

(1) **DŴR CYMRU CYFYNGEDIG**

- and -

(2) **XXXXX**

BULK DISCHARGE AGREEMENT
for XXXX

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 ('Dŵr Cymru'); 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 made under Section 110A 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) Dŵr Cymru provides discharge services 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

Connection means the point at which Dŵr Cymru's sewerage network and XXX's sewerage network are physically connected so as to enable provision of the sewerage services

Discharge means the discharge of domestic sewerage purposes as defined in Section 117 (1) (a) and (b) of the Water Industry Act 1991 (the Act) , in relation to any premises, means any one or all of the following purposes:

- (a) the removal, from buildings on the premises and from land occupied with and appurtenant to the buildings, of the contents of lavatories;
- (b) the removal, from such buildings and from such land, of water which has been used for cooking or washing;

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, 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 prevent by Good Industry Practice.

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

Maximum Agreed Rate of Flow means the combined Discharge of [per day, per hour, per annum XXX or flows separately agreed of]

XXm³ l/s per day, per hour, per annum for sewage as defined in (a) and (b);

Point of Discharge is the sewer connection at GPS XXX where the sewer networks of Dŵr Cymru and XXXX are physically connected and the discharge shall be known as XXXX

Sewerage services means the reception, treatment and disposal of the Discharge

Wholesale Tariff Document means the Wholesale charging document published annually by Dŵr Cymru

2. THE DISCHARGE

XXX shall use Good Industry Practice to operate their Sewerage Network ensuring the Discharge volume does not exceed the Maximum Agreed Rate of Flow

3. CONNECTION

3.1 XXXX may serve notice on Dŵr Cymru and following the granting of permission, XXX may make the connection

4. POINT OF CONNECTION

The point of connection is GPS XXXXXXXX.

5. MEASUREMENT OF DISCHARGES

5.1 The amount of discharge will be determined by []

6. MAINTENANCE AND REPAIR

6.1 In the event of unplanned works being required on the Dŵr Cymru sewer network that affects the Discharge from XXXX, Dŵr Cymru shall:

6.1.1 Notify XXXXXX promptly by phone, email or text as agreed;

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 sewer network that affects the Discharge from 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 Schedule 1.

7 CHARGES AND PAYMENT

- 7.1 Sewerage Services provided 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 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 Dŵr Cymru the amounts stated in the invoice 14 days after the date that Dŵr Cymru 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 of Force Majeure this Agreement shall remain in effect and:
- i) Dŵr Cymru shall use all reasonable endeavours to restore its ability to carry out its obligations; and
 - ii) Dŵr Cymru 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 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;
- 8.2 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;
- 8.4 Dŵr Cymru liability to XXXXX in respect of claims for damages arising in any one calendar year shall not exceed £ million for any one or more incidents, or series of incidents, whether related or unrelated in that calendar year;
- 8.5 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;

- 8.6 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;
- 8.7 For the avoidance of doubt the Parties expressly agree that Dŵr Cymru shall only be liable to compensate XXXX for any payments XXXX 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 Dŵr Cymru negligence in failing to operate its water undertaking in accordance with Good Industry Practice. In no circumstances shall Dŵr Cymru 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 sewerage undertaker (within the meaning of the Act) for the provision or receipt of the Discharge (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;

10 VARIATION

- 10.1 The Parties shall review this Agreement:
- at any time with the agreement of both Parties; or
 - following a material change to the regulatory and/or legislative regime relevant to this Agreement

in order to ensure that the terms of this Agreement comply with Relevant Legislation (including, without limitation, Ofwat's NAV policy or Bulk Supply Charging Rules and Welsh Government Charging Guidance as either are amended, consolidated, modified, extended, or replaced from time to time).

11 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.

12 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.

13 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.

14 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.

15 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.

16 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

17 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.

18 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.

19 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.

SIGNED by

being a duly authorised signatory on behalf of
DŴR CYMRU CYFYNGEDIG

SIGNED by.....

being a duly authorised signatory on behalf XXXXX

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 out of hours	Wholesale Service Centre as above	Wholesale Service Centre as above

XXXXX

Contract Manager	[Insert name and role]	[Insert number]
Operational incidents during business hours	[Insert name / department -as appropriate include address and email]	[Insert number and alternative number for texts if required]
Operational incidents out of hours	[Insert name / department -as appropriate]	[Insert number]

Schedule 2 – Charging