

DRAFT

DATED

2012

BETWEEN

WEST SUSSEX COUNTY COUNCIL

And

EAST SUSSEX FIRE AUTHORITY

AGREEMENT

**Pursuant to Section 16 of the
Fire and Rescue Services Act 2004**

DRAFT

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DATED the day of 2012

PARTIES:

- (1) **EAST SUSSEX FIRE AUTHORITY** of 20, Upperton Road, Eastbourne, East Sussex BN21 1EU (“**ESFA**”) and
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ (“**WSCC**”)

(each a “Party” and together referred to as the “Parties”)

BACKGROUND

- (A) ESFA is a fire and rescue authority pursuant to the East Sussex Fire Services (Combination Scheme) Order 1996.
- (B) WSCC is a local authority with fire and rescue services functions.
- (C) Under Section 16 of the Fire and Rescue Services Act 2004 (“the Act”) the Parties are able to enter into arrangements under which one Party discharges to any extent certain fire and rescue services functions for the other Party.
- (D) This Agreement is to provide for arrangements under which call handling, mobilisation and related functions are discharged by ESFA for WSCC pursuant to Section 16 of the Act.
- (E) The Parties acknowledge that the functions to be discharged by ESFA under this Agreement are critical in terms of their impact upon the fire and rescue functions of WSCC and that they will work together to ensure that these functions are delivered in a suitable manner.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the Recitals and Schedules, the following definitions shall apply unless otherwise expressly stated.

the Act	means the Fire and Rescue Services Act 2004;
Agreement	means this agreement and all Schedules;
Authorised Officer	Means an officer of WSCC whose post and contact

Background IPR	<p>details are notified to ESFA by WSCC from time to time means all Intellectual Property Rights in any material or in any work (in whatever format) which exists as at the Commencement Date;</p>
Best Value	<p>means the statutory framework for the planning, delivery and continuous improvement of local authority services;</p>
Budget	<p>means the estimated budget for the provision of the Joint Control in each Financial Year, as described in Schedule 2;</p>
Business As Usual	<p>means the day to day provision of the Interim Service and the Operational Service and changes thereto that do not require authorisation but that can reasonably be expected to be undertaken by the Joint Control;</p>
Business Continuity Plan	<p>means a plan prepared by ESFA and approved by the Executive Governance Board for ensuring that the Operational Service continues to be provided in the event of disruption including but not limited to technology or other failure, severe weather, pandemic, or industrial action and dealing with Major Incidents;</p>
Business Continuity Management System	<p>means the arrangements made to identify potential threats to the Interim Service and the Operational Service, the impact of those threats if they were realised and the production, maintenance and testing of the WSCC Business Continuity Plan and the Business Continuity Plan;</p>
Call Challenge Protocol	<p>during the Interim Period, this means WSCC's call challenge protocols and from the Cut Over Date for the remainder of the Term, this means the procedure agreed by the Operational Governance Board employed for challenging callers to establish whether or not mobilisation of resources is appropriate;</p>
Change Control Note	<p>means an amendment to this Agreement to agree a Material Change signed by both Parties pursuant to the</p>

	Change Control Procedure;
Change Control Procedure	means the procedure for changing this Agreement, as set out in Schedule 5;
Change Control Request	means a written request for a Material Change which is submitted by one party to the other pursuant to the Change Control Procedure;
Change in Law	means any change in any Law which impacts on the performance of the Interim Service or the Operational Service and which comes into force after the Commencement Date;
Chichester Premises	means the control centre located at Chichester Fire Station Northgate Chichester shown edged/coloured xx on Plan 1;
Commencement Date	means 00:01 a.m. on 1 February 2013;
Confidential Information	means any information or data in whatever form, disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one Party (the "Discloser") to the other (the "Recipient") in connection with this Agreement which by its nature is confidential or which the Discloser acting reasonably states in writing to the Recipient is to be regarded as confidential, or which the Discloser acting reasonably has marked 'confidential' (including, business affairs, operations, products, finances, plans, designs, processes, research, development, know how, and personnel information), but which is not Personal Data, or information to which the FOIA would apply;
Control Staff	means persons designated to deliver both the Interim and Operational Service;
Cut Over Date	means 1 October 2013, or such other date as the Parties shall agree in writing, being the date from which the Operational Service shall be provided from the Haywards Heath Premises;

DPA	means the Data Protection Act 1998;
Data Controller	has the meaning set out in the DPA;
Data Policy	means the joint policy on data protection, data sharing and information security to be agreed between the parties in accordance with the Statement of Requirements;
Data Processor	has the meaning set out in the DPA;
Duty Officer or Chief Operations Officer	means a person appointed by WSCC in the role of Area Manager and notified to ESFA as a designated point of contact;
Duty Strategic Incident Manager or Duty Principal Officer	means a person appointed by WSCC in the role of Brigade Manager and notified to ESFA as a designated point of contact
Emergency Call	means an initial request for assistance at an emergency;
Emergency Call Management	means the process of receiving an Emergency Call, obtaining information from the caller, selecting and mobilising Operational Resources and providing information to the caller;
Emergency Incident	means an event that threatens public safety health or welfare as further defined in section 1 of the Civil Contingencies Act 2004.
ESFA Costs	means the Budget costs borne exclusively by ESFA, details of which are set out in Schedule 2;
ESFA Equipment	means the equipment provided by ESFA which is necessary for call handling and mobilisation and which shall be used by ESFA for the provision of the Operational Service.
ESFA Personnel	means all persons engaged by ESFA for the purposes of delivering the Interim Service or the Operational Service
ESFA Premises	means ESFA's premises at 20, Upperton Road, Eastbourne, East Sussex BN21 1EU;

ESFA Software	means the software necessary to provide the Operational Service from the Cut Over Date;
Executive Governance Board	means a board established in accordance with the provisions of clause 10 and Schedule 6;
Exit Strategy	means the strategy to be followed by the Parties on termination or expiry of this Agreement as described in Schedule 7;
Expert	means a person appointed in accordance with clause 27;
Expert Determination	means the process set out at clause 27.2 to 27.10;
Fallback Control Premises	means premises which may be required to deliver the Operational Service in the event that the Operational Service cannot be delivered at the Haywards Heath Premises;
Fallback Event	means a situation in which ESFA are prevented from providing the Interim Service or the Operational Service at the Primary Control;
Financial Year	means the period from the 1 April of one year to the 31 March of the following year during the term of the Agreement;
FOIA	means the Freedom of Information Act 2000;
Foreground IPR	means all Intellectual Property Rights in any material or in any work (in whatever format), which is brought into existence as part of the Interim Service or the Operational Service to be provided under this Agreement after the Commencement date;
Functions	means WSCC's functions as set out in clause 3.1;
Governance Boards	means the boards established in accordance with the provisions of clause 10 and Schedule 6;
Group Manager	means the most senior control room manager who provides leadership and management to the Joint Control and ensure statutory responsibilities under the Fire & Rescue Services Act 2004 and in particular

	ensures that the Agreement is met.
Guidance	means any applicable guidance, direction and/or determination which WSCC and/or ESFA has a duty to have regard to, to the extent that the same are publicly available or where the existence and/or contents of such guidance, direction and/or determination has been notified from one Party to another;
Haywards Heath Premises	means the control centre located at Haywards Heath Fire Station Mill Green Road, Haywards Heath West Sussex RH16 1XQ shown edged/coloured xx on Plan 2;
Intellectual Property Rights	means all patents, trade marks, service marks, registered designs or any applications for any of the foregoing, copyright (including in any text, computer coding, algorithms, applets, or in any other constituent elements of any work produced as a part of the commissioning or provision of the Interim Services or Operational Service), design right, database rights, topographical rights, unregistered trade marks or other intellectual or industrial property rights, look and feel in any work produced under this Agreement, and all knowhow whether subsisting in the United Kingdom or anywhere else in the world;
Interim Fallback Premises	means the premises in the basement of County Hall, Chichester as set out in Schedule 4 used to deliver the Interim Service during the Interim Period in the event that the Interim Service cannot be delivered at the Chichester Premises;
Interim Period	means the period from the Commencement Date to the Cut Over Date during which the Interim Service shall be provided at the Chichester Premises;
Interim Service	means the services to be provided to WSCC by ESFA during the Interim Period, as set out in Part A of the

	Statement of Requirements;
Interim Service Equipment	means the equipment based at the Chichester Premises provided by WSCC which is necessary for call handling and mobilisation including the servers which is further detailed in Part A of the Schedule of Requirements and which shall be used by ESFA in accordance with the provisions of clause 9;
Joint Control	means the personnel, equipment and facilities established and maintained by ESFA to provide the Interim Service and the Operational Service;
Later Transferring Employee	means any person engaged in the provision of the Operational Service who transfers to a Replacement Service Provider;
Law	means: <ul style="list-style-type: none"> (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation; (b) any enforceable EU right within the meaning of Section 2 (1) European Communities Act 1972; (c) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; and (d) Guidance; and in each case in force in England and Wales or in England;
Loss	means all costs (including the costs of enforcement) expenses, liabilities, injuries, direct loss, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments howsoever caused incurred or suffered by a Party;
Major Incident	means an event or situation, generally arising with little or no warning, causing or threatening death, injury or serious disruption to people and services and damage

to structures. The incident is of such magnitude that it cannot be dealt with by the public services operating under normal conditions and requires the special mobilisation, organisation and co-ordination of those services and, when necessary, voluntary bodies.

Material Change	means any large body of work or upgrade to Joint Control systems which requires planning and agreement and which requires time, resource and/or financial commitment above normal capacity or agreed budgets, non-exclusive examples of which are set out at clause 19.3;
Minimum Staffing Level	means the staffing level already agreed by the Parties for the Interim Period and the staffing level for the Operational Service to be agreed between the Parties prior to the Cut Over Date which represents the minimum staffing level for the Joint Control and which may be varied by agreement between the Parties from time to time;
Minor Change	means any day to day change which requires authorisation in accordance with the Mobilising Instructions and the Operational Instructions, which is likely to have a minor impact (but greater than Business as Usual) on Joint Control resources or minor software upgrades or hardware replacements required to keep the Joint Control in working order;
Mobilise	means an action taken by the Joint Control to issue instructions to Operational Resources to attend an Emergency Incident;
Mobilising Instructions	means instructions, business rules or guidelines agreed by WSCC and ESFA in writing;
Mobilising Instructions Agreement Process	means the process by which the Parties agree the Mobilising Instructions and variations thereto as set out in the Statement of Requirements;
Mobilising System	means the computerised system used to mobilise

	resources;
Mutual Aid Agreement	means an agreement with another fire and rescue authority under section 13 of the Fire and Rescue Services Act 2004 putting in place suitable arrangements for dealing with Spate Conditions;
Operational Governance Board	means the board of that name established in accordance with the provisions of clause 10 and Schedule 6;
Operational Instructions	means verbal instructions issued by WSCC to ESFA by a duly authorised person in accordance with the Mobilising Instructions;
Operational Resources	means vehicles, equipment and personnel designated for responding to Emergency Incidents;
Operational Service	means, in relation to the period from the Cut Over Date for the remainder of the Term, the services to be provided by ESFA to WSCC in accordance with the terms of this Agreement in exercise of the Functions, as set out in Part B of the Statement of Requirements;
Payment	means the sum payable for the provision of the Operational Service pursuant to the delegation of the Functions in accordance with the provisions of clause 7 and Schedule 2;
Performance Report	means the performance reports to be prepared by ESFA or WSCC, details of which are set out in the Statement of Requirements;
Performance Standards	means the performance standards for the Interim Service and Operational Service set out in the Statement of Requirements;
Personal Data	has the meaning set out in the DPA;
Plan 1	means the plan appended to this Agreement and marked 'Plan 1';
Plan 2	means the plan appended to this Agreement and marked 'Plan 2';

Pre Determined Attendances	means the agreed resources pre-defined and allocated to attend a specific incident type following an initial call according to risk;
Preferred Staffing Level	means the staffing level already agreed by the Parties for the Interim Period and the staffing level for the Operational Service to be agreed between the Parties prior to Cut Over Date which represents the optimum staffing level for the Joint Control and which may be varied by agreement between the Parties;
Primary Control	means the Chichester Premises for the Interim Period and the Haywards Heath Premises from the Cut Over Date for the remainder of the Term;
Quarter	means a rolling period of three calendar months running from each of 1 April and “Quarterly” shall be construed accordingly (and the Parties acknowledge that the first Quarter of the term shall be a part Quarter);
Replacement Service Provider	means an entity, other than ESFA, who will be providing all or part of the Operational Service instead of ESFA;
Review	means a review conducted in accordance with Schedule 6, paragraph 1.2.8 or Part B of the Statement of Requirements paragraph 16.
Serious Service Failure	means a failure by ESFA which: affects the ability to handle Emergency Calls or to mobilise resources (including but not limited to, a radio network failure or break down of Mobilising System); or has a material detrimental impact on the provision of the Interim Service or the Operational Service (as applicable); or represents a significant health and safety risk to the public or fire fighters
Shared Costs	means the Budget costs shared between the Parties, details of which are set out in Schedule 2;

Spate Conditions	means circumstances when the number and frequency of emergency calls directed to the Joint Control exceeds the capacity to answer calls within an acceptable time;
Statement of Requirements	means the specifications set out at Schedule 1 containing the description of and requirements for the Interim Service and the Operational Service;
Staff Data	such Personal Data (including sensitive personal data as defined by the DPA) relating to the Transferring Employees or the Later Transferring Employees (as applicable) which WSCC or ESFA (as applicable) shall reasonably require, including but not limited to copies of their current contracts of employment and all relevant policies and procedures applying to the Transferring Employees at the Commencement Date or the Later Transferring Employees at the Service Transfer Date (as applicable and as defined in Schedule 3), together with all National Insurance and PAYE records;
Term	means the term of this Agreement calculated in accordance with Clause 2 and as extended in accordance with clause 2.2, if applicable;
Transferring Employees	any person under a contract of employment with WSCC who is transferred to ESFA pursuant to TUPE, details of whom are set out in Schedule 3;
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
WSCC Business Continuity Plan	means the plan prepared by WSCC and supplemented by ESFA for use during the Interim Period for ensuring that services continue to be provided in the event of disruption including but not limited to technology or other failure, severe weather, pandemic, or industrial action and dealing with Major Incidents and large scale incidents;
WSCC Costs	means the Budget costs borne exclusively by WSCC,

- details of which are set out in Schedule 2;
- WSCC Equipment means the equipment provided by WSCC which is necessary for call handling and mobilisation and which shall be provided by WSCC in order that ESFA can provide the Operational Service, as set out in Part B of the Statement of Requirements.
- WSCC's Premises means the Chichester Premises, the Haywards Heath Premises and the Interim Fallback Premises;
- WSCC Software means the software provided by WSCC necessary to provide the Interim Service and the Operational Service which is further detailed in the Statement of Requirements;
- Working Day means any day other than a Saturday or Sunday, bank holiday or public holiday in England and Wales;
- 1.2 A reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument or the like shall include a reference to any amendment or re-enactment whether taking effect before or after the Commencement Date.
- 1.3 Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.
- 1.4 Words preceding "include", "includes", "including" and "included" are to be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as eiusdem generis shall not apply.
- 1.5 Headings are for convenience only and are not to be taken into consideration interpreting this Agreement.
- 1.6 References to Schedules and Appendices are references to Schedules and Appendices of this Agreement and a reference to a paragraph is a reference to the paragraph in the Schedule containing such a reference.
- 1.7 The Schedules and Appendices shall be deemed to form and be read and construed as part of this Agreement.

2. TERM & EXTENSION

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue for seven (7) years from the Cut Over Date unless:
- 2.1.1 terminated by either Party giving not less than 18 months' written notice to the other Party; or
 - 2.1.2 terminated otherwise in accordance with the provisions of this Agreement.
- 2.2 The Parties may, by agreement, extend the Term for a period or periods of up to seven (7) years and shall use their reasonable endeavours to reach agreement on whether or not to extend no later than 18 months prior to the expiry of the Term.

3. DISCHARGE OF FUNCTIONS

- 3.1 With effect from the Commencement Date, ESFA shall discharge call handling, mobilisation and related functions pursuant to sections 7(2)(c), 8(2)(c) and 9(3)(c) of the Act for WSCC.
- 3.2 The Functions set out at clause 3.1 shall be discharged by ESFA only to the extent necessary to enable ESFA to provide the Interim Service and the Operational Service.
- 3.3 This Agreement does not affect the liability of the Parties for the exercise of their statutory functions.
- 3.4 For the avoidance of doubt, ESFA shall not, in providing the Interim Service and the Operational Service, discharge any of the Functions otherwise than in accordance with the provisions of this Agreement.

4. THE INTERIM SERVICE AND THE OPERATIONAL SERVICE

- 4.1 ESFA shall discharge the Functions by:
- 4.1.1 providing the Interim Service during the Interim Period; and
 - 4.1.2 providing the Operational Service from the Cut Over Date for the remainder of the Term.
- 4.2 ESFA shall ensure that:
- 4.2.1 the Interim Service is provided in accordance with the terms of Part A of the Statement of Requirements and the provisions of this Agreement throughout the Interim Period; and

- 4.2.2 the Operational Service is provided in accordance with the terms of Part B of the Statement of Requirements and the provisions of this Agreement from the Cut Over Date and for the remainder of the Term.
- 4.3 ESFA shall ensure that the Interim Service and the Operational Service are provided in accordance with the Law.
- 4.4 ESFA shall:
- 4.4.1 comply with the terms of the WSCC Business Continuity Plan during the Interim Period; and
- 4.4.2 have a Business Continuity Management System and Business Continuity Plan in place from the Cut Over Date for the remainder of the Term, both of which shall comply with the requirements of Part B of the Statement of Requirements (Performance Standards).
- 4.5 ESFA shall comply with the Mobilising Instructions agreed from time to time in accordance with the Mobilising Instructions Agreement Process.
- 4.6 ESFA shall not provide the Interim Service or the Operational Service to any other organisation without WSCC's prior written consent during the Term, such consent not to be unreasonably withheld or delayed.
- 4.7 WSCC shall comply with its obligations as set out in the Statement of Requirements and the Parties agree that WSCC's fulfilment of these obligations is fundamental to this Agreement and is required in order for ESFA to provide the Interim Service and the Operational Service.
- 4.8 The Parties shall comply with the provisions of Schedule 7 (Exit Strategy).
- 4.9 ESFA shall have in place suitable arrangements for dealing with Spate Conditions, including a Mutual Aid Agreement.4.10 ESFA shall have in place suitable arrangements for dealing with a Fallback Event including the provision of a level of suitable technology that will enable the maintenance of the Interim Service and the Operational Service as agreed between the Parties at Executive Governance Board level.

5. PERFORMANCE STANDARDS AND STAFFING REQUIREMENTS

- 5.1 ESFA shall use best endeavours to ensure that the Interim Service and the Operational Service meet or exceed the Performance Standards at all times during

the Term provided that during a Fallback Event Performance Standard P1 shall be met but not be reported on by ESFA.

5.2 WSCC shall use best endeavours to achieve the Performance Standards for WSCC set out in Part A of the Statement of Requirements and ESFA agrees to provide reasonable assistance to WSCC for this purpose.

5.3 Each Party shall provide the other Party with Performance Reports detailing its performance in respect of relevant Performance Standards as set out in the Statement of Requirements.

5.4 If there is a Serious Service Failure, ESFA shall:

- notify the Duty Officer/Chief Operations Officer immediately of the Serious Service Failure and consult promptly regarding action to be taken;
- take appropriate action promptly to resolve the Serious Service Failure;
- follow the WSCC Business Continuity Plan during the Interim Period and the Business Continuity Plan from the Cut Over Date for the remainder of the Term and the Parties shall agree any other actions that may be appropriate; and
- carry out the actions identified in the WSCC Business Continuity Plan or Business Continuity Plan (as applicable) in accordance with its terms.

5.5 At all times from the Cut Over Date, ESFA shall ensure that:

5.5.1 its staff, contractors and agents involved in the provision of the Operational Service are suitably qualified, adequately trained and capable of providing the applicable Operational Service in respect of which they are engaged provided that in exceptional circumstances, ESFA may provide the Operational Service using alternative staff (eg in the case of pandemic or industrial action) to ensure business continuity;

5.5.2 the Performance Standard in respect of the Minimum Staffing Level is met.

5.6 Until such time as the Parties implement agreed Mobilising Instructions, ESFA shall comply with the terms of the Mobilising Instructions used by WSCC for WSCC mobilisations.

5.7 The Parties shall develop agreed Mobilising Instructions as soon as practicable but in any event no later than the Cut Over Date.

6. TRANSFER OF STAFF

The Parties have agreed the terms and conditions which shall apply in relation to Transferring Employees and Later Transferring Employees in Schedule 3 and both parties shall comply with the provisions of that Schedule.

7. PAYMENT

- 7.1 In return for accepting the discharge of Functions and for the provision of the Interim Service and the Operational Service by ESFA in accordance with the terms and conditions of this Agreement, WSCC agrees to make Payment to ESFA in accordance with the provisions of Schedule 2.
- 7.2 ESFA shall not suspend the supply of the Interim Service or the Operational Service if any Payment is overdue unless it is entitled to terminate this agreement under clause 16.
- 7.3 Any Payment is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by WSCC following delivery of a valid VAT invoice.

8. WSCC PREMISES

- 8.1 The provisions of Schedule 4 shall apply in respect of use by ESFA of WSCC Premises for the purposes of the Interim and Operational Services.

9. EQUIPMENT & SOFTWARE

- 9.1 With effect from the Commencement Date for the Interim Period, WSCC shall:
- 9.1.1 grant ESFA a licence to use the Interim Service Equipment for the purpose of providing the Interim Service;
- 9.1.2 grant or procure the grant of a licence or sub-licence (as applicable) to use the WSCC Software in the provision of the Interim Service.
- 9.1.3 and ESFA undertakes to take reasonable care of the Interim Service Equipment and the WSCC Software and to use it only for the provision of the Interim Service and in accordance with any operational manuals supplied by WSCC and to indemnify WSCC against any Loss or damage which it may suffer as a result of ESFA's breach of any of provisions of this clause 9.1.

- 9.2 With effect from the Cut Over Date for the remainder of the Term, ESFA shall supply and maintain to a good standard all the ESFA Equipment and ESFA Software necessary for the provision of the Operational Service (where applicable, in accordance with the provisions of the Statement of Requirements). ESFA shall not replace the ESFA Equipment or ESFA Software without obtaining WSCC's written consent, such consent not to be unreasonably withheld or delayed. However, to avoid any doubt, ESFA shall be entitled to undertake routine upgrades to ESFA Software or hardware without WSCC's consent provided that this does not have a detrimental effect on the Operational Service.
- 9.3 With effect from the Cut Over Date for the remainder of the Term, WSCC shall supply and maintain to a good standard all the WSCC Equipment and the WSCC Software necessary for the provision of the Operational Service (where applicable, in accordance with the provisions of the Statement of Requirements). WSCC shall not replace the WSCC Equipment or WSCC Software without obtaining ESFA's written consent, such consent not to be unreasonably withheld or delayed. However, to avoid any doubt, WSCC shall be entitled to undertake routine upgrades to WSCC Software or hardware without ESFA's consent provided that this does not have a detrimental effect on the Operational Service.
- 9.4 With effect from the Cut Over Date for the remainder of the Term, WSCC shall ensure that the WSCC Equipment and WSCC Software integrates with the ESFA Equipment and ESFA Software.

10. GOVERNANCE BOARDS

- 10.1 The Parties shall establish an Operational Governance Board and an Executive Governance Board by the Commencement Date and in accordance with the provisions of Schedule 6.
- 10.2 The Governance Boards shall be made up of representatives appointed by both Parties in accordance with Schedule 6.
- 10.3 The Governance Boards shall be entitled to establish their own procedures.
- 10.4 The Parties shall co-operate and provide such information, reports and data as reasonably required by the Governance Boards to allow the Governance Boards to perform their roles.

11. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 11.1 Both Parties and their employees and agents shall at all times keep confidential and secret and will not disclose to any person other than a person so authorised by the other Party any Confidential Information provided that:
- the recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Agreement.
- 11.2 The provisions of this Clause 11 shall not apply to any Confidential Information which:
- 11.2.1 is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
- 11.2.2 is obtained by a third party who is lawfully authorised to disclose such information; or
- 11.2.3 is authorised for release by the prior written consent of the Discloser of such Confidential Information to the Recipient; or
- 11.2.4 the disclosure of which is required to ensure the compliance of ESFA with this Agreement; or
- 11.2.5 is required to be disclosed to the professional advisors, including auditors, lawyers, independent consultants, advisors, insurers and bankers of each Party provided that the Receiving Party ensures that the person receiving the Confidential Information is made aware and agrees to be bound by the terms of this Clause 11.
- 11.3 Nothing in this Clause 11 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise required by any Law.
- 11.4 The Parties shall comply with the FOIA, the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 to the extent that they apply to the Parties under this Agreement.
- 11.5 The Parties agree that:
- 11.5.1 the provisions of this Clause 11 are subject to the respective obligations and commitments of the Parties under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004; and

11.5.2 the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the recipient of the relevant request referred to in Clause 11; and

11.5.3 where a Party is managing a request as referred to in Clause 11 the other Party shall cooperate with that Party and shall respond within five (5) working days of any request by that Party for assistance in determining how to respond to a request for disclosure.

11.6 Each Party shall:

11.6.1 notify the other Party of any request for information that it receives relating to the Interim Service or the Operational Service or the subject matter of this Agreement, as defined under section 8 of the FOIA, as soon as practicable after receipt and in any event within 5 (five) working days of receiving a request for information;

11.6.2 provide the other Party with a copy of all information relevant to each and every such request in its possession or power in the form that the other Party requires within seven (7) working days (or such other period as the Parties may specify) of the other Party requesting any such information; and

11.6.3 provide all necessary assistance as reasonably requested by the Party who has received a request for information to enable that Party to respond to a request for information, as defined under Section 8 of the FOIA within the time for compliance set out in section 10 of the FOIA.

12. DATA PROTECTION AND DATA SECURITY

12.1 The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

12.2 Each Party in performing its obligations in relation to the Interim Service and the Operational Service under this Agreement:

12.2.1 shall create and keep up to date such records as it is reasonable and prudent to create including providing details to the other Party of how that other Party's obligations are being performed;

12.2.2 shall keep the records stored electronically in accordance with statutory requirements and appropriate guidance in relation to storing the records;

- 12.2.3 shall take reasonable steps to ensure the security of all records at all times and safeguard the records from unauthorised access or tampering;
- 12.2.4 shall ensure that a comprehensive recovery system is in place in the event of partial or complete failure of the Mobilising System;
- 12.2.5 shall retain Personal Data for such purposes as shall be necessary to meet statutory and operational needs but no longer than is necessary for these purposes;
- 12.2.6 shall register under the DPA to the full extent required for the purposes of this Agreement and maintain such registration to comply in full with the provisions of the DPA and to procure compliance by relevant officers, agents and employees with this Clause 12;
- 12.2.7 shall take all reasonable steps to ensure that its officers, employees, agents and sub-contractors have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data held or processed by the Party and its officers, employees, agents and sub-contractors and that it has taken, or will take at all material times all reasonable steps to ensure the reliability of any of its officers, employees, agents and sub-contractors which will have access to personal data processed as part of the Interim Service and the Operational Service;
- 12.2.8 undertakes that it will act only on the instructions of the other Party in relation to the processing of any personal data made available by or on behalf of that other Party in connection with the Interim Service and the Operational Service (or otherwise);
- 12.2.9 undertakes that it will only obtain, hold, process, use, store and disclose Personal Data as is necessary to perform its obligations under this Agreement and that such data will be held, processed, used, stored and disclosed only in accordance with the DPA and any other applicable Law; and
- 12.2.10 undertakes to allow the other Party access to any relevant premises on reasonable notice to inspect its procedures, technical and organisational measures.
- 12.3 The Parties shall use all reasonable efforts to assist each other to comply with the DPA. The Parties shall assist each other in complying with subject access requests

served on either Party under Section 7 of the DPA and the Parties shall consult with each other prior to the disclosure of any Personal Data in relation to such requests.

- 12.4 WSCC undertakes that in respect of Personal Data received by it (which shall normally be for the purpose of responding to incidents) from the Joint Control that it shall hold such Personal Data as a Data Processor and will only use such Personal Data for the purpose for which it has been sent by ESFA.
- 12.5 ESFA agrees that in respect of Personal Data inherited by it from WSCC from the Commencement Date that it shall hold such Personal Data as Data Processor and will only use such data as is necessary for the running of the Joint Control.
- 12.6 In respect of new Personal Data received by the Joint Control from the Commencement Date the Parties mutually agree that ESFA will be the Data Controller and a Data Processor.
- 12.7 This Clause 12 shall survive the termination or expiry of the Agreement howsoever caused and shall continue thereafter in full force and effect.

13. BEST VALUE

- 13.1 Each Party shall co-operate as far as practicable with the other to meet their respective Best Value duties in connection with the Interim Service and the Operational Service.

13A. INDEMNITIES

13A.1 Subject to Clause 13A.5 and 13A.6, ESFA shall indemnify and keep indemnified WSCC from all losses including :

13A.1.1 any claim by a third party for losses arising from ESFA's performance of the Interim or Operational Service

13A.1.2 any breach of Law for which ESFA is responsible

to the extent that any such losses are due to a breach of contract, negligence, default, breach of Law or fraud of ESFA or of its employees or of any of its representatives or sub-contractors arising from the Interim or Operational Services (save to the extent that the same directly arise from breach of contract, negligence, default, breach of Law or fraud by WSCC its representatives).

13A.2 Subject to Clauses 13A.5 and 13A.6, WSCC shall indemnify and keep indemnified ESFA from all losses including without limitation:

13A.2.1 any claim by a third party for losses arising from WSCC's performance of the obligations under this agreement

13A.2.2 any breach of Law for which WSCC is responsible

to the extent that any such losses are due to a breach of contract, negligence, default, breach of Law or fraud of WSCC or of its employees or of any of its representatives or sub-contractors arising from those obligations (save to the extent that the same directly arise from breach of contract, negligence, default, breach of Law or fraud by ESFA its representatives).

13A.3 Where an indemnity referred to in this clause applies to any claim received arising from the Interim or Operational Services, then the party having the burden of the indemnity shall have full conduct and control of the claim. The other party shall provide all reasonable assistance to it in dealing with the claim. The other party shall be kept fully informed and consulted in relation to the defence of the claim. Any representations upon the substance or defence of the claim made by the other party shall be given proper consideration by the party dealing with the claim.

13A.4 Notwithstanding clause 13A.5, neither Party shall exclude or limit its liability for: (i) death or personal injury caused by negligence; (ii) fraudulent misrepresentation; or (iii) any act or omission for which it would be unlawful for the Parties to exclude liability.

13A.5 Except in relation to liability of the type referred to in 13A.4, neither Party shall be liable to the other for:

- (i) any indirect or consequential loss or damage; and/or
- (ii) loss of profits, business, revenue or goodwill

But for the avoidance of doubt this shall not exclude liability for ESFA in respect of a claim by a third party for losses sustained upon WSCC failing to provide fire and rescue services at an incident where such failure arises from a breach of contract, negligence or default of ESFA in providing the Interim or Operational Services.

13A.6 Subject to clause 13A.4, the aggregate liability of each Party in respect of any loss or damage suffered by the other Party and arising out of or in connection with this Agreement whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed ten million pounds sterling (£10,000,000).

14. INSURANCE

- 14.1 Each Party shall from the Commencement Date maintain in force at least the following insurance policies with reputable insurance companies to cover its relevant potential liabilities in connection with this agreement:
- 14.1.1 a public liability insurance policy with a limit of at least £50 million per claim;
 - 14.1.2 employer's liability insurance with a limit of at least £10 million per claim.
- 14.2 Each Party shall by the Commencement Date and immediately following each renewal date promptly provide documentary evidence to the other Party that all insurance policies have been taken out by that Party pursuant to this Agreement, are fully maintained and that the premiums on them are fully paid.
- 14.3 This Clause 14 shall survive in all respects the expiry of this Agreement or its termination for any reason.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 Ownership of all Background IPR shall remain with the respective owner but each Party hereby grants the other Party a perpetual, irrevocable, royalty free licence to use such of its Background IPR as necessary to enable it to fulfil its functions under this Agreement.
- 15.2 Foreground IPR shall belong absolutely to the Party that creates it from the moment it is created, but that Party hereby grants to the other Party a perpetual, irrevocable, sub-licensable licence to use the Foreground IPR for the purposes of this Agreement during the Term and this licence shall continue after the Term in order to enable WSCC or any Replacement Service Provider to continue to provide control services.

16. TERMINATION

- 16.1 Without prejudice to the remainder of this Clause 16 and Clause 17 either Party shall be entitled to terminate this Agreement at any time without liability to the other Party by giving such other Party written notice of termination in accordance with Clause 2.1.1.
- 16.2 Without prejudice to any other right or remedy it may possess and notwithstanding the provisions of Clause 27 (Dispute Resolution) either Party shall be entitled upon the happening of any of the following events to terminate the Agreement by eighteen months' written notice to the other Party:

- 16.2.1 if any payment or act made or to be made or any matter or thing done or to be done, under this Agreement that is material to the Agreement is, or is reasonably anticipated by either Party to be ultra vires in respect of either Party; and/or
- 16.2.2 if the other Party commits a fundamental breach of this Agreement which in the opinion of the first Party is not capable of remedy; and/or
- 16.2.3 if the other Party having committed a remediable breach or persistent breach does not rectify such breach within three months of a written notice from the first Party requiring such rectification (a 'Remediation Notice'); and/or
- 16.2.4 if the other Party repeats a remediable breach having already received a Remediation Notice for that breach or for a breach substantially similar to that breach; and/or
- 16.2.5 where there is a Change in Law which directly or indirectly results in any material matter contemplated by this Agreement becoming unlawful; and/or
- 16.2.6 if ESFA, having in WSCC's reasonable opinion so failed to provide the Interim Service or the Operational Service adequately or otherwise fulfil its obligations under this Agreement as to place the health and welfare of any service user and/or any employee of ESFA or WSCC in jeopardy provided that if the failure is capable of remedy WSCC shall first give ESFA notice of the failure and 30 Working Days in which to remedy it; and/or
- 16.2.7 if either Party is entitled to terminate the Agreement pursuant to Clause 18 (Prevention of Corruption).

17. EFFECTS OF TERMINATION

- 17.1 With effect from:
 - 17.1.1 the service of any notice of termination of this Agreement by either Party on the other Party, or
 - 17.1.2 the beginning of the period of 18 (eighteen) months immediately prior to the expiry of this Agreement, or
 - 17.1.3 any other expiry or termination of this Agreement for any reason whatsoever
- and for a period of 6 (six) months following such expiry or termination the Exit Strategy shall apply, and the Parties shall undertake all actions and give each other such assistance to ensure a smooth, orderly and effective transfer and ongoing provision of the Interim Service or the Operational Service and to minimise any

disruption of such services and shall not take any action to prejudice or hinder the same.

18. PREVENTION OF CORRUPTION

18.1 If either Party or any of its employees or officers or anyone acting on their behalf (with or without the Party's knowledge):

18.1.1 makes a gift or some other consideration to any person with the intent of obtaining some benefit in relation to the Agreement; and/or

18.1.2 puts pressure on any person with the intent of obtaining some benefit in relation to the Agreement; and/or

18.1.3 commits any offence under the Bribery Act 2010; and/or

18.1.4 commits any other similar offence under any subsequent legislation;

18.1.5 then the other Party shall have the right to terminate the Agreement on notice with immediate effect except where in the reasonable opinion of the enforcing Party:

18.1.6 the action or offence described in Clauses 18.1.1 to 18.1.4 is an isolated and infrequent incident; and

18.1.7 the other Party has taken reasonable steps to avoid the commission by any of its officers, employees or anyone acting on its behalf of any such action or offence and the other Party has taken reasonable steps (including where appropriate the dismissal of any employee or officer) to prevent the future commission by any of its employees or officers or anyone acting on its behalf of any such action or offence; and

18.1.8 such action or offence has not been authorised, endorsed or condoned by the enforcing Party.

19. CHANGE

19.1 The Parties shall review the operation of the arrangements and all or any procedures or requirements of this Agreement in preparation for a Change of Law affecting the arrangements so as to ensure that the arrangements comply with such Law and where either Party considers that a Change in Law requires a Material Change, the provisions of clause 19.2 shall apply.

- 19.2 Any requirement for a Material Change shall be subject to the Change Control Procedure.
- 19.3 The Parties agree that the following matters shall, without limitation, constitute a Material Change:
- full or large numbers of Pre Determined Attendances changes, restructure of any agreed joint working arrangements, any Mobilising System (software or hardware) major upgrade or replacement, increase or decrease in Minimum Staffing Levels.
- 19.4 The Parties agree that a Minor Change shall be dealt with in accordance with the Mobilising Instructions and the Operational Instructions.
- 19.5 The Parties agree that Business As Usual shall not constitute a Material Change for the purposes of the Change Control Procedure and shall be accommodated within the usual operation of the Joint Control.

20. ASSIGNMENT AND SUB CONTRACTING

This Agreement is personal to WSCC and to ESFA and neither Party shall assign or transfer or purport to assign or transfer to any other person any of its rights or obligations under this Agreement, nor shall it subcontract any of its rights or obligations without the prior written consent of the other Party provided that both Parties shall be entitled to transfer this Agreement to a statutory successor taking over the Function.

21. SEVERANCE

- 21.1 If at any time any provision of this Agreement or part of any provision is found by any court or other authority of competent jurisdiction to be or becomes illegal, invalid or unenforceable for any reason, such provision or part provision, to the extent required, shall be deemed to be omitted from this Agreement and shall not affect the legality, validity or enforceability of the remaining provisions in the Agreement.
- 21.2 If a provision of this Agreement or part of any provision is found illegal, invalid or unenforceable the Parties shall negotiate in good faith to amend such provision or part provision such that, as amended, the provision or part provision is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original intentions on entering into this Agreement.

22. WAIVER

- 22.1 The rights and remedies of either Party in respect to this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by such party to the other nor by failure or delay by the said party in ascertaining or exercising of any such rights or remedies.
- 22.2 Any waiver by either party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 22.3 No waiver shall be effective unless it is communicated in writing to the other Party.

23. THIRD PARTY RIGHTS

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement except as provided for in Schedule 3.

24. NOTICES

- 24.1 Except as otherwise expressly provided in this Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party sending the communication.
- 24.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (delivered by hand or sent by post, registered post or by the recorded delivery service) electronic mail or by facsimile transmission. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 (two) Working Days after the day on which the letter was posted, or 4 (four) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 24.3 For the purposes of Clause 24.2 the address of each Party shall be:
- For WSCC: County Hall, West Street, Chichester, West Sussex, PO19 1RQ
- For ESFA: 20, Upperton Road, Eastbourne, East Sussex BN21 1EU
- 24.4 Either Party may change its address for service by serving a notice on the other Party in accordance with this Clause.

25. REPRESENTATION AND WARRANTY

Each Party represents and warrants to the other Party that at the Commencement Date it has full power and authority to enter into and perform its obligations under this Agreement.

26. FURTHER ASSURANCES

The Parties shall carry out, agree and execute all further documents, deeds, agreements and consents as may be necessary to carry out the provisions of this Agreement and bring this Agreement into full force and effect.

27. DISPUTE RESOLUTION PROCEDURE

27.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:

27.1.1 the dispute shall be referred to the Operational Governance Board; and

27.1.2 If the Operational Governance Board fails to resolve the dispute within 14 days of the date referral, either Party may refer the dispute to the Executive Governance Board,

27.1.3 if the Executive Governance Board fails to resolve the dispute within 14 days of the date referral, either party may refer to dispute to the Chief Fire Officers.

27.2 If the Chief Fire Officers fail to resolve the dispute within 14 days of referral the parties shall refer the dispute for Expert Determination.

27.3 An Expert is a person appointed in accordance with this clause to resolve a dispute under this Agreement.

27.4 The Parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of his/her appointment.

27.5 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of two months of the matter being referred to the Expert.

- 27.6 The parties are entitled to make submissions to the Expert and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 27.7 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.
- 27.8 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the dispute which may include any issue involving the interpretation of any provision of this Agreement. The Expert's written decision on the matters referred to him/her shall be final and binding on the parties in the absence of manifest error or fraud.
- 27.9 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him/her in arriving at a determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.
- 27.10 Nothing in this clause 27 shall prevent either party from instigating legal proceedings pursuant to clause 29.

28. ENTIRE AGREEMENT

- 28.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 28.2 Each Party acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statements, representations, warranties or understandings (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than is expressly set out in this Agreement as a warranty.

29. GOVERNING LAW

- 29.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.
- 29.2 Subject to the provisions of Clause 27 (Dispute Resolution) of this Agreement, both Parties agree the courts of England and Wales shall have exclusive jurisdiction to

hear and settle any action, suit, proceeding or dispute in connection with the Agreement.

30. VARIATION

There shall be no variation to this Agreement without the prior written consent of both Parties.

31. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of the deed.

**The Common Seal of)
West Sussex County Council)
was affixed to this deed)
in the presence of)**

Authorised Signatory

**The Common Seal of)
East Sussex)
Fire Authority was affixed to this)
deed in the presence of)**

Authorised Signatory