

CONFIRMED COPY

THE FIRE & RESCUE SERVICES ACT 2004
SECTIONS 13 & 16 AGREEMENT



LONDON FIRE AND EMERGENCY PLANNING AUTHORITY
AND
ESSEX FIRE AUTHORITY

DEED made the 25th day of March 2015

1. Parties:

- 1.1 London Fire and Emergency Planning Authority of 169 Union Street London SE1 0LL
- 1.2 Essex Fire County Fire and Rescue Service of Kelvedon Park, Rivenhall End, Witham, Essex, CM8 2HB.

2. Definitions and Interpretations

- 2.1 "The 2004 Act" means the Fire and Rescue Services Act 2004.
- 2.2 "The Assistor" means the party to the Agreement which under the provisions of this Agreement gives assistance to, or discharges a function of, the other party to this Agreement.
- 2.3 "The Recipient" means the party to this Agreement which under the provisions of this Agreement receives assistance from, or has a function discharged by, the other party to this Agreement.
- 2.4 "The Term" means the period commencing on 1st April 2014 and reviewed annually as a minimum in accordance with Clause 8.2. The Agreement can only be terminated in accordance with the provisions of Clauses 6.1 to 6.4.
- 2.5 "The Reinforcements" means such resources (including personnel, vehicles and other equipment) as the Chief Fire Officer/Chief Executive for the time being employed by the Assistor considers to be available at that time to meet a request for assistance from the Recipient.
- 2.6 The "Annual Charge" means, for each year, a yearly sum calculated by applying the Rates contained within the Schedule. This shall equal the total number of mobilisations each Resource is used by the Assistor in the Recipient's area under Clauses 4.2 and 5.2 multiplied by the Rates included within the Schedule.
- 2.7 "Emergency calls" means telephone and other calls requesting assistance in respect of an incident within a fire and rescue authority's functions under sections 7 to 9 of the 2004 Act.

- 2.8 "Chief Fire Officer/Chief Executive" includes any person authorised to act on his or her behalf
- 2.9 "Year" means the period of twelve months ending on 31 March.
- 2.10 "Emergency" means any incident within a fire and rescue authority's functions under sections 7 to 9, inclusive, of the 2004 Act.
- 2.11 "Agreement" refers to this signed contract between the two Parties securing arrangements under S13 and S16 of the 2004 Act. The full Schedule forms part of the Agreement.
- 2.12 "Rates" means the amounts in pounds Sterling, excluding VAT, which shall be used to charge for each resource used under this Agreement, in accordance with Clause 2.6. Rates shall be fully inclusive of all on-costs and expenses relating to the provision of resources under this Agreement.
- 2.13 "Force Majeure" means in relation to either Party, circumstances beyond the reasonable control of that Party, including, without prejudice to the generality of the aforementioned meaning of the term war, invasion, armed conflict or act of foreign enemy, acts of governmental or supra-national, outbreak of hostilities, national emergency, riots, insurrection, act of terrorism, sabotage, criminal damage, nuclear explosion, radio active or chemical contamination or ionising radiation, fire, explosion, flood, epidemic, lock outs (whether or not by that party), strikes and other industrial disputes, (in each case, whether or not relating to that party's workforce), restraints or delays affecting carriers, inability or delay in obtaining supplies or adequate or suitable materials.

3. Recitals

- 3.1 The Parties have agreed to enter into arrangements on the terms set out in this Agreement.
- i) For securing under S.13 of the 2004 Act the rendering of mutual assistance in discharging their functions under sections 7 to 9 of the 2004 Act
 - ii) For securing under S.16 of the 2004 Act the discharge of some of each others' functions under sections 6 to 9, inclusive, and 11 of the 2004 Act.

AGREEMENT

The intention of this agreement:

Mutual Assistance (S.13)

This agreement sets out the mutual assistance arrangements between the Parties to provide assistance to each other where:

- Recipient has insufficient resources to adequately respond to an incident by itself whilst maintaining normal levels of emergency cover in its own area

or

- Assistor has appropriate resources nearer to an incident which enables it to provide a quicker response.

Discharge of Functions (S.16)

This agreement sets out the arrangements for the discharge of certain functions under sections 6 to 9 inclusive, and 11 of the 2004 Act, as set out in the Schedule where:

- Both Parties have agreed that this arrangement is of mutual benefit; either to enhance the services provided by either Party or to bring overall efficiencies in service delivery

4. Reinforcements

4.1 Pursuant to S.13 of the 2004 Act, the Assistor agrees to provide the Reinforcements to the Recipient in the event of an Emergency during the Term of this agreement as soon as the Assistor considers is reasonably practicable in the prevailing circumstances.

4.2 Pursuant to S.13 of the 2004 Act, the Recipient agrees and undertakes to pay to the Assistor the Annual Charge annually in arrears within 28 days, or such period as mutually agreed between both Parties, of receiving a detailed invoice for the performance by the Assistor of the Reinforcement duties as stated in Clause 2.6.

5. Discharge of functions

5.1 Pursuant to S.16 of the 2004 Act, the Assistor agrees to discharge certain functions under the 2004 Act during the Term, as specified in the Schedule.

5.2 Pursuant to S.16 of the 2004 Act, the Recipient agrees and undertakes to pay to the Assistor party the Annual Charge annually in arrears within 28 days, or such period as mutually agreed between both Parties, of receiving a detailed invoice for the performance by the Assistor of the discharged functions as stated in Clause 2.6.

6. Termination

- 6.1 It is not the intention of either Party, while both parties have statutory functions, to terminate this Agreement and it will only be terminated under exceptional circumstances.
- 6.2 This Agreement may be terminated at any time by either party giving to the other not less than six-calendar months' prior written notice to expire at any time.
- 6.3 For the purposes of Clause 6.2, such notice shall be deemed to be validly served by one party if sent by Recorded Delivery Post addressed to the other party at the registered address of that Party.
- 6.4 The Party terminating the Agreement shall pay any reasonable costs incurred by the other Party as a result of termination. If both Parties are unable to agree reasonable costs the amount shall be determined under Dispute Resolution as set out in Clause 10.1.
- 6.5 Both Parties shall inform the Secretary of State of any intention to terminate this Agreement.

7. Liability and Indemnity

- 7.1 Subject to Clause 7.3, both the Assistor and the Recipient shall indemnify and keep indemnified the other from and against all costs, liabilities fees, charges and damages howsoever caused in respect of death or personal injury or loss of or damage to any property caused whilst acting under the provisions of this Agreement to the extent that the said costs, liabilities fees, charges and damages are due to their negligence or the negligence of their respective employees servants or agents.
- 7.2 For the purposes of this agreement, but without prejudice to clause 7.1, the Assistor and the Recipient agree that their respective fire crews shall be regarded as agents of the other party to the agreement during such time as they are dealing with an incident on behalf of the other party to the agreement whilst under the overall command of an officer of the other party to the Agreement.
- 7.3 Neither Party shall be under any liability whatsoever to the other in respect of any indirect or consequential loss arising by reason of any performance or failure to perform any obligation under this Agreement.
- 7.4 Each of the parties shall at its own cost maintain in effect at all times adequate insurance against all and any particular liability it may incur hereunder, and, without prejudice to the need to maintain adequate insurance in the circumstances of this agreement, shall maintain such levels of insurance as are required by law.

7.5 In respect of any claim arising under any indemnity contained in this Agreement, the Party indemnified ("The Indemnified Party") shall:

7.4.1 As soon as reasonably practicable give to the other Party ("The Indemnifying Party") written notice of any matter in respect of which The Indemnified Party is claiming to be indemnified by The Indemnifying Party, and all relevant details relating to the said matter in the knowledge or possession of The Indemnified Party. If further relevant details pertaining to the said matter become known to the Indemnified Party, that party will disclose to The Indemnifying Party such relevant details as soon as is reasonably practicable.

7.4.2 Where the claim is one made by any third party against The Indemnified Party, the Indemnified Party shall not admit liability or make any offer, promise, compromise, settlement or communication with the third party in respect of the claim without the prior written consent of The Indemnifying Party, (which shall not be unreasonably withheld or delayed), and

7.4.3 Where the claim relates to a claim by any third party against The Indemnified Party, at the request of The Indemnifying Party and subject to The Indemnifying Party providing reasonable satisfaction to The Indemnified Party respecting security for all financial matters pertaining to the said claim, including costs, charges and expenses, the Indemnified Party shall surrender to the Indemnifying Party, or its insurers, on request, the conduct, in the indemnified Party's name, of the defence, settlement and/or counterclaim of the third party's claim (provided that the Indemnified Party shall be kept fully informed about the conduct of such defence, settlement and/or counterclaim).

8. Contract review and variations

8.1 This Agreement, including the Schedule, may be varied at any time by mutual agreement between the parties, such variation to be recorded by written memorandum, signed and dated by both parties and attached to this Agreement.

8.2 The Agreement, including the Schedule, shall be reviewed at intervals of no more than 12 months. This will normally occur on 1 April each year. Additionally the Agreement shall be reviewed at the request of either Party.

8.3 The Agreement shall be reviewed, and if necessary varied, if either Party proposes to change resources available under the Schedule or makes any other changes which may impact on Reinforcements available under this Agreement.

8.4 At each annual review the Rates contained within the Schedule shall be reviewed and agreed by both Parties.

8.5 Both Parties shall inform the Secretary of State immediately of any variation to this Agreement.

9. Force Majeure

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

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

9.2.1 it shall give written notice to the other Party, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable on becoming aware of the Force Majeure and will at all times use all reasonable endeavours to mitigate the severity of the Force Majeure; and

9.2.2 subject to the provisions of this clause, the date for performance of such obligation shall be deemed suspended but only for a period equal to the delay caused by such event constituting Force Majeure.

9.3 If at any time either party claims Force Majeure in respect of its obligations under this Agreement with regard to the performance of the Services or any part thereof, the other party will not be liable to make any payment of the Annual Charge relating to the period that Force Majeure persists.

9.4 Separate arrangements shall be put in place for periods of strike or other industrial action involving staff from either Party. Under such circumstances this Agreement shall be suspended, regardless of whether the Assistor or the Recipient is directly affected by the action.

10. Disagreement and resolution

10.1 In the event of disagreement between the Parties, regarding matters to which this agreement relates, The Local Government Association shall act as the arbitrator in any issue relating to the established arrangement which the Parties cannot resolve themselves. (The 2004 Act gives a role to the Secretary of State as final arbitrator on request from an FRA which is unable to reach agreement with others on the making, terms variation or revocation of an S13 Reinforcement Scheme or S16 Arrangement).

11. Operational arrangements and incident command

- 11.1 On occasions where the resources employed by the Assistor are deployed singly under this Agreement, they will be controlled using National Incident Command principles and the Assistor's standard operating procedures as set out in the Schedule.
- 11.2 Large or complex incidents may be under the Incident Command of the Recipient but firefighters deployed by the Assistor under this Agreement shall work as complete crews under the supervision of officers from the Assistor party. Crews shall not be split up such that individual firefighters from both Parties are working together as part of the same crew.
- 11.3 At a frequency mutually agreed between the Parties, joint training exercises between both Parties shall be undertaken at identified major risk site as determined in the Schedule.
- 11.4 All relevant premises risk information held by the either Party shall be supplied to the other Party before the commencement of this Agreement. This risk information shall be kept up to date, so that both Parties receive the risk information as soon as reasonably practicable.
- 11.5 The Recipient party shall ensure that all Assistor staff are provided with adequate food, hygiene/comfort facilities and short-term accommodation whilst deployed under this agreement.

11.6 *The LFC will deploy a minimum of two pumping appliances to all fire related incidents involving buildings.*

12. General

- 12.1 The Assistor shall keep accurate and complete records of all Emergency Calls or incidents to which it has responded under the provisions of this Agreement and submit copies of such records to the other party on request.

13. Freedom of Information Act 2000

- 13.1 Both Parties agree that this Agreement may be disclosed in part or in its entirety in response to any request for disclosure of information pursuant to the Freedom of Information Act 2000.

14. Third Party Contracts

- 14.1 This Agreement shall not be sub-contracted without the approval of both Parties.
- 14.2 Both Parties hereby agree that they do not intend that any third party which may benefit from this Agreement shall have any rights of enforcement under the terms of the Contract (Rights of Third Parties) Act 1999.

IN WITNESS of which this deed was executed as a deed

SIGNED AND DELIVERED as a deed by Dara Vexter

For and on behalf of London Fire and Emergency Planning Authority

Name DARA VEXTER

Title SOLICITOR

Date 2nd MARCH 2015

EXECUTED as a DEED by affixing the common
seal of THE LONDON FIRE AND
EMERGENCY PLANNING AUTHORITY
hereunto to this Deed in the presence of the

) [Common Seal]
)
)
)
)

Dara Vexter

For Head of Legal and
Democratic Services

CS/DEM 1661

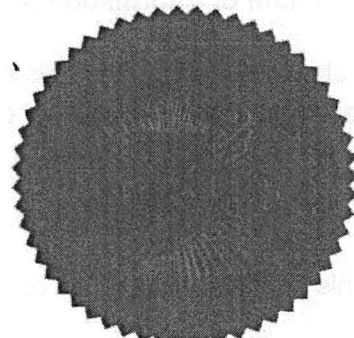
EXECUTED as a DEED by affixing the common seal
of Essex Fire Authority for and on behalf of the
Authority in the presence of

[Common Seal]

PHILIP THOMSON

Name

[Signature]
Signature



Seal no. 76

THE SCHEDULE

SECTION 13 – MUTUAL ASSISTANCE

London Fire and Emergency Planning Authority available resource type(s)	Rate £
Pumping Appliance per hour	£295

Essex Fire Authority available resource type(s)	Rate £
Pumping Appliance per hour	£295

Identified resources under this agreement. This does not mean that all of these resources are available all of the time.

Identified response location	Essex Fire Authority resource required as part of the pre -determined attendance
None identified	N/A

(locations shown on the map highlighted in blue in Appendix A)

Identified response location	London Fire and Emergency Planning Authority resource required as part of the pre -determined attendance
None identified	N/A

(Locations shown on the map highlighted in blue in Appendix A)

SECTION 16

Pursuant to S.16 of the 2004 Act and Clause 5 of this Agreement, Essex Fire Authority agrees to discharge the following functions of London Fire and Emergency Planning Authority under the 2004 Act during the Term.

Function	Geographical Area	Rate £
None Identified	N/A	N/A

Pursuant to S.16 of the 2004 Act and Clause 5 of this Agreement, London Fire and Emergency Planning Authority agrees to discharge the following functions of Essex Fire Authority under the 2004 Act during the Term.

Function	Geographical Area	Rate £
None identified	N/A	N/A

RISK SITES

Identified sites within London Fire and Emergency Planning Authority area	
Site name	Site location (OS reference)
Incident hazard information is available via our Control Room on your dedicated talk group.	

Identified sites within Essex area.	
Site name	Site location (OS reference)
Incident hazard information is available via our Control Room on your dedicated talk group.	

TRAINING AND EXERCISING

Both parties agree to conduct a joint training exercise at a risk site at a frequency of not less than 12 months.

APPENDIX A