

DATED

FIRE CONTROL TRANSFER SERVICES AGREEMENT

between

ISLE OF WIGHT COUNCIL

and

SURREY COUNTY COUNCIL

Catastrophic Failure

- (a) a failure by the Service Provider for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms on the occurrence of a Disaster.
- (b) any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, that has or is likely to cause significant harm to the Authority.

Change: any change to this agreement including to any of the Services.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 6.

Charges: the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as set out in Schedule 3.

Commencement Date: 1st of March 2012

Contract Year: a period of 12 months, commencing on the Commencement Date.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (**DPA**), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default Notice: is defined in clause 4.2

Disaster: a catastrophic event which affects business continuity resulting in the implementation of the Business Continuity Plan

Dispute Resolution Procedure: the procedure set out in clause 16.

Environmental Information Regulations: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Exit Management Plan: the plan set out in Schedule 8

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice

issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, including any industrial dispute relating to the Service Provider or the Service Provider's Personnel.

Information: has the meaning given under section 84 of FOIA.

Initial Term: the period commencing on the Commencement Date and ending on the 31st March 2017.

Management Reports: the reports to be prepared and presented by the Service Provider in accordance with clause 13 and Schedule 4 to include a comparison of Achieved Service Levels with the Target Service Levels as detailed in clause 5.1 in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service

Payment Plan: the plan for payment of the Charges as set out in Schedule 3.

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Authority in accordance with clause 24.1(a)

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Service Provider.

Replacement Service Provider: any third party supplier of Replacement Services appointed by the Authority from time to time.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Service Failure: a failure by the Service Provider to provide the Services in accordance with any individual Target Service Level measured on a monthly basis.

Target Service Levels: the service levels to which the Services are to be provided, as set out in Schedule 2.

Service Provider Party: the Service Provider's agents and contractors, including each Sub-Contractor.

Service Provider's Personnel: all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Services: the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in Schedule 1 **Error! Reference source not found.** (Specification).

Sub-Contract: any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 2; or
- (b) the earlier termination of this agreement in accordance with its terms

Termination Date: the date of expiry or termination of this agreement.

Termination Payment Default: is defined in Schedule 3.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) **Error! Reference source not found.** to this agreement;
 - (c) the remaining schedules to this agreement;

COMMENCEMENT AND DURATION

2. TERM

- 2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.
- 2.2 Either party may extend this agreement beyond the Initial Term by a further period or periods of up to 5 years (Extension Period). If either party wishes to extend this agreement, it shall give the other party at least six months' written notice of such intention before the expiry of the Initial Term or Extension Period. The receiving party must respond to the notice within a period of one month from the date of receipt of the written notice, either agreeing to the Extension Period or rejecting the proposed extension.
- 2.3 If the receiving party agrees to the Extension Period, then the Term shall be extended by the period set out in the notice.
- 2.4 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 27 shall apply.

3. CONSENTS, SERVICE PROVIDER'S WARRANTY AND DUE DILIGENCE

- 3.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

THE SERVICES

4. SUPPLY OF SERVICES

- 4.1 The Service Provider shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement (with agreed cut-over date being the 4th of March 2012).
- 4.2 In the event that the Service Provider does not comply with the provisions of clause 4.1 in any way, the Authority may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a **Default Notice**).

5. TARGET SERVICE LEVELS

- 5.1 Where any Service is stated in Schedule 2 to be subject to a specific Target Service Level, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to and not less than 10% lower than such specific Target Service Level set out in Schedule 2.
- 5.2 As existing Services are varied and new Services are added, Target Service Levels for the same will be determined and included within Schedule 2 Schedule 1.
- 5.3 The Service Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 13.
- 5.4 In the event that any Achieved Service Level falls short of the relevant Target Service Level as specified in clause 5.1, without prejudice to any other rights the Authority may have, such failure shall be dealt with as part of the Contract Management processes set out in clauses 13 – 16 inclusive .

6. SERVICE STANDARDS

- 6.1 Without prejudice to clause 5, the Service Provider shall provide the Services, or procure that they are provided:
- (a) with reasonable skill and care and in accordance with the best practice prevailing in the Emergency Service Call-Handling industry from time to time;
 - (b) in accordance with all Applicable Laws.

7. HEALTH AND SAFETY

- 7.1 The Service Provider shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the agreement.

- 7.2 While on the Authority's Premises, the Service Provider shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 7.3 The Service Provider shall notify the Authority immediately in the event of any incident occurring in the performance of the agreement on the Authority's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 7.4 While on the Authority's premises, the Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the agreement.
- 7.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request
- 7.6 The Authority shall promptly notify the Service Provider of any health and safety hazards that may exist or arise at the Authority's premises and that may affect the Service Provider in the performance of the Agreement.
- 7.7 .

8. BUSINESS CONTINUITY

- 8.1 The Service Provider shall comply at all times with the relevant provisions of the Business Continuity Plan.
- 8.2 Following the declaration of a Disaster in respect of any of the Services, the Service Provider shall:
- (a) implement the Business Continuity Plan;
 - (b) continue to provide the affected Services to the Authority in accordance with the Business Continuity Plan; and
 - (c) restore the affected Services to normal within the period laid out in the Business Continuity Plan (if any).

To the extent that the Service Provider complies fully with the provisions of this clause (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Service Provider), the Target Service Levels to which the affected Services are to be provided during the continuation of the Disaster shall not be the Service Levels as referred to in clause 5 but shall be the service levels set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

CHARGES AND PAYMENT

9. PAYMENT

- 9.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Service Provider in accordance with the Payment Plan.
- 9.2 The Service Provider shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall be directed to the Authority's Representative.
- 9.3 The Authority shall pay the Charges which have become payable in accordance with the Payment Plan within 20 days of receipt of an undisputed invoice from the Service Provider.
- 9.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 16. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the parties.
- 9.5 Subject to clause 9.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue
- 9.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 9.7 The parties have agreed that the basis of the charging, the Charges and Payment Schedule as set out in Schedule 3 will be reviewed at the end of the first year of the Initial Term and thereafter annually.

10. NOT USED

11. PERSONNEL USED TO PROVIDE THE SERVICES

- 11.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;

- (c) only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and

12. TUPE

The parties agree that the provisions of Schedule 7 shall apply to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

13. REPORTING AND MEETINGS

- 13.1 The Service Provider shall provide the Management Reports in the form and at the intervals set out in Schedule 4.
- 13.2 The Authorised Representatives shall meet in accordance with the details set out in Schedule 4 and the Service Provider shall, at each meeting, present its previously circulated Management Reports and Financial Reports in the format set out in that Schedule.

14. MONITORING

- 14.1 The Authority shall monitor the performance of the Services by the Service Provider.
- 14.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 14.1 at no additional charge to the Authority.

15. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 15.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 15.2 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Authority's Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
 - (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services new or potential improvements to the interfaces or integration of the Services with other services provided by

third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and

(c) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Authority. This may include but is not limited to other local authorities delegating their control functions to the Service Provider pursuant to Section 16 of the Fire and Rescue Services Act 2004

15.3 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 15.2 shall be addressed by the parties using the Change Control Procedure.

16. DISPUTE RESOLUTION

16.1 Either party may call an extraordinary meeting of the parties by service of not less than 5 days' written notice and each party agrees to procure that its Authorised Representative requested to attend by the Authority (if any) shall attend all extraordinary meetings called in accordance with this clause.

16.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator, appointed at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.

16.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.

16.4 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

16.5 While the Dispute Resolution Procedure referred to in this clause is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment

obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

17. SUB-CONTRACTING AND ASSIGNMENT

17.1 Subject to clause 17.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

17.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

17.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

LIABILITY

18. INDEMNITIES

18.1 The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence), to the extent that any such loss or claim is due to the negligence of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its Representatives (excluding the Service Provider).

18.2 The Authority shall indemnify and keep indemnified the Service Provider against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence), to the extent that any such loss or claim is due to the negligence of itself or of its employees or of any of its

Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Service Provider or its Representatives (excluding the Authority).

19. LIMITATION OF LIABILITY

- 19.1 Subject to clause 19.4 neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 19.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 19.3 Subject to clause 19.4, the Authority's and the Service provider's total aggregate liability:
- (a) in respect of the indemnities given in Schedule 7 is unlimited; and
 - (b) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall in no event exceed 200% of the aggregate Charges paid under or pursuant to this agreement.
- 19.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) death or personal injury caused by its negligence;

20. INSURANCE

- 20.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
 - (c) professional indemnity insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;]

in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

INFORMATION

21. FREEDOM OF INFORMATION

21.1 The parties acknowledge that they are each subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with each other to enable the recipient of any Request for Information to comply with these information disclosure requirements.

21.2 The parties acknowledge that either of them may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the other; or
- (b) following consultation with the other and having taken its views into account,

provided always that they shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the other advanced notice, or failing that, to draw the disclosure to the other's attention after any such disclosure.

21.3 The Service Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

22. DATA PROTECTION

22.1 The parties shall (and shall procure that any of their Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

22.2 Notwithstanding the general obligation in clause 22.1, where the Service Provider is processing Personal Data as a Data Processor for the Authority, the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
- (b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 22.2; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

22.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

23. CONFIDENTIALITY

23.1 Subject to clause 23.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Authorised Representatives from making any disclosure to any person of any matters relating hereto.

23.2 Clause 23.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 21.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 23.1;
- (d) by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made in relation to Monitoring;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authority to any other department, office or agency of the Government; and
- (h) by the Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

TERMINATION

24. TERMINATION FOR BREACH

24.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:

- (a) if the Service Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause if the Service Provider has failed to remedy such breach within [20 working days] or such other period as may be agreed between the parties of receipt of notice from the Authority (a **Remediation Notice**) to do so;
- (b) if a Catastrophic Failure has occurred;
- (c) if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment;
- (d) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (e) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Authority reasonably objects.

24.2 The Authority may terminate this agreement in accordance with the provisions of clause 27.

24.3 If this agreement is terminated by the Authority for cause such termination shall be effected in accordance with the provisions of Schedule 8 Exit Management Plan.

24.4 The Service Provider may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

25. TERMINATION ON NOTICE

Either party may terminate this agreement at any time by giving 6 months' written notice to the other.

26. FORCE MAJEURE

- 26.1 Subject to the remaining provisions of this clause, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 26.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 26.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 26.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 26.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 26.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 26.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 20 Working Days.

27. CONSEQUENCES OF TERMINATION

- 27.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Service Provider.
- 27.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Service Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Service Provider's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.
- 27.3 The provision relating to (provision of records), (Indemnities), (Insurance), (Freedom of Information), (Data Protection), (Termination for Breach) and this clause (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

28. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Service Provider in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

29. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

30. SEVERABILITY

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

31. PARTNERSHIP OR AGENCY

Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.

32. THIRD PARTY RIGHTS.

32.1 No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

32.2 Notwithstanding clause 32.1 it is expressly agreed that the parties to this agreement may by agreement rescind or vary this agreement or any term of this agreement without the consent of any person who has a right to enforce this agreement or the term in question, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

33. NOTICES

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

34. ENTIRE AGREEMENT

This agreement, the schedules and the documents annexed to it or otherwise referred to in it and contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

35. GOVERNING LAW AND JURISDICTION

35.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

35.2 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.

**EXECUTED AS A DEED BY THE PARTIES TO THIS AGREEMENT ON THE DATE
HEREINBEFORE MENTIONED**

The Common Seal of the Isle of
Wight Council was hereby affixed
In the presence of

Authorised Signatory

THE COMMON SEAL OF Surrey
County Council was hereunto affixed
in the presence of:

Authorised Signatory

Schedule 1

Specification

Surrey and Isle of Wight currently operate their own control rooms, call handling and mobilising systems. Surrey provides immediate assistance and a managed Mobile Data Service to the Isle of Wight.

Both FRAs plan to transfer the Isle of Wight's control function and mobilisation to Surrey, upgrade existing mobilising system and deliver enhance mobilising, communications and C² capability. In closing down its control room facility the Isle of Wight needs to create a new incident command suite and mobile command unit that incorporates the appropriate technology and integrates with Surrey – these will be staffed when appropriate for local management of incidents (it does not require the 24/7 staffing).

The work will be carried out in two phases. The first phase will be to establish the merger and safely taking 999 calls and mobilising. The second phase will be to upgrade the mobilising system and various other facilities. The upgrades will include the provision of a full voice and data communications capability using the Airwave network and AVLS, which will be coupled with dynamic cover software to help ensure the nearest appropriate resource is mobilised to an incident. The current retained availability system will be replaced with one that gives improved visibility of retained firefighter availability. Isle of Wight will upgrade Station End Equipment and align the technical specification with Surrey.

Surrey plans to upgrade its secondary control facilities and enter into a fallback agreement with Hertfordshire or another Fortek provided service which will enable both controls to mobilise each other's resources.

The FRA plans to complete phase 1 by March 2012. Activity in phase 2 will be carried out in parallel in the 2 authorities and take place primarily during 2012-13. But some hardware upgrades will need to take place at different times e.g. Surrey upgrading Mobile Data Terminals in 2012 and Isle of Wight in 2013-14 (after a 5 year warranty expires on current equipment).

Table 1 - Summary of notable features FRA/s are planning to use in future compared to the status in 2011 and 2009

	MDTs	Real Time Incident Messaging/ DEIT	Status messaging	AVLS (Automatic Vehicle Location)	Call line Identification (EISEC/ ALSEC)	Integrated GIS	Shared Gazetteer (inc NLPG)	San H full voice and data	Partnering Arrangement with Automatic Systems Failover	Reduction in control rooms Secondary Controls
Isle of Wight and Surrey	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Position as at 5 th July 2011 (For completion by FRA)	<u>IoW</u> Partial on 12 appliances	X	X	X	X	X	X	X	X	X
	<u>Surrey</u> ✓	Partial	✓	✓	✓	✓	✓	X	X	X
Isle of Wight Oct 2009	Partial	X	x	x	x	x	x	x	x	x
Surrey Oct 2009	Frontline Appliances	X	✓	✓	✓	Partial	✓	x	x	x

Note: 2009 position based on information collected by DCLG at the time
 The intention is to upgrade existing Mobile Data Terminals in both FRAs.

Table 2 - Summary of Expected Resilience and Efficiency Outcomes

(rows based on Annex A to guidance issued to FRAs seeking central support for improving the resilience and efficiency of their control services on 5 July 2011)

Improvement	Y/N	How	When
Efficiency			
Financial efficiency of the control service is improved	Yes	<ul style="list-style-type: none"> Shared control room between two FRAs, leading to improved call handling, reduced staffing and costs; Technological improvements assists more effective use of resources; 	2012-13
Improved operational efficiency of the control service	Yes	<ul style="list-style-type: none"> IoW benefits from Surrey's ability to identify caller location swiftly; Improved data based mobilisation; Integrated GIS, MDTs, dynamic mobilising, SAN H – access to Airwave, AVLS, shared gazetteer; 	2012-13
Expected financial savings	Yes	<ul style="list-style-type: none"> Combined efficiency savings of around £550k are expected per year from 2012-13 	2012-13
Resilience			
Data centric mobilisation benefits are secured and/or enhanced	Yes	<ul style="list-style-type: none"> MDTs upgraded to support better data mobilisation; Better data capture; Station End Equipment replaced to interface with MDTs in IOW; 	2012-13
Call handling capacity during sudden peaks in call volume improves	Yes	<ul style="list-style-type: none"> Improved call handling; Additional staff for spate conditions or if buddy FRA needs assistance; 	2012-13
Remote call handling and mobilisation arrangements are improved	Yes	<ul style="list-style-type: none"> Agreed partner arrangements with other FRAs, ability to mobilise resources Surrey to mobilise IOW assets 	2012
Remote incident management arrangements are improved	Yes	<ul style="list-style-type: none"> Agreed partner arrangements with other FRAs, ability to mobilise resources Surrey to mobilise IOW assets 	2012-13
Physical and protective security is improved	Yes	<ul style="list-style-type: none"> Duplicated servers within new high security SCC data centres at creating multiple seamless fall-back options. Upgrades to physical site and building security 	2012-13
Local improvements contribute to an improvement in resilience nationally	Yes	<ul style="list-style-type: none"> Real time intelligence, incorporation of DEIT Have agreed regional interoperability policies (SEORRG - SEOPAP) Potential for interoperability improved through Airwave 	2012-13

Schedule 2

Target Service Levels

1. THE TARGET SERVICE LEVELS

Service	Method of calculating service delivery	Service level
'999' call-handling for IWFRS (RED)	Analysis of calls from ICCS	85% of calls within 7 seconds 95% of calls answered within 10 seconds 98% of calls answered within 20 seconds
RDS availability system via BT leased line (RED)	Analysis of IWC and SFRS monitoring software	98% including scheduled maintenance at SFRS or SCC network
Support to Station-end equipment (1 st and 3 rd line) (GREEN)	SFSR Remote Monitoring software and analysis of defect reporting data	95% of SEE fixed next-day
IWFRS station mobilisation via PAKNET (primary), PSTN (secondary), pager (tertiary) (RED)	Analysis of calls from ICCS	98% each method in isolation 100% using each method in combination for a single mobilisation
IWFRS duty officer mobilisation via mobile telephone or pager (RED)	Analysis of calls from ICCS	2 minutes from mobilisation need identified in 95% of instances
Access to performance data and ability for IWFRS to produce reports (GREEN)	Routine access to data by IWFRS staff	99% availability

Schedule 3

Charges and payment

1. CHARGES

Payment Schedule

Year	Annual Contract Fee £	Amount Payable Quarterly £
2011/12	21,667	
2012/13	260,000	65,000
2013/14	270,400	67,600
2014/15	281,220	70,305
2015/16	292,470	73,117
2016/17	304,168	76,042

PAYMENT PLAN

Invoices will be submitted quarterly by the Service Provider on

1st April
1st JULY
1st October
1st January

36. OF EACH YEAR. INVOICES WILL BE PAYABLE IN ACCORDANCE WITH CLAUSE 9 OF THIS AGREEMENT WITH THE FIRST INVOICE BEING FOR ONE MONTH IN THE FINANCIAL YEAR 2011/12 PLUS THE FIRST QUARTER'S PAYMENT FOR 2012/13 AND THEREAFTER ON A QUARTERLY BASIS UNTIL THE TERMINATION OF THE AGREEMENT.

TERMINATION PAYMENT DEFAULT

In the event that at any time undisputed Charges of 25% of the aggregate Charges for the Contract Year have been overdue for payment for a period of 60 days or more, the Authority will have committed a Termination Payment Default.

Schedule 4

Contract management

1. AUTHORISED REPRESENTATIVES

- 1.1 The Authority's initial Authorised Representative: CFO IWFRS
- 1.2 The Service Provider's initial Authorised Representative: CFO SFRS

2. MEETINGS

- 2.1 Type Service Review
- 2.2 Quorum CFOs (or designated representatives)
- 2.3 Frequency Monthly
- 2.4 Agenda: Minutes of previous meeting and matters arising
Review of performance report
AOB

3. REPORTS

- 3.1 Type Performance
- 3.2 Contents Metrics from SFRS systems and supporting narrative
SFRS Customer satisfaction survey
- 3.3 Frequency Monthly
- 3.4 Circulation list CFOs

Schedule 5

SFRS Business continuity plan

The statutory legal requirements (in the legislation referred to below) require formal approval by the fire authority of a fire and rescue service's Business Continuity Plan, and the SFRS plan was formally approved in Nov 2011.

- The Civil Contingencies Act 2004:
Place a duty on Fire and Rescue Authorities (FRA), to put in place business continuity management arrangements to ensure that they can continue to exercise their functions in the event of an emergency so far as reasonably practicable.
- Fire & Rescue Services Act 2004:
Promote fire safety;
Fighting fires and protecting people and property from fires;
Rescuing people from road traffic collisions;
Dealing with other specific emergencies such as flooding, or terrorist attack

Methodology: SFRS Business Continuity Policy and Plan has been produced by conducting Business Impact Analysis's (BIA) and Risk Assessments (RA). SFRS produced its first BC plan in November 2005 and since then it has been continually updated. The newly formed Planning and Intelligence Team keep it under review regularly and it is fully reviewed annually by the SFRS Senior Leadership Team. SFRSs BC and resilience arrangements follow national guidance from the Audit Commission (Business Continuity Management in the Fire and Rescue Service dated Sep 2010) and are accredited by the BSi. IOW FRS will be included in the review of the Mobilising BIA/RA.

Practice: BIAs and RAs

Combined BIAs and RAs have been produced for each SFRS business unit. These areas are:

- Service Mobilising
- Service Improvement
- Service Support
- Service Delivery
- Transport and Technical Services

There are 5 parts to each BIA/RA

- Key Processes
- Specific Resource Requirements
- Cumulative Impact

- Maximum Tolerable Period of Disruption
- Risk Assessment

Standard Operating Procedures

A number of **Standard Operating Procedures** (SOP's) have been produced to support the Business Continuity Plan.

These are:

- Loss of Premises
- Transport Disruption
- Service Degradation (including workforce degradation)
- Pandemic Flu
- Fuel Shortage
- BC Event Informing and Investigation procedures.

[Need to agree if the BCPs are to be attached.]

Schedule 6

Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Authority or the Service Provider sees a need to change this agreement, the Authority may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Service Provider.

2. PROCEDURE

- 2.1 Discussion between the Authority and the Service Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Authority; or
 - (c) a recommendation to change this agreement by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Service Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;

- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Service Provider; or
 - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this agreement.

Schedule 7

TUPE

Part 1. Transfer of employees

1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

Appropriate Pension Provision: in respect of:

- (a) Eligible Employees, either:
 - (i) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or
 - (ii) pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members..

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from the Authority to the Service Provider or Sub-contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Service Provider or Sub-contractor (which, for the avoidance of doubt, shall be the Commencement Date).

Eligible Employees: the Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where [the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or] a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor; and

- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

LGPS: Local Government Pension Scheme.

LGPS Regulations: includes:

- (a) the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239); and
- (b) the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166) (as amended); and
- (c) the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 (SI 2008/239); and
- (d) the Local Government Pension Scheme Regulations 1997 (SI 1997/1612) (as amended and replaced from time to time).

Redundancy Costs: statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Service Provider to the Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

Redundant Transferring Employees: Transferring Employees whom the Service Provider has dismissed following a lawful redundancy within [NUMBER] months of the Effective Date.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Service Provider by virtue of the application of TUPE.

Service Provider's Final Staff List: the list of all the Service Provider's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Service Provider's Provisional Staff List: the list prepared and updated by the Service Provider of all the Service Provider's [and Sub-Contractor's] personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Service Provider or Sub-contractor to the Authority or any Replacement Service Provider.

Staffing Information: in relation to all persons detailed on the Service Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Transferring Employees: employees of the Authority whose contracts of employment transfer with effect from the Effective Date to the Service Provider by virtue of the application of TUPE as listed in 0 of this Schedule.

2. TRANSFER OF EMPLOYEES TO THE SERVICE PROVIDER

- 2.1 The Authority and the Service Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees [and Third Party Employees] shall transfer to the Service Provider or Sub-contractor. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The [first] Relevant Transfer shall occur on the Effective Date.
- 2.2 The Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Effective Date. The Authority shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Service Provider, as required by TUPE. The Authority shall warrant that such information is complete and accurate as it is aware or should reasonably have been aware as at the date it is disclosed.
- 2.3 Subject to paragraph 2.4, the Authority shall indemnify and keep indemnified the Service Provider against any losses, except indirect losses, incurred by the Service Provider or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Service Provider or any relevant Sub-Contractor's failure to comply with regulation

13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.

- 2.4 The Service Provider shall be liable for and indemnify and keep indemnified the Authority against Employment Liabilities arising from or as a consequence of:
- (a) any proposed changes to terms and conditions of employment the Service Provider or Sub-Contractor may consider taking on or after the Effective Date.
- 2.5 The Service Provider shall be liable for and indemnify and keep indemnified the Authority against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
- 2.6 The Service Provider shall immediately on request by the Authority provide details of any measures that the Service Provider or any Sub-Contractor of the Service Provider envisages it will take in relation to any Transferring Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Service Provider shall give confirmation of that fact, and shall indemnify the Authority against all Employment Liabilities resulting from any failure by it to comply with this obligation.
- 2.7 The Authority shall indemnify and keep indemnified the Service Provider against any Redundancy Costs in relation to the Redundant Transferring Employees or any employees of the Service Provider made redundant arising from and evidenced as being as a consequence of the Transferring Employees transferring to the Service Provider, within six months from the Effective Date.
- 2.8 The Authority has agreed that each Transferring Employee shall receive a relocation sum of £5,000 to be payable by the Service Provider to each Transferring Employee and has further agreed to reimburse the Service Provider in full in relation to all such payments made.
- 2.9 The Authority shall indemnify and keep indemnified the Service Provider in relation to payments made by the Service Provider to the Transferring Employees which they are currently entitled to under their existing terms and conditions with the Authority which have not been disclosed to the Service Provider as part of the Employment Liability Information.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 This agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Service Provider shall [and shall procure that any Sub-Contractor shall] on receiving notice of termination of this agreement or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services, the Service Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Service Provider shall notify the Authority of any material changes to this information as and when they occur.
- 3.3 At least 14 days prior to the Service Transfer Date, the Service Provider shall [and shall procure that any Sub-Contractor shall] prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Service Provider, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects. The Service Provider's Final Staff List shall identify which of the Service Provider's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4 The Authority shall be permitted to use and disclose the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5 The Service Provider warrants that the Service Provider's Provisional Staff List, the Service Provider's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Service Provider's Final Staff List.
- 3.6 The Service Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it shall comply with the DPA in the provision of the TUPE Information.
- 3.7 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.8 The Service Provider shall indemnify and keep indemnified in full the Authority [and at the Authority's request each and every Replacement Service Provider against all Employment Liabilities relating to

any person who is or has been employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of any of the Services arising from or connected with any failure by the Service Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises before or after the Service Transfer Date.

4. PENSIONS

4.1 The Service Provider shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this agreement.

PART 2 TRANSFERRING EMPLOYEES

Transferring Employees	Third Party Employees
To be populated for due diligence by 16 th February 2012.	

Schedule 8

Exit Management Plan

There will be a minimum of 6 months notice period by either party of the intention to withdraw from the agreement to allow for a structured exit. Written notice will be given by the Authorised Representatives of both parties.

The exit will be a managed project by the Authority using the PRINCE2 methodology, with project team members from both parties. A project plan and detailed work packages will specify the required resource, with agreement from both parties to supply the resource as required by the plan to meet the agreed exit date. The parties agree to work together to ensure a safe and structured exit.

The key outputs from the exit will be;

- Export of all Authority (IWFRS) data, including all that which was imported into the Service Provider's systems, in a format to be specified by the Authority (IWFRS) and agreed by the Service Provider.

- The ceasing or re-direction of '999' and priority lines related to the Authority (IWFRS)

- Reconfiguration of the Airwave network and supporting assets.

- The transfer or termination of 3rd party services or support arrangements.

No additional payments will be made to the Service Provider in relation to the execution of this exit management plan.