD (the “**Council**”)
- (2) Discounts4U Sample Supplier (example) of Anywhere street, Nowhere village, Exeter, EX2 4DD (the “**Supplier**”).

Each a “**Party**” and together, the “**Parties**”.

BACKGROUND

The Council maintains the Devon Discounts Website (www.devon.gov.uk/discounts) for members of Devon County Council staff. The Devon Discounts Website provides details of businesses which offer a discount to Council Staff. The Supplier has applied to be included on the Devon Discounts Website and the Council has accepted the Supplier’s application. This Agreement governs the relationship between the Parties.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Authorised Representative: the Council’s Authorised Representative or the Supplier’s Authorised Representative, whichever is appropriate in the relevant context.

Council Staff: means staff employed by the Council who are granted access to the Devon Discounts Website .

Council’s Authorised Representative: the person referred to in clause 5.3.

Devon Discounts Website : the section of the Council’s website that is accessible to only Council Staff and is dedicated to providing information pertaining to discounts offered to Council Staff.

End Provider: a business which offers a discounts through an Intermediary.

Intermediary: a person who acts as a medium and, instead of or in addition to offering its own discounts, has a relationship with one or more End Providers.

Supplier’s Authorised Representative: the person referred to in clause 3.4.

Supplier Information Form: the information page provided at Schedule 1 which has been duly completed by the Supplier and sets out, amongst other things, the nature of the discount being offered to Council Staff.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.

1.4 Words in the singular shall include the plural and vice versa.

1.5 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words **without limitation** following them.

1.6 A reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence when it is signed and dated by both Parties and shall continue unless terminated in accordance with clause 8.

3. SUPPLIER'S RESPONSIBILITIES

3.1 The Supplier shall offer the discount(s) to Council Staff, as set out in the Supplier Information Form. The Supplier confirms that it has duly completed the Supplier Information Form and warrants that this information (including information regarding discounts) is clear, not misleading, and that it has the authority to enter into this Agreement.

3.2 The Supplier may, at any time, update the information (including the discount(s)) contained in the Supplier Information Form, by providing the Council's Authorised Representative with a replacement Supplier Information Form (available upon request). The Council's Authorised Representative shall keep any replacement Supplier Information Forms with its copy of this Agreement.

3.3 The Supplier acknowledges and agrees that:

- (a) it is responsible for maintaining the accuracy of the Supplier Information Form;
- (b) the Council is entering into this Agreement on the basis that the information it has received from the Supplier, including the Supplier Information Form, is accurate and complete (in all material respects) and is not misleading;
- (c) the Council does not warrant or make any representations as to the suitability of any goods and/or services offered by the Supplier to Council Staff and does not in any way endorse the Supplier by entering into this Agreement;
- (d) the Council makes no representations or assurances to the Supplier or anyone else that by entering into this Agreement, the Supplier will experience an increase in business and/or sales or that Council Staff will choose to take advantage of any discounts offered by the Supplier;
- (e) this is a non-exclusive relationship and that other businesses offering goods and/or services at a discount to Council Staff will be included on the Devon Discounts Website;
- (f) it may not hold itself out in any way as being endorsed by the Council or in partnership with the Council;
- (g) it will provide reasonable endeavours to promptly resolve any complaints, grievances or disputes, that may arise with Council Staff in a reasonable and courteous manner and shall liaise directly with the relevant Council Staff in this regard;
- (h) the Council reserves the right to liaise with and receive information from Devon & Somerset Trading Standards Service regarding your business from time to time;
- (i) the Council shall not be held responsible for the actions of any Council Staff who access the Devon Discounts Website or make contact with the Supplier; and
- (j) if it considers that the Council is not or may not be complying with any of the Council's obligations, it shall only be entitled to terminate this Agreement in accordance with clause 8.

3.4 The Supplier shall appoint a representative empowered to act on its behalf for all purposes in connection with this Agreement and at the Commencement Date that person is Ann E One (the "**Supplier's Authorised Representative**"). The Supplier may, at any time, replace the person named above as the Supplier's Authorised Representative with written notice to the Council.

4. INTERMEDIARIES

4.1 If the Supplier is an Intermediary, in addition to the Supplier's responsibilities as contained in clause 3, the Supplier also acknowledges and agrees that:

- (a) End Providers have warranted to the Supplier that:
 - (i) any information regarding discounts offered to Council Staff is clear and not misleading and that End Providers are responsible for maintaining the accuracy of their discounts offered to Council Staff; and
 - (ii) they will provide reasonable endeavours to promptly resolve any complaints, grievances or disputes that may arise with Council Staff in a reasonable and courteous manner and shall liaise directly with the relevant Council Staff in this regard,
- (b) the Supplier has not made any assurances or representations to End Providers that:
 - (i) the Council is endorsing the End Providers in any shape or form;
 - (ii) the Council is warranting or making any representations as to the suitability of any goods and/or services offered by the End Providers;
 - (iii) the Council has made any representations or assurances that the End Providers will experience an increase in business and/or sales or that Council Staff will choose to take advantage of any discounts offered by the End Providers,
- (c) the Supplier is aware of the provisions in clause 8 (Termination) and should either Party terminate this Agreement, the Supplier agrees to refund End Providers any fees they have paid to the Supplier to participate in the Devon Discounts Website on a pro-rata basis or such other basis as may be agreed between the Supplier and the End Providers.

5. COUNCIL'S OBLIGATIONS

5.1 The Council shall:

- (a) create a dedicated section of the Devon Discounts website which details the discount(s) the Supplier is making available to Council Staff using the information contained in the Supplier Information Form;
- (b) as soon as is reasonably practicable, update the Devon Discounts website (as appropriate) with any information provided by the Supplier in accordance with clause 3.2 above;
- (c) promote, on a regular basis, the Devon Discounts Website to Council Staff; and
- (d) not disclose details relating to the Supplier's discount, other than to Council Staff, unless:
 - (i) it is agreed in writing with the Supplier; or
 - (ii) if required by a court order or by law.

5.2 If requested by the Supplier, the Council shall send the Supplier a copy of the information contained on the Devon Discounts Website only in so far as it relates to the Supplier.

5.3 The Council shall appoint a representative empowered to act on its behalf for all purposes in connection with this Agreement (the "**Council's Authorised Representative**").

6. CHARGES

6.1 The Parties acknowledge and agree that no charges or payments are due under this Agreement.

7. INDEMNITY

7.1 The Supplier agrees to indemnify and hold the Council harmless from all claims, costs, proceedings, damages and expenses (including reasonable legal and other professional fees and expenses) awarded against, or incurred or paid by, the Council as a result of or in connection with any liability, loss, damage, injury, cost or expense that is caused by, relates to or arises from a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier.

7.2 For the avoidance of doubt, if the Supplier is an Intermediary, the Supplier agrees to indemnify

and hold the Council harmless from all claims, costs, proceedings, damages and expenses (including reasonable legal and other professional fees and expenses) awarded against, or incurred or paid by, the Council as a result of or in connection with any breach of clause 4 (Intermediary) by the Supplier.

8. TERMINATION

8.1 Either Party may terminate this Agreement with immediate effect by providing the other with written notice to the relevant Authorised Representative.

8.2 On termination of this Agreement for any reason, the Council shall, as soon as is reasonably practicable, remove the information contained on the Supplier Information Form from the Devon Discounts Website. On termination of this Agreement (however arising) the accrued rights and liabilities of the parties as at termination, and the following clauses, shall survive and continue in full force and effect:

- (a) Clause 4 (Intermediaries);
- (b) Clause 7 (Indemnity);
- (c) Clause 8 (Termination); and
- (c) Clause 19 (Governing Law).

9. FORCE MAJEURE

Either Party may defer the performance of their obligations under this Agreement or terminate this Agreement on the service of written notice, if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

10. VARIATION

10.1 Subject to clauses 10.2 and 10.3 below, this Agreement may not be varied except by an instrument in writing signed by the Authorised Representatives.

10.2 The Council may amend the terms and conditions of this Agreement, with the exception of the Supplier Information Form, provided that it provides the Supplier's Authorised Representative with at least 1 month's notice in writing.

10.3 The Supplier may amend or update the Supplier Information Form at any time with notice in writing to the Council's Authorised Representative.

11. WAIVER

11.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

11.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

12. SEVERANCE

12.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

13. ENTIRE AGREEMENT

13.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.

14. ASSIGNMENT

14.1 Neither Party shall, without the prior written consent of the other, assign, transfer, or deal in any other manner with all or any of its rights or obligations under this Agreement.

14.2 Each Party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

15. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16. RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

17. NOTICES

17.1 A notice or other communication given to a Party under this Agreement:

- (a) shall be in writing;
- (b) shall be signed by or on behalf of the party giving it;
- (c) shall be sent for the attention of the Authorised Representative, in accordance with the provisions of this clause); and
- (d) shall be:
 - (i) delivered personally; or
 - (ii) sent by pre-paid first-class post or recorded delivery; or
 - (iii) sent by e-mail.

17.2 The addresses for service of a notice or other communication are as follows:

- (a) **Supplier:**
 - (i) address: Anywhere street, Nowhere village, Exeter, EX2 4DD
 - (ii) for the attention of: Ann E One
 - (iii) e-mail address: communications@devon.gov.uk;
- (b) **Council:**
 - (i) address: Devon County Council, Communications, Room G55, Topsham Road, Exeter, Devon EX2 4QD

- (ii) for the attention of: Devon Discounts
- (iii) e-mail address: communications@devon.gov.uk

17.3 If a notice or other communication has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- (a) if delivered personally, at the time of delivery; or
- (b) if sent by e-mail, at the time of transmission; or
- (c) if sent by pre-paid first-class post or recorded delivery, at 12 noon on the second day after posting.

17.4 For the purposes of this clause:

- (a) all times are to be read as local time in the place of deemed receipt; and
- (b) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice or other communication is deemed to have been received when business next starts in the place of receipt.

17.5 To prove delivery, it is sufficient to prove that:

- (a) if sent by e-mail, the notice or other communication was transmitted by e-mail to the e-mail address of the party; or
- (b) if sent by pre-paid first-class post, the envelope containing the notice or other communication was properly addressed and posted.

17.6 The provisions of this clause 17 shall not apply to the service of any process in any legal action or proceedings.

18. DISPUTE RESOLUTION

18.1 If any dispute arises in connection with this Agreement, the Council's Authorised Representative and the Supplier's Authorised Representative shall provide reasonable endeavours to meet (either personally or via teleconference if appropriate) in a good faith effort to resolve the dispute.

19. GOVERNING LAW AND JURISDICTION

19.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

19.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated below.

Signed By:



NAME: Phil Norrey

JOB TITLE: Chief Executive, Devon County Council

DATED: 04-06-2013

FOR AND ON BEHALF OF DEVON COUNTY COUNCIL

Signed By:

NAME:

JOB TITLE:

DATED:

FOR AND ON BEHALF OF Discounts4U Sample Supplier (example)

Schedule 1 Supplier Information Sheet

Name of Business	Discounts4U Sample Supplier (example)
Address	Anywhere street Nowhere village Exeter EX2 4DD
Website	www.devon.gov.uk/discounts
Telephone	01392 380101
Description of offer / discount	<ul style="list-style-type: none"> • 25% off pens and paper (test only) • buy one coffee or tea get one free (test only)
Who is eligible to take advantage of the offer/discount (e.g. DCC Staff):	DCC employees and their immediate family
Discount code	Mention code DCC4U2013 when in the shop or purchasing online at the checkout.
Offer/discount start date	20/09/2013
Offer/discount end date	30/11/2013
Name, position and email of Supplier's Authorised Representative (please see clause 3.4)	Name: Ann E One Position: Owner Email: communications@devon.gov.uk
SIGNED FOR AND ON BEHALF OF THE ABOVE NAMED BUSINESS:.....	
NAME:	
POSITION:.....	