

Dated

(1) **DŴR CYMRU CYFYNGEDIG**

- and -

(2)

AGREEMENT
Water Supply at

THIS AGREEMENT is made on

BETWEEN

- (1) **DŴR CYMRU CYFYNGEDIG** incorporated and registered in England and Wales with company number 0236677 whose registered office is at Pentwyn Road, Nelson, Treharris, Mid Glamorgan, CF46 6LY ('DCC'); and
- (2) **XXXXX** incorporated and registered in England and Wales with company number XXXX whose registered office is at XXXXXX

(each a 'Party' and together 'the Parties').

WHEREAS:

- (A) This agreement is authorised by Section 40 of the Water Industry Act 1991 (the Act).
- (B) Dŵr Cymru and XXXX are the water undertakers appointed to their respective areas under Section 6 of the Act.
- (C) The Parties acknowledge that this Agreement complies with Section 40 of the Act.
- (D) Dŵr Cymru provides a bulk supply of water to XXXX at XXXXXX on the following terms and conditions.

IT IS AGREED as follows

1. DEFINITIONS

Commencement date means the date of the signing of this agreement or the connection date if earlier

Force Majeure means any event or circumstance which is beyond the reasonable control of Dŵr Cymru which results in or causes the failure of Dŵr Cymru to perform any of its obligations under this Agreement including but not limited to any act of God, strike, lockout or other industrial disturbance or dispute, act of the public enemy, war declared, or undeclared threat of war, terrorist act, blockade, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire storm, flood, earthquake, accumulation of snow and ice, lack of water arising from weather or environmental problems or any other reason outside the control of the relevant party, explosion, fault or failure of plant and apparatus to the extent that any such event could not have been prevented by Good Industry Practice. Force Majeure would also include the inability of Dŵr Cymru to access its source water supply.

Good Industry Practice means the exercise of that degree of skill diligence prudence and foresight which would reasonably and ordinarily be expected from a water undertaker appointed under the Act.

Potable Water means water that will meet the standards of wholesomeness as provided under section 67 of the Act.

Point of Supply is at GPS [] and the supply shall be known as []

2. QUANTITY

DCC shall use Good Industry Practice to supply such quantity of Potable water as XXXXX may

require up to a maximum of [] m3 per [day, per hour, per annum]

3. QUALITY OF SUPPLY

3.1 The quality of water to be supplied shall be [Potable or Non Potable] water.

3.2 The provision of information, sharing of risk assessments and all communications regarding Water Quality will be in accordance with the Water Quality Protocol in place between the parties at the time.

4. POINT OF SUPPLY

[].

5. MEASUREMENT OF SUPPLY

- 5.1 All water supplied by Dŵr Cymru under this Agreement shall pass through and be measured by a Dŵr Cymru meter;
- 5.2 The meter and all assets upstream of the meter are the responsibility of Dŵr Cymru., All assets downstream of that Meter are the responsibility of XXXXX. Subject to the provisions of clause (5.4) the amount of water supplied by Dŵr Cymru shall be taken to be that shown on the register of the meters;
- 5.3 If XXXXXX has reasonable grounds to believe that the amount shown on the register of such meter or meters is inaccurate it may give Dŵr Cymru 14 days' notice requiring such equipment or any part thereof to be tested. The meter will be tested in accordance with Regulation 6 of The Water (Meters) Regulations 1988 No 1048 as amended. If the meter falls within the prescribed limits of error Dŵr Cymru will recover from XXXXX the expenses reasonably incurred in carrying out the test (including the associated works). For the avoidance of doubt if the meter does not fall within those limits, Dŵr Cymru will bear these expenses itself, together with the expenses necessary to secure compliance with the requirements of the Regulations.
- 5.4 If the equipment falls outside the prescribed limits of error in accordance with a test carried out under clause 5.3 above, the quantity of water supplied by Dŵr Cymru shall be taken to be such as Dŵr Cymru and XXXXX shall agree to be a reasonable estimate.
- 5.5 If the parties are unable to agree a reasonable estimate the dispute shall be referred to the arbitration of a single arbitrator appointed by agreement between Dŵr Cymru and XXXXX, and failing agreement as to the arbitrator or procedure to be applied within 3 months of the dispute arising, the parties will refer it to the Centre for Effective Dispute Resolution (CEDR) for resolution by means of arbitration.

6. MAINTENANCE AND REPAIR

- 6.1 In the event of unplanned works being required on the Dŵr Cymru supply system that affects the supply of [Potable or Non Potable] water to XXXX, Dŵr Cymru shall:
- 6.1.1 Notify XXXXXX promptly;
- 6.1.2 If practicable, consult with XXXXX to arrange the timing and likely duration of the works to minimise disruption.

- 6.2 In the event of planned work being required on the Dŵr Cymru supply system that affects the supply of [Potable or Non Potable] water to XXXXX, Dŵr Cymru shall:
- 6.1.1 Consult with XXXXXX to arrange the timing and duration of the works so as to minimise disruption;
 - 6.1.2 Use reasonable endeavours to carry out the works at a time convenient to XXXXX;
 - 6.1.3 Provide XXXX with not less than 7 days' notice of the commencement of any supply interruption.
- 6.3 Communications between the parties regarding planned and unplanned work will be in accordance with that detailed in the Schedule 1 in place between the parties at the time of the works.

7 CHARGES AND PAYMENT

- 7.1 Water supplies under this Agreement shall be charged with effect from [] in accordance with Schedule 2.
- 7.2 XXXXXX shall pay Dŵr Cymru the charges specified in Clause (7.1) of this Agreement together with Value Added Tax thereon at the appropriate rate monthly in arrears;
- 7.3 Dŵr Cymru shall send XXXXX an invoice at the end of each month. XXXX shall pay DCC the amounts stated in the invoice 14 days after the date that Dŵr Cymru's invoice is received by XXX;
- 7.4 For the purpose of Clause 7.4, the invoice will be deemed to have been received, if sent by first class pre-paid post, on the next Working Day after posting if posted on a Working Day, and on the second Working Day after posting if not posted on a Working Day. If sent by e-mail during a Working Day it is received on that Working Day and if sent after 5pm on a Working Day it is received on the following Working Day;
- 7.5 If payment is not received by the agreed due date interest will be due on the outstanding amounts for each day overdue at an equivalent annual rate of 4% above the Bank of England Base Rate.

8 DEFAULT AND LIABILITY

- 8.1 If Dŵr Cymru is unable to carry out any of its obligations under this Agreement by reason for Force Majeure this Agreement shall remain effect and:
- i) Dŵr Cymru shall use all reasonable endeavours to restore its ability to carry out its obligations; and
 - ii) Dŵr Cymru's obligations shall be suspended without liability for such period as Dŵr Cymru is unable to carry out its obligations;
- 8.2 Dŵr Cymru shall not be liable for any contamination of any water supplied which may occur for reasons outside its reasonable anticipation or control;

- 8.3 Dŵr Cymru shall not be liable to XXXX for any losses, damages or expenses arising from any breach of this Agreement other than losses, damages or expenses resulting from a breach which were the reasonably foreseeable consequences of such a breach;
- 8.4 Dŵr Cymru shall not be liable to XXXXXX in any circumstances whatever for:
- i) any loss of profit, loss of revenue, loss of contract or loss of goodwill; or
 - ii) any loss arising from any obligation or liability of XXXXX to any other person howsoever and whensoever arising;
- 8.5 Dŵr Cymru's liability to XXXXX in respect of claims for damages arising in any one calendar year shall not exceed £xx million for any one or more incidents, or series of incidents, whether related or unrelated in that calendar year;
- 8.6 Nothing in the preceding provisions of this clause shall exclude or limit any liability for death or personal injury resulting from the negligence of Dŵr Cymru and Dŵr Cymru shall indemnify XXXXXXX and keep it indemnified against all such loss or liability which XXXX may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of Dŵr Cymru;
- 8.7 XXXXX undertakes to indemnify and hold harmless Dŵr Cymru from and against any and all losses, claims, actions, proceedings, costs, expenses and damages of whatsoever nature incurred by Dŵr Cymru to the extent caused by any negligent act or omission on the part of XXXXX its officers employees agents or subcontractors;
- 8.8 For the avoidance of doubt the Parties expressly agree that DCC shall only be liable to compensate XXXXX for any payments XXXXX may be required to make under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 where the breach of the Service Regulations was caused by DCC negligence in failing to operate its water undertaking in accordance with Good Industry Practice. In no circumstances shall DCC be required to compensate XXXXX for any poor service payments it chooses to make to its customers as enhanced rights and benefits above the requirements of the Service Regulations.

9 TERMINATION

- 9.1 This agreement shall continue in force until terminated by either party giving to the other notice in writing if:
- a) either Party ceases to be a water undertaker (within the meaning of the Act) for the provision or receipt of the Supply (as applicable);
 - b) the other Party is in material breach of this Agreement and either such breach is incapable of remedy, or where such breach is capable of remedy, the other Party fails to remedy such breach within 30 days of receipt of service of a notice specifying the breach and requiring it to be remedied; or
 - c) if the other party goes into administration or liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom agrees to be bound by or assures the obligations imposed under this Agreement) or if a special administration order within the meaning of section 23 of the Act is made in relation to either party;
- 9.4 Either Party may terminate this Agreement at any time by serving 24 months written notice on the other Party;

10 NOTICES

Any notice required or permitted to be given by either party to the other under this Agreement shall be given in writing and addressed to that other party at its registered office. Any such notice shall be deemed to have been received by that other party on the third day after its dispatch by post or on the same day if sent by email.

11 ASSIGNMENT

This Agreement may not be assigned or transferred by either of the Parties without the prior written consent of the other, such consent not be unreasonably withheld.

12 VARIATION

No amendment or variation of this Agreement shall take effect unless it is in writing, signed by authorised representative of each of the Parties.

13 ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement and understanding between the Parties with respect to all matters which are referred to and shall supersede any previous agreements between the Parties in relation to the matters referred to in this Agreement. Each Party acknowledges that, in entering into this Agreement, it has not relied on and shall have no right or remedy (save in the case of fraud) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement.

14 WAIVER

No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or some other right, power or remedy.

15 THIRD PARTIES

The Parties do not intend that any third party shall be entitled to exercise any rights under this Agreement pursuant to the Contract (Rights of Third Parties) Act 1999

16 SEVERANCE

If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall be unaffected.

17 STATUTE

For the avoidance of doubt nothing in this Agreement shall exclude, restrict or otherwise prejudice or affect either Parties' rights, powers, duties or obligations conferred by or under any enactment or regulation.

18 JURISDICTION

This Agreement shall be governed by the law of England and Wales and be subject to the exclusive jurisdiction of the Courts of England and Wales, as applied in Wales.

DRAFT

SIGNED by

being a duly authorised signatory on behalf of
DŴR CYMRU CYFYNGEDIG

SIGNED by.....

being a duly authorised signatory on behalf XXXXX

DRAFT

Schedule 1 - Contact arrangements

Dŵr Cymru

Contract Manager	[Insert name and role]	[Insert number]
Operational incidents during business hours	Wholesale Service Centre Dŵr Cymru Welsh Water PO Box 3164 Cardiff CF30 0FF Telephone: 0800 260 5053 Email: wholesaleservicecentre@dwrcymru.com	0800 260 5053
Operational incidents	Wholesale Service Centre as above	Wholesale Service Centre as above

XXXX

Contract Manager	[Insert name and role]	[Insert number]
Operational incidents during business hours	[Insert name / department -as appropriate]	[Insert number]
Operational incidents	[Insert name / department -as appropriate]	[Insert number]

Schedule 2 – Charging

DRAFT