

DŴR CYMRU CYFYNGEDIG

AND

THE SECRETARY OF STATE FOR JUSTICE

SUPPLY OF SERVICES AGREEMENT

DATA LOGGING

DCWW/DL/2021/xxx

DCWW Standard Terms and Conditions for the provision of Data Logging Services to Non-Household Customers

DCWW shall provide the Services to the Customer in accordance with and subject to the terms and conditions of this Agreement.

1. Definitions and Interpretations

1.1 In this Agreement the following words and expressions have the following meanings unless inconsistent with the context:

“Agreement” means this Agreement between DCWW and the Customer including any and all Schedules, Annexes and Exhibits attached to it or incorporated in it by reference, for the supply of Services in accordance with these Conditions.

“Charges” means the charges payable by the Customer for the supply of the Services as set out in Schedule 3.

“Conditions” means the terms and conditions set out within this Agreement.

“Customer” – The Secretary of State for Justice, 102 Petty France, St James, London SW1H 9AJ (company registration TBC).

“DCWW” means Dŵr Cymru Welsh Water, the trading name of Dŵr Cymru Cyfyngedig (company registration 2366777), and any agents appointed to carry out the Services.

“Force Majeure Event” means any event or circumstances which is beyond the reasonable control of DCWW which results in or causes the failure of DCWW to perform any of its obligations under this Agreement including but not limited to any act of God, strike, lockout, unavailability of labour, materials or services, or other industrial disturbance or dispute, Act or regulations of any governmental or other agency, act of the public enemy, war declared, or undeclared threat of war, terrorist act, blockade, revolution, 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 environment problems, explosion, fault or failure of plant and apparatus to the extent that any such event could not have been prevented by Good Industrial Practice.

“Intellectual Property Rights” means patents, inventions, copyright and related rights, trademarks, database rights, confidential information and all other intellectual property rights whether registered, capable of registration or otherwise.

“Services” means the professional services to be performed (including any products delivered as part of the Services) by DCWW pursuant to this Agreement, as more particularly described in Schedule 2.

“Site(s)” means the location(s) of potable water meter(s), upon or within which the Services will be performed, relevant to the Customer’s land and/or buildings described in Schedule 1.

“Termination Date” means the date of termination of this Agreement, howsoever arising.

1.2 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated and all statutory instruments or order made pursuant to it.

1.3 Words denoting the singular number only shall include the plural and vice versa. Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa.

1.4 Unless the context otherwise requires, reference to any clause, sub-clause or schedule (as the case may be) shall be to this Agreement.

1.5 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

2. Commencement of the Services

2.1 DCWW shall use all reasonable endeavours to commence performance of the Services on a date agreed between DCWW and the Customer.

2.2 Time for performance of the Services shall not be of the essence of the Contract.

3. Customer Obligations

3.1 Where the Site(s) is within the Customer’s land and/or buildings, the Customer must prepare the Site(s) ready for the supply of the Services and provide safe access to DCWW commensurate with the requirements of the Services.

- 3.2** Where the Site(s) is within the Customer's land and/or buildings, the Customer agrees that if access to the Site(s) is not, with less than 24 hours written notice otherwise, provided as agreed and as a result DCWW incurs additional costs and/or expense in performing the Services, it will reimburse DCWW fully in respect of such additional costs and/or expense.
- 3.3** Where the Site(s) is within the Customer's land and/or buildings, the Customer will assume full responsibility for the safety, health and welfare of DCWW representatives at Site for the duration of the Services. The Customer will provide DCWW with a comprehensive safety management plan for the duration of the Services including, as a minimum, the name and position of the person responsible for DCWW representatives on Site, relevant Site -specific safety procedures that must be followed and details of any known safety hazards.
- 3.4** Any equipment or material furnished, provided or made available by the Customer for the purposes of this Agreement shall be safe, of suitable quality and fit for the intended purposes.
- 3.5** The Customer must supply DCWW with all relevant information requested on a timely basis. The accuracy and completeness of any information requested by DCWW for the provision of the Services shall be the responsibility of the Customer.
- 3.6** The Customer agrees that if any of the information provided to DCWW is incomplete or inaccurate or if it does not comply with any of the other requirements of this Agreement and, as a result, DCWW incurs additional costs and/or expense in performing the Services, it will reimburse DCWW fully in respect of such additional costs and/or expense.
- 3.7** The Customer must promptly co-operate with all reasonable requests by DCWW and shall not cause unreasonable delays. In particular, the Customer agrees that it will perform (or procure the performance) of any and all requirements specified within this Agreement by the dates stated, or if no dates are stated, within a reasonable period of time prior to the commencement of the Services.
- 3.8** Any Data Logger, including the Data Logger manufacturer's warranty set out in Clause 6, installed during delivery of the Services will become property of the Customer following delivery or installation (whichever occurs first), pursuant to Clause 8.
- 3.9** Any data collected via the Customer's Data Logger will be the property of the Customer, pursuant to Clause 8.
- 3.10** If DCWW repairs or replaces any part of the Customer's supply pipework and/or apparatus, that supply pipe and/or apparatus will remain the ownership of and is the responsibility of the Customer.
- 3.11** The Customer acknowledges that the Charges and DCWW's ability to provide the Services are based upon circumstances as at the date of this Agreement, and that DCWW shall suffer no liability to the Customer if subsequent circumstances alter the quality of the Services or the benefit of them to the Customer.
- 3.12** The Customer acknowledges that the accuracy and ability to carry out the Services may be affected by a number of factors relevant to the Site(s) at the time that the Services are carried out, including but not limited to:
- a) The Customer's business curtailing the activities that can be carried out;
 - b) The Customer having a shared access or being on a shared Site(s);
 - c) DCWW responsibility to ensure public access to highways and/or footpaths is appropriately managed at Site(s);
 - d) Any requirement for maintenance and/or replacement of potable water meters, to which Data Logger equipment is to be installed on, at Site(s).

4. DCWW's Obligations

- 4.1** DCWW shall perform the Services with reasonable skill and care as practiced by professional consultants and engineers in England and Wales and in accordance with any applicable recognised codes of practice and shall comply with all relevant health and safety regulations.
- 4.2** Unless otherwise specified to the contrary, DCWW shall provide all materials and equipment necessary for the proper execution of the Services.
- 4.3** DCWW shall be entitled to amend any part of the Services or specification of any product delivered as part of this Agreement if necessary, to comply with any applicable law or regulatory requirement or if such amendment would not materially impact the nature or quality of the Services.
- 4.4** In the event any amendment to any part of the Services or specification of any product delivered as part of this Agreement would incur costs and/or expense in excess of the Charges agreed within this Agreement, formal agreement with the Customer will be obtained before delivery.

- 4.5 DCWW will deliver the Services with best endeavours but cannot guarantee that any private leakage present at Site will be identified within the Services outlined in this Agreement.
- 4.6 DCWW will reinstate any excavations undertaken as part of the Services to render the location of the excavation safe and in keeping with the pre-excavation condition and aesthetic of the Site, unless explicitly excluded in Schedule 2.
- 4.7 DCWW shall be entitled to delay its performance of the Services until such time as all of the requirements of Clause 3 have been fulfilled. In the event that such requirements are not fulfilled within a reasonable period, DCWW shall be entitled to terminate the contract without any liability to the Customer.
- 4.8 DCWW reserve the right to not enter or to leave Site if it is believed carrying out the Services may cause injury or ill health to persons or damage to property.
- 4.9 Pursuant to Clause 7, DCWW will place reliance upon but does not guarantee the accuracy of any information, data, materials or workmanship used in the provision of the Services.

5. Water Industry Act 1991

- 5.1 If a leak is suspected on the Customer's supply system, as a result of DCWW owned data, and the Customer does not carry out a repair within a reasonable time, DCWW may serve notice on the Customer under the Water Industry Act 1991 to have the leak repaired at the Customer's expense within 28 calendar days.
- 5.2 DCWW reserve the full legal right under the Water Industry Act 1991 to enforce any agreed trade effluent consent. This will not be limited by any use made by the Customer of the Services, or any part of them, delivered under this Agreement.

6. Warranty

- 6.1 Subject to any other warranty provisions agreed in this Agreement, DCWW warrants that the Services will be performed materially in accordance with the requirements of this Agreement using reasonable skill and care and in compliance with applicable legal requirements. Any products delivered or installed as part of the Services shall be free from material manufacturing or design defect for a period of 5 years following the initial delivery or installation (whichever occurs first) at the outset of the Services.
- 6.2 Clause 6.1 does not apply when:
 - a) A fault arises due to any subsequent mechanical, chemical or other damage not due to a defect in the Services and/or products used by DCWW in the performance of the Services;
 - b) A fault arises due to wilful damage, abnormal working conditions, failure to follow instructions, misuse, alteration or unauthorised repair, improper maintenance (or failure to follow any maintenance instructions) or negligence on the part of the Customer or third party;
 - c) A fault is caused by a third party's equipment not performing correctly including, without limitation, any mobile telecommunications base station upon which a signal is to be relayed.

7. Defects and Faults

- 7.1 The Customer shall report any defects or faults with the Services delivered promptly on becoming aware of such defect or fault. DCWW will use reasonable endeavours to inspect such reported faults within ten working days to determine the cause of the fault.
- 7.2 Any faults will be rectified as soon as practically possible but will be dependent on DCWW and Customer availability, and the Data Logger manufacturer in the event equipment needs to be returned for repair under warranty.
- 7.3 The warranty provided in Clause 6 and the remedy set out in Clause 7 are the sole remedy of the Customer in respect of any defects or faults with the Services delivered.

8. Charges and Payment

- 8.1 In consideration of the provision of the Services by DCWW, the Customer shall pay the Charges as set out in this Agreement.
- 8.2 The Customer shall pay each invoice submitted to it by DCWW under this Agreement in full and without deduction within 14 calendar days of receipt.
- 8.3 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay DCWW on the due date DCWW may suspend all or any part of the Services until payment has been made in full.
- 8.4 All sums payable to DCWW under this Agreement shall become due immediately on its termination.

- 8.5** DCWW reserves the right to increase the Charges by the provision of notice in writing to the Customer in the event that the cost to DCWW of providing the Services materially increases, whether as a result of a price increase by its suppliers or subcontractors or as a result of compliance with any applicable law not in place at the time of commencement of performance of the Services.
- 8.6** Title in any goods delivered under this Agreement shall not pass to the Customer until such time as DCWW has received, in cleared funds, all of the Charges.

9. Limitation of Liability

- 9.1** This clause sets out the entire financial liability of DCWW (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
- a) Any breach of this Agreement howsoever arising;
 - b) Any use made by the Customer of the Services and/or the products provided as part of the Services or any part of them, including any separate agreement(s) between the Customer and DCWW; and
 - c) Any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 9.2** All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 9.3** Nothing in this Agreement limits or excludes the liability of DCWW:
- a) For death or personal injury resulting from its negligence; or
 - b) Fraud or fraudulent misrepresentation; or
 - c) Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.
- 9.4** Subject to clauses included within the Terms & Conditions:
- a) DCWW shall not under any circumstances whatever be liable for loss of profit; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - b) DCWW's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution, negligence, or otherwise arising in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited to the Charges paid in relation to the 12 month period prior to, and duration of the Agreement remaining after, the cause of action arising.

10. Force Majeure

- 10.1** If DCWW is unable to carry out any of its obligations under this Agreement by reason of Force Majeure this Agreement shall remain in effect and DCWW's obligations shall be suspended without liability for such period as DCWW is unable to carry out its obligations. DCWW shall use all reasonable endeavours to restore its ability to carry out its obligations.

11. Termination

- 11.1** Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other on giving not less than seven calendar days written notice.
- 11.2** On termination of this Agreement for any reason:
- a) The Customer shall immediately pay to DCWW all of DCWW's outstanding unpaid invoices in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - b) DCWW may continue to use any Data Logger equipment installed as part of the Services pursuant to this Agreement for its own purposes;
 - c) The accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
 - d) Clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause 9 (Limitation of liability), this clause, clause 20 (Notices) and clause 21 (Governing Law and Jurisdiction).

12. Variation

- 12.1** No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

13. Waiver and Severance

- 13.1** A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise 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.
- 13.2** No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict further exercise of any such right or remedy.
- 13.3** 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.

14. Intellectual Property

- 14.1** All Intellectual Property Rights in, arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by DCWW.
- 14.2** The Customer grants DCWW a fully paid up, non-exclusive, royalty-free, non-transferrable licence to use, copy and modify any materials provided by the Customer for the purposes of receiving and using the Services.

15. Entire Agreement

- 15.1** This Agreement and any documents referred to in it constitute the entire agreement between the parties and supersede and extinguish all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.
- 15.2** Each party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

16. Confidentiality

- 16.1** Each party undertakes that it shall not at any time during this Agreement and for a period of 3 years after termination (howsoever arising) of this Agreement disclose to any person any confidential information concerning the business, affairs, customers, clients, products, or suppliers of the of the other party except if and to the extent:
- a) To its employees, officers, representatives, subcontractors, agents or advisers who have a need to know such information for the purposes of carrying out the performance of this Agreement provided that such employees, officers, representatives, subcontractors, agents and advisers are under an obligation of confidentiality equivalent to that set out in this clause;
 - b) With formal written agreement signed by or on behalf of each of the parties;
 - c) As may be required by law, a court of competent jurisdiction or a regulatory authority.
- 16.2** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under or in relation to this Agreement.

17. Assignment

- 17.1** The Customer shall not, without the prior written consent of DCWW, assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights or obligations under this Agreement.

18. No Partnership or Agency

- 18.1** 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 representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19. Rights of Third Parties

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

20. Notices

- 20.1** Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post, at its registered office.
- 20.2** Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or on the second business day after posting.

21. Governing Law and Jurisdiction

- 21.1** 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 as applied in Wales.
- 21.2** 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.

Signed by

Name

Position

Date

For and on behalf of

DWR CYMRU CYFYNGEDIG

Signed by

Name

Position

Date

For and on behalf of

THE SECRETARY OF STATE FOR JUSTICE

Schedule 1 – The Sites

The Sites are the locations of DCWW owned water meters relevant to 18 Her Majesty’s Courts and Tribunal Service (HMCTS) properties:

Agreed Building Name	Address	Area	Region	DCWW Meter Serial Number (At date of Agreement)
Cardiff Magistrates Court	Fitzalan Place, Cardiff	North	Wales	XXXXXX
Cardiff Crown Court	The Law Courts, Cathays Park, Cardiff	North	Wales	XXXXXX
Merthyr Tydfil Combined Court Centre	Glebeland Place, Castle Street	North	Wales	XXXXXX
Cardiff Civil and Family Justice Centre	Park Street, Cardiff	North	Wales	XXXXXX
Newport (South Wales) Crown Court	The Law Courts, Faulkner Road, Newport	North	Wales	XXXXXX
Swansea Crown Court	The Law Courts, St Helen’s Road	North	Wales	XXXXXX
Caernarfon Justice Centre	Llanberis Road	North	Wales	XXXXXX
Newport (South Wales) Magistrates Court	Newport Magistrates Court, Usk Way, Newport	North	Wales	XXXXXX
Swansea Magistrates Court	Grove Place	North	Wales	XXXXXX
Swansea Civil and Family Justice Centre	Quay West, Quay Parade	North	Wales	XXXXXX
Llanelli Justice Centre	Court Buildings, Town Hall Square	North	Wales	XXXXXX
Prestatyn Justice Centre	The Court House, Victoria Road	North	Wales	XXXXXX
Llandudno Magistrates Court	The Court House, Conwy Road, Llandudno	North	Wales	XXXXXX
Cwmbran Magistrates Court	Tudor Road, Cwmbran	North	Wales	XXXXXX
Pontypridd County Court and Family Court	The Court House, Courthouse Street	North	Wales	XXXXXX
Aberystwyth Justice Centre	Trefechan Lanfa Trefechan Aberystwyth	North	Wales	XXXXXX
Blackwood Civil and Family Court	Hall Street, Gwent	North	Wales	XXXXXX
Port Talbot Justice Centre	Harbourside Road	North	Wales	XXXXXX

Schedule 2 – The Services

DCWW will deliver, install, and maintain data loggers and ancillary equipment at the 18 Sites described in Schedule 1, for a period of 5 years from the date of initial installation.

Activity will include:

- Liaison with HMCTS project team, as required, to organise access to Sites for installation;
- Delivery and installation of 18 data loggers and ancillary equipment, before 31st March 2022;
- Maintenance of data loggers at Site;
- Managing any required data logger repairs with the equipment manufacturer, under the manufacturer's product warranty, on behalf of the Customer;
- Publishing logged data to DCWW's dedicated web platform and provision of Customer access to view logged data via that platform; and
- Data exports to the Customer's chosen platform.

Schedule 3 – The Charges

REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS