

This document is available in Welsh on request.

Dated: **[INSERT DATE]** 2021

(1) Dŵr Cymru Cyfyngedig

(2) **[INSERT NAME OF THIRD PARTY RETAILER]**

Agreement for the provision of Meter Reading Services

Contents

Clause		Page
1	DEFINITIONS AND INTERPRETATION.....	2
2	SERVICES	5
3	SUPPLIER'S OBLIGATIONS	6
4	CONTRACT REPRESENTATIVES	6
5	SUPPLIER'S FEES AND EXPENSES	6
6	CONFIDENTIAL INFORMATION AND PUBLICITY	7
7	INTELLECTUAL PROPERTY RIGHTS	8
8	CUSTOMER DATA AND CUSTOMER MATERIALS	8
9	STAFF.....	9
10	FORCE MAJEURE	9
11	TERM AND TERMINATION	9
12	CHANGE CONTROL	11
13	DATA.....	11
14	LIABILITY	13
15	BRIBERY ACT 2010	13
16	ANTI-SLAVERY.....	13
17	TAX.....	13
18	NOTICES.....	14
19	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	14
20	ASSIGNMENT AND SUBCONTRACTING.....	14
21	ENTIRE AGREEMENT.....	14
22	INVALIDITY.....	14
23	WAIVER.....	15
24	VARIATION	15
25	SURVIVAL	15
26	GOVERNING LAW	15
Schedules		
1	The Services and Service Levels	16
2	Fees	17
3	Change Control.....	18

THIS AGREEMENT is made on **[INSERT DATE]**

Between

(1) Dŵr Cymru Cyfyngedig, a company incorporated in England and Wales (No. 2366777) whose registered office is at Linea, Fortran Road, St Mellons, Cardiff, CF3 0LT ("**the Supplier**"); and

(2) [] a company incorporated in England and Wales (No. []) whose registered office is at [] ("**the Customer**").

Whereas

- (A) Dŵr Cymru Cyfyngedig ("**DCC**") holds an Appointment under the Water Industry Act 1991 as a water and sewerage undertaker.
- (B) From 1 April 2017 the market for provision of retail services to business customers is open to competition in England. The scope of the competitive retail market remains the same for DCC and other companies operating wholly or mainly in Wales (i.e. only business customers who use 50 M/L or more water at a single site per annum will be able to choose their retailer of water services (i.e. not sewerage or trade effluent services)).
- (C) DCC, like all other incumbent water undertakers, is required to ensure that all Retailers, both the retail operations within DCC responsible for looking after business customers with Eligible Sites, and third party Retailers, are treated in a fair and equal way, and in particular are provided with an equivalent level of service.
- (D) DCC's Appointment requires DCC to have arm's length arrangements in place to demonstrate that DCC is carrying out its Wholesale and Retail activities in relation to its business customers eligible for competition as if they were being carried out by separate legal entities.
- (E) The Supplier has entered into an agreement for the supply of meter reading services to the Commercial Retail Team of DCC and is prepared to enter into an agreement in equivalent terms for the supply of such services to the Customer.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Defined terms

In this Agreement, the following words and expressions have the following meanings:

"Agreed Purposes"	[STATE THE PURPOSES FOR WHICH THE PERSONAL DATA IS TO BE HELD]
"Anti-Bribery Laws"	any and all applicable statutes, statutory instruments, bye-laws, case-laws, orders, directives, decrees and laws which relate to anti-bribery and/or anti-corruption, including the Bribery Act
"Applicable Customer"	means a customer who has an Eligible Site
"Background Materials"	those items provided to the Customer under this Agreement, which were created by the Supplier prior to, or independently of the provision of the Services
"Bribery Act"	the UK Bribery Act 2010

"Business Day"	a day other than Saturday or Sunday or a bank holiday or public holiday in England and Wales
"Change Control Procedure"	the change control procedure set out in Schedule 3
"Change Order"	a change order in the form set out in Appendix 1
"Commencement Date"	[TO BE INSERTED]
"Customer Inbox"	is [TO BE INSERTED]
"Customer Data"	the data pertaining to or relating to the Customer which comes into the possession, knowledge or control of the Supplier in the course of performing its obligations under the Agreement, which is defined as being the Customer's data or data which can reasonably be understood to be the Customer's data, and may include all data, designs, models, drawings, work notes, reports, specifications, manuscripts, documentation, manuals, samples, prints, photographs, negatives, tapes, discs, software, user guides, written technical guidance information, Confidential Information (as defined in clause 6.1) or any other similar items embodied in any intangible or tangible media and all copies and drafts of such items including without limitation, data pertaining to or relating to any employees or customers of the Customer
"Customer Materials"	all information, goods, materials, customer lists, data (other than the Customer Data) and equipment owned, licensed and/or developed by the Customer which is to be provided or made available to the Supplier by the Customer pursuant to this Agreement to enable the Supplier to perform its obligations under this Agreement
"DPA"	the Data Protection Act 2018 as amended or replaced from time to time
"Data Discloser"	a party that discloses Shared Personal Data to the other party.
"Data Protection Legislation"	the DPA, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the law implementing the Network and Information Systems Security Directive 2016/1148, including the EU Directive 95/46/EC, the GDPR, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications), the decisions, codes of practice and guidance of a competent institution supervising or regulating data protection, the Processing of Personal Data and privacy of EU and/or UK citizens, all as may be amended or replaced from time to

time. The expressions: "Controller", "processor", "data subject", "personal data", "personal data breach", "processing" and "appropriate technical and organisational measures" shall have the meaning as set out in the Data Protection Legislation in force at the time;

"EEA"	the European Economic Area, and including the United Kingdom in the event it leaves the European Union;
"Eligible Site"	means a customer's site which uses 50MI or more of water per annum
"Force Majeure"	any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, war, riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction, save that strike or lockout of the party's own staff shall not entitle them to claim that to be a force majeure event
"GDPR"	the General Data Protection Regulation (2016/679) of the European Union effective from the GDPR Start Date and as may be adopted and adjusted in the United Kingdom following any exit by it from the European Union
"Intellectual Property Rights"	rights in patents (including utility models), designs (whether or not capable of registration), chip topographies, copyright, moral rights, database rights, trademarks, trade and business names, rights to sue for passing off, rights in the nature of unfair competition rights, trade secret, confidentiality and other proprietary rights including rights to know-how and other technical information and applications to register any of the foregoing and all rights in the nature of any of the foregoing anywhere in the world
"Modern Slavery Act"	the Modern Slavery Act 2015
"Permitted Recipients"	the parties to this Agreement, the employees of each party, any third parties engaged to perform obligations in connection with this Agreement, and [ADD ANY OTHER PERMITTED RECIPIENTS]
"Personnel"	any employee, agent or subcontractor of the Supplier
"Purchase Order"	the purchase order issued by the Customer in respect of the relevant Services

"Service Levels"	the service levels for the performance of the Services as set out in Schedule 1
"Services"	the services or project described in Schedule 1 to be provided by the Supplier under this Agreement
"Shared Personal Data"	the personal data to be shared between the parties under clause 1.1 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: a)[type of personal data]; and b) [type of personal data]
"Supplier Inbox"	is [TO BE INSERTED]
"VAT"	Value Added Tax
"Year"	the period of 12 months from the date of this Agreement and each consecutive period of 12 months thereafter during the period of this Agreement, or any shorter period commencing on a day immediately following the end of a Year and ending on the termination of this Agreement.

- 1.2 The index and headings to the clauses and Schedules of this Agreement shall not affect its construction.
- 1.3 Where the context so requires or admits, the masculine shall include the feminine and the neuter and the singular shall include the plural and vice versa.
- 1.4 Any reference to writing includes reference to any communication effected by electronic email.
- 1.5 Any reference in this Agreement to a clause or Schedule is a reference to a clause of or a Schedule to this Agreement and references to paragraphs are to paragraphs in the Schedule in which such paragraph appears.
- 1.6 The expression person means any individual, firm, company, incorporated association, partnership, government, state, or agency of state, or joint venture.
- 1.7 Any reference to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.8 References in this Agreement to Data Subjects, Personal Data, Process, Processed, Processing, Data Controller or Data Processor, where capitalised, shall have the meanings in, and shall be interpreted in accordance with, the Data Protection Legislation.
2. **SERVICES**
- 2.1 The Customer hereby engages the Supplier to provide the Services to the Customer and the Supplier hereby agrees to provide the Services in accordance with the terms and conditions in this Agreement.

- 2.2 Unless otherwise agreed by the Customer in writing, the provision of the Services by the Supplier to the Customer shall be subject to the terms and conditions contained in this Agreement. Any terms and conditions other than those contained in this Agreement (including without limitation, any terms contained within timesheets submitted to the Customer for signature) are expressly excluded.

3. **SUPPLIER'S OBLIGATIONS**

- 3.1 The Supplier shall provide the Services in accordance with the Service Levels.
- 3.2 The Supplier warrants that the Personnel have the necessary skills and experience to perform the Services to the standard required by the Customer. The Supplier agrees to take all such steps as may be required to fulfil its obligations under this Agreement. The Supplier will notify the Customer as soon as reasonably practicable if the Supplier is unable to comply with any of the terms of this Agreement.
- 3.3 The Supplier warrants that the Services shall be executed with reasonable care and in a professional manner to the best of the ability of the Supplier as would be expected from an expert provider of similar services.
- 3.4 The Supplier will procure that the Personnel:
- 3.4.1 maintain an up-to-date record of time spent performing the Services; and
 - 3.4.2 if necessary for the provision of the Services, work and co-operate with the Customer and its officers, employees and other workers (including other contractors).
- 3.5 The Supplier shall establish and maintain proper security measures and procedures to provide for the safe custody of Customer Data and Customer Materials and to prevent unauthorised access or use thereof in accordance with the provisions set out in **clause 8**.
- 3.6 The Supplier warrants that it maintains adequate contingency or disaster recovery procedures so that it can continue to provide the Services with the minimum of delay in the event of disruption in relation to the provision of the Services including, without limitation, any circumstance referred to in **clause 10**. The Customer shall be entitled, upon reasonable request, to see a copy of any such continuity procedures that the Supplier has in place. For the avoidance of doubt, this **clause 3.6** shall be subject to those provisions contained in **clause 10**.

4. **CONTRACT REPRESENTATIVES**

- 4.1 The parties shall on the Commencement Date each appoint a representative who shall have full authority to take all necessary decisions regarding this Agreement and the performance of its obligations hereunder (the Contract Representative).
- 4.2 The parties may agree that their respective Contract Representatives meet at regular intervals during the continuance of this Agreement to discuss and minute progress and each party's performance under this Agreement.

5. **SUPPLIER'S FEES AND EXPENSES**

- 5.1 The fees for the Services for the period from 1 April 2021 to 31 March 2022 shall be the fees set out in **Schedule 2** and shall be exclusive of VAT which shall be added to the sum in question. The Supplier shall include details on each invoice of the applicable VAT rate and the Supplier's unique VAT number. The Supplier shall not be entitled to invoice the Customer any expenses (including, without limitation, travel costs) unless expressly agreed to in writing by the Customer before such expenses have been incurred. These payments represent the entire remuneration for the Services.
- 5.2 Fees are calculated annually and the fees for the Year commencing on 1 April 2020 and each subsequent Year thereafter, will be notified to the Customer prior to the end of the

current 12 month period and shall be equivalent to the fees paid by DCC's Commercial Retail Team to the Supplier for the same services.

- 5.3 The Supplier shall ensure that any invoice relating to the Services is addressed to Central Payments, PO Box 3106, Cardiff CF30 0BH and contains the relevant Purchase Order number. In addition, the Supplier shall display the Supplier's full name and registration details on each invoice and shall clearly detail the Services supplied during the relevant period. For the avoidance of doubt, payment will not be made unless a valid Purchase Order Number is quoted on the invoice.
- 5.4 The Customer shall pay the undisputed sums shown to be due in cleared funds to the bank nominated by the Supplier by the 28th day of the month following the month of the invoice date ("**the Payment Period**") where there is no dispute over such invoice. In order to facilitate payment, the Supplier's invoice shall provide details of its (or its nominated representative's, as the case may be in respect of debt factoring companies) bank account details along with wire transfer instructions. Where the Customer notifies the Supplier of any errors in the invoice, the Payment Period shall be suspended and the Supplier shall re-issue the same so that it is accurate and the Payment Period shall re-commence upon the date that the new invoice is received by the Customer.
- 5.5 If either party fails to pay on the due date any undisputed amount which is payable to the other under this Agreement then, without prejudice to **clause 11**, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2 per cent per annum over National Westminster Bank's base rate from time to time. The parties agree that this **clause 5.5** is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.6 The Supplier shall maintain and preserve any and all documentation pertaining to the supply of the Services under the Agreement and shall continue to hold such documentation for a period of six (6) years following termination or expiry of this Agreement. The Supplier shall permit, on reasonable notice, employees and agents of the Customer (or any appointed representative) to inspect examine and/or reproduce such documentation (take copies thereof) to monitor and verify the correctness of the Fees, the effectiveness of the Supplier's business practices and the Supplier's compliance with the terms of this Agreement.
- 5.7 On termination of this Agreement, the Supplier is obliged, within a reasonable time period, to return to the Customer the Customer Materials.

6. **CONFIDENTIAL INFORMATION AND PUBLICITY**

- 6.1 Each party acknowledges that during the course of this Agreement, it may have access to information of a confidential or proprietary nature (including information imparted orally) relating to the business of the other party (including, without limitation, the terms of this Agreement) (Confidential Information) and each party undertakes at all times:
- 6.1.1 to use the Confidential Information solely for the purposes of carrying out its obligations under this Agreement and not to use the Confidential Information for its own personal gain or benefit or for the benefit of any person other than the other party; and
- 6.1.2 to keep the Confidential Information secret and confidential and in particular not to divulge, publish or disclose the Confidential Information whether in whole or in part to any person other than in confidence and on a need to know basis to its employees, officers or agents who are subject to confidentiality obligations in respect thereof under their contracts of employment or engagement (as the case may be) with the relevant party; and
- 6.1.3 to use its best endeavours to enforce the obligations of confidentiality owed by its employees, officers and agents.

- 6.2 The above undertakings as to confidentiality shall not apply to information which the disclosing party can establish to the other party's reasonable satisfaction:
- 6.2.1 is at the date of disclosure in or subsequently enters the public domain otherwise than as a consequence of any unauthorised disclosure, act or omission by the disclosing party and/or its employees, officers or agents; or
 - 6.2.2 is lawfully and properly in the possession of the disclosing party at the time it is disclosed to or obtained by the disclosing party (as evidenced by the disclosing party's written records); or
 - 6.2.3 is requested to be disclosed by a governmental authority, regulator or by law.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All right, title and interest (including all Intellectual Property Rights) in the Background Materials shall be the exclusive property of the Supplier, and the Customer shall not be entitled to use the whole or any part of the Background Materials except as permitted by this Agreement.
- 7.2 The Supplier hereby grants the Customer a non-exclusive, worldwide, royalty free, revocable, non-transferable licence to use the Background Materials as may be required by the Customer to use any Services.
- 7.3 The Customer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence to use any of its Intellectual Property Rights required by the Supplier to carry out its obligations under this Agreement.

8. CUSTOMER DATA AND CUSTOMER MATERIALS

- 8.1 The Supplier shall take all steps necessary to ensure that the Customer Data and the Customer Materials are protected in accordance with good industry practice, and in particular the Supplier shall:
- 8.1.1 not use the data or information nor reproduce the data or information in whole or in part in any form except for the purposes of this Agreement;
 - 8.1.2 not disclose the Customer Data or the Customer Materials to any third party or persons not authorised by the Customer to receive it, except with the prior written consent of the Customer;
 - 8.1.3 take all steps to maintain the integrity of all of the Customer Data and the Customer Materials, including without limitation by taking reasonable physical, logical and system security measures to prevent loss or corruption or unauthorised use of or access to such the Customer Data or the Customer Materials; and
 - 8.1.4 not delay, manipulate, remit or capture, or in any other way interfere with any of the Customer Data or the Customer Materials which is, at the relevant time, under the possession or control of the Supplier except with the prior written consent of the Customer and/or only to the extent necessary to enable the Supplier to perform its obligations under this Agreement.
- 8.2 In the event of any loss or corruption of the Customer Data caused by the Supplier's breach of this Agreement, negligence or unauthorised use of or access to the Customer Data, the Supplier shall upon becoming aware of the same notify the Customer in writing of such loss or corruption.
- 8.3 The Supplier must not use the Customer Materials and/or the Customer Data for any purpose other than the purpose for which they were provided to the Supplier by the Customer and/or only to the extent necessary to enable the Supplier to perform its obligations under the Agreement.

9. **STAFF**

9.1 During the provision of the Services, the Supplier shall:

- 9.1.1 at all times provide sufficient Personnel who are appropriately qualified, experienced adequately trained and capable of providing the Services;
- 9.1.2 ensure there is an adequate number of Personnel to provide the Services properly; and
- 9.1.3 comply with all legal and regulatory requirements applicable to the employment of the Personnel.

9.2 The parties agree and understand that, due to the nature of the services being provided, the Transfer of Undertakings (Protection of Employment) Regulations 2006 will not apply to either the commencement or termination of the Services and that, as a result, no person shall on commencement transfer their employment from the Customer or third party to the Supplier or on termination transfer their employment from the Supplier to the Customer or any third party. The Customer shall remain responsible and liable for the employment of any person who was engaged in the Services or services similar to the Services prior to the Commencement Date and the Supplier shall remain responsible and liable for the employment of any person who was engaged in the Services or services similar to the Services during the period of this Agreement.

10. **FORCE MAJEURE**

10.1 Neither party to this Agreement shall be deemed to be in breach of this Agreement, or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to Force Majeure.

10.2 If a party's performance of its obligations under this Agreement is affected by Force Majeure, then:

- 10.2.1 it shall give written notice to the other party, specifying the nature and extent of the Force Majeure, immediately on becoming aware of the Force Majeure and will at all times use all endeavours to mitigate the severity of the Force Majeure;
- 10.2.2 the date for performance of such obligation shall be deemed suspended but only for a period equal to the delay caused by such event; and
- 10.2.3 it shall not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure.

10.3 If the Force Majeure in question continues for more than three months, the party not subject to the Force Majeure may give notice in writing to the other to terminate this Agreement. The notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice is given, and once such notice has been validly given, this Agreement will terminate on that termination date.

10.4 In the case of the Supplier, the provisions of **clause 3.6** shall continue to apply in the event that the provisions of this **clause 10** are exercised.

11. **TERM AND TERMINATION**

11.1 This Agreement shall come into force on the Commencement Date and, subject to the following provisions of this clause, shall continue for a period of 3 years and thereafter unless or until earlier terminated by either party giving to the other party not less than **3 months'** previous written notice.

11.2 Each party may by written notice served on the other party terminate this Agreement immediately if :-

- 11.2.1 the other party is in material and/or persistent breach of any of the terms of this Agreement and, in the case of a breach capable of remedy, a plan to remedy the breach is not forthcoming within fourteen (14 days) of receipt of a notice specifying the breach. In the event that the plan is not acceptable to the non-defaulting party, or the defaulting party fails to comply with the plan, the non-defaulting party may terminate the Agreement immediately, without providing any further notice; or
- 11.2.2 the other party, being a company, a limited liability partnership or partnership has:
 - 11.2.2.1 had a winding-up order made against it;
 - 11.2.2.2 had a petition presented for its winding-up which has not been withdrawn or dismissed within 14 days following presentation;
 - 11.2.2.3 had a provisional liquidator appointed to it;
 - 11.2.2.4 proposed or passed a resolution for winding-up (other than for the purposes of solvent amalgamation or reconstruction);
 - 11.2.2.5 had an administration application filed in relation to it pursuant to paragraph 12 of Schedule B1 to the Insolvency Act 1986 ("**Schedule B1**"),
 - 11.2.2.6 had a notice of intention to appoint an administrator filed in relation to it;
 - 11.2.2.7 entered into administration within the meaning of Schedule B1;
 - 11.2.2.8 had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets; or
 - 11.2.2.9 proposed or made any composition or arrangement with its creditors generally (including but not limited to a company voluntary arrangement or scheme of arrangement).
- 11.2.3 the other party, being an individual or firm has entered into any composition or arrangement with its creditors, has a petition presented by it or by any other person for its bankruptcy, has a bankruptcy order made against it, has applied to the Court for an interim order under section 253 of the Insolvency Act 1986, has submitted a proposal for a voluntary arrangement to a nominee under Section 256A of the Insolvency Act 1986, has a petition presented for an administration order under Part III of the Insolvent Partnerships Order 1994, has a petition presented for winding up as an unregistered company under Parts IV or V of the Insolvent Partnerships Order 1994, has an interim receiver of its property appointed under section 286 of the Insolvency Act 1986, is unable to pay its debts within the meaning of sections 267 and 268 of the Insolvency Act 1986, has a receiver or manager appointed over any of its assets, has a receiver appointed under the Mental Health Act 1983, dies or by reason of any illness (including mental disorder or infirmity), accident or injury or any other cause whatsoever becomes unable for a consecutive period of one month or for an aggregate period of one month in any one consecutive period of six months to comply with its obligations under this Agreement; or
- 11.2.4 the other party has any distraint, execution or other process levied or enforced on any of its property; or
- 11.2.5 the other party ceases or threatens to cease to trade.

- 11.3 For the purpose of **clause 11.2** a breach shall be considered capable of remedy if the party in breach can comply with the provisions in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 11.4 The rights to terminate this Agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 11.5 Upon the termination of this Agreement for any reason, subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.
- 11.6 The provisions of this Agreement which, expressly or impliedly, have effect after termination will continue to be enforceable notwithstanding termination.

12. **CHANGE CONTROL**

- 12.1 The Customer may request or the Supplier may propose changes to the scope of this Agreement in accordance with the Change Control Procedure.
- 12.2 Only Change Orders authorised in writing by the issuing party's Contract Representative will have any effect.
- 12.3 The Customer shall keep and maintain a change control database, containing detailed records of all Change Orders and their current status.

13. **DATA PROTECTION**

- 13.1 This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 13.2 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Agreement with immediate effect.
- 13.3 Each party shall:
- 13.3.1 ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - 13.3.2 give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - 13.3.3 process the Shared Personal Data only for the Agreed Purposes;
 - 13.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - 13.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - 13.3.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or

- unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 13.3.7 not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
 - 13.3.8 complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
 - 13.3.9 ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 13.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- 13.4.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
 - 13.4.2 promptly inform the other party about the receipt of any data subject access request;
 - 13.4.3 provide the other party with reasonable assistance in complying with any data subject access request;
 - 13.4.4 not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
 - 13.4.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
 - 13.4.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - 13.4.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
 - 13.4.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - 13.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the other party or the other party's designated auditor; and
 - 13.4.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the UK Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the UK Data Protection Legislation.
- 13.5 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full

indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

14. **LIABILITY**

14.1 Nothing in this Agreement shall limit or exclude the Supplier's liability for:

14.1.1 death or personal injury caused by its negligence;

14.1.2 fraud or fraudulent misrepresentation; or

14.1.3 any other liability which cannot be limited or excluded by applicable law.

14.2 Subject to clause 14.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

14.2.1 loss of profits;

14.2.2 loss of sales or business;

14.2.3 loss of agreements or contracts;

14.2.4 loss of anticipated savings;

14.2.5 loss of or damage to goodwill;

14.2.6 loss of use or corruption of software, data or information; and

14.2.7 any indirect or consequential loss.

14.3 Subject to clause 14.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to **[TO BE INSERTED]**.]

15. **BRIBERY ACT 2010**

15.1 The Supplier shall, and shall procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Agreement shall comply with all applicable Anti-Bribery Laws.

16. **ANTI-SLAVERY**

The Supplier will not, and will procure that any other persons who perform services or supply goods for or on behalf of it in connection with this Agreement will not engage in any practice or omit to do any act or thing that amounts to modern slavery as defined under the Modern Slavery Act ("**Modern Slavery Practice**").

17. **TAX**

17.1 The Supplier is responsible for making appropriate PAYE and other deductions from the remuneration it makes to the Personnel and will account for the same to the appropriate authorities.

17.2 If necessary, the Supplier will register itself for VAT purposes and, if it does so, will supply the Customer with satisfactory evidence of registration upon request from the Customer.

18. **NOTICES**

18.1 Any demand, notice or communication must be in writing and may be given by hand or sent by first class pre-paid post and shall be deemed to have been duly served:

18.1.1 if delivered by hand, when left at the proper address for service;

18.1.2 if given or made by first class pre-paid post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays)

provided that such delivery occurs either after 4.00 p.m. on a Business Day, or on a day other than a Business Day, service shall be deemed to occur at 9.00 a.m. on the next following Business Day (such times being local time at the address of the recipient).

18.2 Any demand, notice or communication shall be made in writing and shall be addressed to the recipient at its registered office or its address stated in this Agreement (or such other address as may be notified in writing from time to time) and shall be marked for the attention of the Company Secretary.

19. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

20. **ASSIGNMENT AND SUBCONTRACTING**

20.1 The Supplier shall be entitled to carry out its obligations under this Agreement through any agents or sub-contractors.

20.2 Save as provided by clause 20.1, this Agreement is personal to the Supplier, and the Supplier may not, without the prior written consent of the Customer, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights hereunder, or subcontract or otherwise delegate any of its obligations under this Agreement.

20.3 Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between the parties.

21. **ENTIRE AGREEMENT**

This Agreement contains all the terms which the parties have agreed in relation to the transactions provided for by this Agreement and neither of the parties have been induced to enter into this Agreement by a statement or promise which it does not contain. This shall not exclude any liability which a party would otherwise have to the other party in respect of any statement made fraudulently by that party prior to the date of this Agreement.

22. **INVALIDITY**

22.1 If any provision of this Agreement is held by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:

22.1.1 this shall not affect or impair any other provision of this Agreement, which shall remain in full force and effect except where it deprives one of the parties of a substantial part of the benefit intended to be derived by it from this Agreement without providing any corresponding benefit;

22.1.2 the parties shall in good faith amend and, if necessary, novate this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision and so that the amended clause complies with the laws of England and Wales; and

- 22.1.3 if the parties cannot agree upon the terms of any amendment or novation within 6 months of the date upon which a clause was determined to be wholly or partly illegal, invalid or unenforceable then the parties agree to refer the terms of the amendment or novation back to the court, tribunal or administrative body that originally found the provision to be illegal, invalid or unenforceable. The parties agree that the court's, tribunal's or administrative body's decision in this respect shall be final and binding.

23. **WAIVER**

- 23.1 Any failure or delay by either party in exercising any right, power or remedy under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it, or the exercise of any right, power or remedy.
- 23.2 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.
- 23.3 Save as expressly provided in this Agreement, any waiver of a breach of, or default under, any of the terms of this Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.

24. **VARIATION**

No variation of this Agreement shall be valid unless in writing and signed by both parties in accordance with the Change Control Procedure.

25. **SURVIVAL**

Upon termination of this Agreement, howsoever arising, clauses 6, 7, 11, 13, 14, 15, 25 and 26 shall survive such termination.

26. **GOVERNING LAW**

The formation, construction, performance, validity and all aspects whatsoever of this Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales as applied in Wales and the parties hereby agree to submit to the exclusive jurisdiction of the English and Welsh Courts.

This document is executed as an agreement and delivered on the date stated at the beginning of this Agreement.

SCHEDULE 1

The Services and Service Levels

1.1 Meter Readings

The Customer will, by the tenth Business Day following 1st February of each year that this Agreement exists, email the Supplier Inbox a list of the meters of Eligible Sites to be read using the "Annual Read Frequency Schedule" which is attached as Appendix 2. The Annual Read Frequency Schedule will include: the customer reference, the Meter Reference, the read frequency required (to be agreed in advance between the Parties) and whether special access requirements exist. In the event that ad-hoc changes are required to the Annual Read Frequency Schedule, such changes shall be agreed with the Supplier.

If the meter needs to be read again, the Customer will email the Supplier Inbox a "Meter Read Request Form" attached as Appendix 3. The Supplier will contact the Applicable Customer within 2 Business Days of receipt of the Meter Read Request Form, to arrange a visit (if required) and email the Customer Inbox with an update on progress and outcome.

1.2 Meter Reading Timescales

The Supplier will ensure that all Eligible Sites' meters are read on the Business Day of each month specified in the Annual Read Frequency Schedule.

The Customer will update the Supplier as and when required. When a change to the date and / or frequency of readings is required, this change must be emailed to the Supplier Inbox before the 20th of the month.

The Supplier will ensure Eligible Site meters, which need to be read again for any reason, will be read and emailed back to the Customer Inbox within fifteen (15) Business Days of receiving the request from the Customer.

SCHEDULE 2

Fees – reviewed on an annual basis

2020/21 Fee Schedule

Service	Basis of Fee	Fee
Meter Reading	Per Meter Read	£12.03

The fee incorporates all costs properly allocated to meter reading, and will be reviewed and adjusted on an annual basis to reflect any changes in DCC's costs base.

SCHEDULE 3

Change Control

1. Both the Supplier and the Customer may, during the term of this Agreement, request or propose an amendment to the Agreement and/or the Service Levels by providing the other with details of each change request (including any proposed Fee alterations) for the other party's consideration.
2. For the purposes of this **Schedule 3**, Law shall mean all laws and legislation of England and Wales applicable to the Services and/or the output from the Services together with all laws and legislation applicable to the Supplier.
3. Any changes to this Agreement including, without limitation, the Service Levels, or any part thereof, must be agreed between the Supplier and the Customer prior to the commencement of any such change involved. Until such time as a change to this Agreement is made in accordance with the Change Control Procedure, the parties shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such change.
4. Any work undertaken by the Supplier and its employees which has not been authorised in advance by a change to this Agreement and which has not been otherwise agreed in accordance with the provisions of this **Schedule 3** shall be undertaken entirely at the expense and liability of the Supplier.
5. For the avoidance of doubt, the Supplier has an absolute discretion to accept or reject any change request unless such a change is required as a result of a change in Law affecting the performance of the Services by the Supplier, in which case, the Supplier shall not unreasonably withhold or delay its consent to such proposed change.
6. Agreed changes to the Agreement and/or the Service Levels shall be logged by the Customer, and the parties shall execute a Change Order in the form set out below in **Appendix 1**.
7. The Fees for any changes shall only be implemented once the Change Order has been agreed and executed by the parties in accordance with the provisions of this Schedule 3.
8. Except as expressly modified by the execution of a Change Order, all other terms and conditions of this Agreement shall remain in full force and effect.

Appendix 1
Change Order Template

Dated:

DŴR CYMRU CYFYNGEDIG

[THIRD PARTY RETAILER]

Change Order No. [Number]

Supply of Meter Reading Services Agreement

THIS CHANGE ORDER is made and is effective as of the day of [2020]
("Effective Date")

BETWEEN

DŴR CYMRU CYFYNGEDIG ("the Supplier"); and

[THIRD PARTY RETAILER] ("the Customer")

RECITALS:

This amendment to agreement is supplemental to an agreement dated [Insert Original Agreement Date dd/mm/yyyy] between the Customer and the Supplier (the Original Agreement) as amended from time to time in accordance with **Schedule 3** of the Original Agreement.

The parties hereby agree as follows: -

[TO BE POPULATED IN EACH INSTANCE]

This amendment to agreement shall not vary or amend any other terms of the Original Agreement or to any variations thereto save as set out herein and such terms shall remain in full force and effect for the remaining duration of the Original Agreement.

IN WITNESS WHEREOF the Parties have caused this Change Order to be executed by their duly representatives

Signed by

Name

Position

For and on behalf of

DŴR CYMRU CYFYNGEDIG

Signed by

Name

Position

For and on behalf of

[THIRD PARTY RETAILER]

Appendix 2

Annual Read Frequency Schedule

Customer Name	Address	Special access requirements	Frequency	Audit Reading required?
Business A	Unit A, Left St, Town, P0STC0D3		Monthly	Y
Business A	Unit A, Left St, Town, P0STC0D3		Monthly	N

Appendix 3

Meter Read Request Form



Request for Water Meter Read to be carried out by Retail Services

To Retail Services

.....

.....

.....

.....

The purpose of this form is to capture the details required in order for a water meter to be read outside of its normal read cycle.

The form should reach us a minimum of 5 working days before the read is required.

The form is divided into sections as follows:

Number	Section
1.	Retailer details
2.	Premises details
3.	Meter details
4.	Declaration

All sections are mandatory.

If a piece of information does not exist or is not applicable in the circumstances, the Retailer must note this and, where relevant, provide a reason why it is not applicable.

1 Retailer details

Retailer Name
Retailer ID
Retailers own reference
Contact Name
Contact number
Contact e-mail

2 Premise details

SPID
VOA BA Reference, if available¹
UPRN, if available²
Address of premises
Building number
Building name
Address line 1
Address line 2
Address line 3
Town
Postcode

¹ If not available please provide a reason why

² If not available please provide a reason why

3 Meter details	
3.1 Existing Meter Details	
Please provide details of the existing meter (mandatory except for meter installation requests)	
Meter serial number
Meter manufacturer
Meter size ³
Meter location (GIS X)
Meter location (GIS Y)
Meter location description
<small>³ Nominal size of the meter in mm e.g. for a DN15 meter the Physical Meter Size is 15</small>	
Reason for additional read	
<p>Indicate a preferred date of meter reading</p> <p>Reading date ..Reading..</p> <p>Unable to read reason</p>	

4 Declaration
<p>By submitting this form I accept the standard terms for metering. If the activity is for a standard meter in standard circumstances then it will take place without a quote being issued.</p> <p>I hereby acknowledge and declare that the information provided in this form is correct to the best of my knowledge and up to date at the date of submission</p> <p>Your details</p> <p>Signature</p> <p>Date(dd/mm/yy)</p> <p>Full Name (in capitals)</p> <p>Role in the company or job title</p>

Signed by

Name

Position

For and on behalf of

DŴR CYMRU CYFYNGEDIG RETAIL SERVICES DIVISION

Signed by

Name

Position

For and on behalf of

[THIRD PARTY RETAILER]