



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

..... 2010

Draft

AGREEMENT

BETWEEN:

THE WELSH MINISTERS

-and-

[NORTH WALES FIRE and RESCUE AUTHORITY]

Transfer of
New Dimension Assets

THIS AGREEMENT is made on 2010

BETWEEN

(1) **THE WELSH MINISTERS** of Crown Building, Cathays Park, Cardiff, CF10 3NQ ("the Welsh Ministers")

and

(2) **[NORTH WALES FIRE and RESCUE AUTHORITY]** of ("the FRA").

BACKGROUND

- (1) The UK Government has transferred to the Welsh Ministers certain equipment for the purposes of the New Dimension Project in Wales ("the New Dimension Assets").
- (2) The Welsh Ministers wish to transfer the ownership of the New Dimension Assets to the Welsh fire and rescue authorities.
- (3) The specific items of equipment to be transferred to the FRA are listed in the Schedule ("the Equipment").
- (4) Before the date of this Agreement the FRA has commenced use of the Equipment.
- (5) Before the transfer mentioned in recital (1) and at the request of the UK Government, Firebuy Limited (Company number 5568715) ("Firebuy") appointed a contractor ("the Prime Contractor") for maintenance and management services in respect of the New Dimension Assets including the Equipment.
- (6) The FRA has agreed with the Welsh Ministers to accept the transfer of the Equipment and to carry out the obligations set out in this Agreement.

IT IS AGREED as follows:

1 Interpretation

25 August 2010

- 1.1 Unless the context requires otherwise "Equipment" includes both the Equipment transferred under this Agreement and any equipment agreed to be transferred under clause 7 (Changes to the Equipment).
- 1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender.
- 1.3 The headings are inserted for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 Save where express provision is made to the contrary, any reference to a statute, statutory provision or subordinate legislation shall be construed as a reference to that legislation as amended and in force from time to time, including any re-enactment, consolidation or replacement (with or without modification). In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision.

2 Transfer

- 2.1 The Welsh Ministers agree to transfer ownership of the Equipment and the FRA agrees to accept that transfer with effect from 00.01 hours on [..... 2010] (" the Time of Transfer").
- 2.2 Subject to clause 2.3, the transfer includes all rights and claims of the Welsh Ministers against third parties with respect to the Equipment so far as the Welsh Ministers can assign the same.
- 2.3 The transfer excludes:
 - 2.3.1 all intellectual property rights owned or used by the Welsh Ministers in relation to the Equipment; and
 - 2.3.2 the communication equipment and associated wiring installed as part of the Firelink Project (Firelink Equipment) including all property, assets, rights and liabilities relating to the Firelink Equipment whether or not such Firelink Equipment is incorporated into or attached to the Equipment.
- 2.4 The Welsh Ministers warrant that:
 - 2.4.1 they have legal and equitable title to the Equipment prior to the Time of Transfer;
 - 2.4.2 no person has commenced or to their knowledge, threatened to commence, any legal proceedings in relation to the Equipment which would be materially inconsistent with the transfer of ownership of the Equipment under clause 2.1; and

2.4.3 there are no encumbrances in respect of the Equipment or agreement by Welsh Ministers to create such an encumbrance.

3 Completion

3.1 Completion of the transfer shall take place at the Time of Transfer.

3.2 Risk and property in and title to the Equipment shall pass to the FRA at the Time of Transfer.

3.3 The Welsh Ministers shall at or as soon as practicable after the Time of Transfer deliver to the FRA all transfers assignments and novations (if necessary) in connection with the Equipment together with the relevant documents of title necessary to give effect to this Agreement.

4 Liabilities

The FRA agrees to accept the transfer of the Equipment on the terms of this Agreement but the Welsh Ministers shall retain and discharge all debts owing by the Welsh Ministers in respect of the Equipment and all other liabilities of the Equipment subsisting as at the Time of Transfer.

5 Further Assurance

The Welsh Ministers agree and declare that they will, after and notwithstanding completion of the transfer under this Agreement, execute and deliver any other documents and take any other steps that the Welsh Ministers consider necessary from time to time to vest the Equipment in the FRA.

6 Obligations of the FRA

6.1 The FRA shall, as soon as practicable, contract for maintenance and management services in respect of the Equipment from the Prime Contractor by entering into a Terms of Access Agreement between the FRA, Firebuy and the Prime Contractor (in the form of a draft of which has been provided to the FRA before the date of this Agreement).

If the FRA has not entered into such a Terms of Access Agreement within 3 months from the date of this Agreement, this Agreement shall be null and void and the rights of the Parties shall be as if this Agreement had not been entered into.

6.2 The FRA shall comply in all material respects with its obligations under the Terms of Access Agreement.

6.3 The FRA agrees with the Welsh Ministers that, in the event of a breach of clause 6.2, specific performance would be the appropriate remedy to be granted by the court.

- 6.4 The FRA shall be liable for all costs relating to the maintenance and management of Equipment under the Terms of Access Agreement.
- 6.5 The FRA agrees to maintain national interoperability of the Equipment and for the purposes of this clause “interoperability” is the state of affairs where the Equipment remains capable of being used or operated in the same way as other New Dimension Assets owned by other FRAs, the UK Government or the Welsh Ministers.
- 6.6 The FRA shall not without the prior written approval of the Welsh Ministers (the Welsh Ministers agree that any approval by the Welsh Ministers is not to be unreasonably withheld and any request is to be responded to by the Welsh Ministers as soon as reasonably practicable):
- 6.6.1 replace the Equipment;
 - 6.6.2 change the specifications (amounts, technology etc.) or stowage arrangements of the Equipment;
 - 6.6.3 carry out repairs and/or maintenance to the Equipment or engage or contract with any other person to undertake the same save –
 - (a) in accordance with Clause 6.1, or
 - (b) where Firebuy and the Prime Contractor have agreed that the FRA can undertake such repairs and/or maintenance.
- 6.7 The FRA shall maintain the Equipment so that –
- 6.7.1 at all times it is fit for purpose for meeting the needs of deployment under the National Mutual Aid Protocol or the Fire and Rescue Service (Emergencies) (Wales) Order 2007, and
 - 6.7.2 in all material respects it meets the technical design specification at the Time of Transfer (or as notified to the FRA in writing by the Welsh Ministers for the purposes of the New Dimension Project in Wales).
- 6.8 The FRA shall use its best endeavours to retain a level of competent staff such that the Equipment may be deployed as described in sub-clause 6.7.
- 6.9 The FRA –
- 6.9.1 shall deploy the Equipment as and when it is required for the purposes of the New Dimension Project; and
 - 6.9.2 unless the Equipment is required as mentioned in clause 6.9.1, may deploy the Equipment for other fire and rescue purposes.

6.10 The FRA shall report promptly the status of the Equipment by notifying the Fire and Rescue Service National Coordination Centre (“FRSNCC”) (or such body or person as notified to the FRA by the Welsh Ministers):

6.10.1 whenever any of the Equipment becomes operationally unavailable and is expected to remain so for more than four hours (in which case the notice shall be given within one hour of the FRA becoming aware of the defect);

6.10.2 whenever any of the Equipment becomes operationally available and ready for deployment following a period of unavailability or following deployment;

6.10.3 when there is a change of location of, and contact numbers for, the Equipment;

6.10.4 when the Equipment is deployed to an incident.

6.11 For the avoidance of doubt, the obligations of the FRA under this Agreement in relation to the availability and deployment of an item of Equipment shall not have effect for so long as: -

6.11.1 that item of Equipment is in the course of regular maintenance; or

6.11.2 that item of Equipment is awaiting or in the course of unplanned maintenance, repair or re-equipping.

7 Changes to the Equipment

7.1 This clause applies to any item of the Equipment which is (with the approval of the Welsh Ministers under clause 6.6, if required)–

7.1.1 added to, or removed from, the New Dimension Assets owned by the FRA;

7.1.2 a replacement for any item of Equipment which is subject to this Agreement.

7.2 The FRA shall sign a memorandum (under the hand of an authorised member of staff) specifying any item of equipment to which this clause applies and send it to the Welsh Ministers as soon as possible after such addition, removal or replacement has taken place.

7.3 The terms of this Agreement will apply to any item of Equipment which is –

7.3.1 added or provided as a replacement as mentioned in sub-clause 7.1

7.3.2 altered but intended to remain as an item of equipment for the purposes of the New Dimension Project in Wales.

8 Reduction in funding and re-transfer

- 8.1 The Welsh Ministers agree with the FRA that they will not reduce Funding to the FRA unless they have first consulted with the FRA on the proposed reduction.
- 8.2 In the event of any reduction in Funding, unless the Parties agree otherwise, the FRA will transfer ownership of the Equipment and the Welsh Ministers will accept that transfer.
- 8.3 Unless the Parties otherwise agree, the transfer will take effect one month after the effective date.
- 8.4 The Welsh Ministers agree to indemnify the FRA against the liability for such costs and charges for which the FRA would otherwise become responsible under the contract mentioned in clause 6.1 after the transfer to the Welsh Ministers.
- 8.5 In this clause –

“the effective date” means the date, as notified to the FRA in writing, when the reduction in Funding has effect;

“Funding” means the financial contributions made by the Welsh Ministers to the FRA :

- (a) towards CNR cost;
- (b) for the Wales NR Team;
- (c) for the National Co-ordination Centre;
- (d) for Fire Service College Training;
- (e) for training and exercising;
- (f) for asset insurance;
- (g) for the USAR Team;

“reduction” in contribution in one year is to be construed by reference to the previous year’s contribution plus RPI.

9 Costs

Each party shall bear its own costs of and incidental to the preparation and completion of this Agreement.

10 Governing law

This Agreement shall be construed in accordance with and governed by the laws of England and Wales.

EXECUTED AS A DEED by the Parties and delivered on the day and year first herein written.

**Schedule
The Equipment**

Asset	Fleet Number	Vehicle Number	Net Book Value (Modified Historic Cost Valuation)
Prime Mover (2)	PM 074 PM 230	WX54 VNB WX54 VVL	£116,760.92 £116,760.92
Incident Response Unit (2)	IRU 063 IRU 019	DG53 FYR DG53 FYC	£209,157.48 £209,157.48
IRU Training Stillages (2)	N/A	N/A	£35,000
Fork Lift Truck (2)	FLT 063 FLT 019	KR53 VUP KR53 VTM	Inclusive in Incident Response Unit costs
High Volume Pump: Hydrosub, hose boxes and sleds	DC 08P DC 32H	N/A N/A	£177,868.27
Hose Stillages (1)	N/A	N/A	£87.50
Gas tight suits (operational spares, non- mobile stock) (48)	N/A	N/A	£28,800
Satellite phones (1)	N/A	N/A	£3,500
TIC (29)	N/A	N/A	£104,400
EPD (70)	N/A	N/A	£11,200
Rados (35)	N/A	N/A	£50,400
Zellweger Enforcer Calibration Instrument (2)	N/A	N/A	£206.40
Zellweger Training Detectors (2)	N/A	N/A	£707.20
PRPS Training (6)	N/A	N/A	£3,600

Additional Assets – will form part of a Change Control Note (CCN) to be included in Terms of Access Contract between FRAs, Firebuy and VT.

Additional Assets	Quantity	Net Book Value (Modified Historic Cost Valuation)
High Volume Pump (HVP) non – mobile stock		
Ramps	3	£9,000
Gate valves	3	£1,225
Distribution manifolds	1	£1,316
Mass Decontamination non-mobile stock		

Flow control training kits	1	£5,070.62
PRPS (Training)	6	£3,600
Electronic Personal Dosimeters (EPDs)	162	£27,345.60
EPD Reader and keypad (inc software)	1	£2,334.40
Complete MD Training Ancillary Kit and Training MD4 with ancillary	1	£17,500

EXECUTED AS A DEED by applying the seal of the Welsh Ministers

The application of the seal of the Welsh Ministers is authenticated by

.....
 who is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh Ministers under section 90(2) of the Government of Wales Act 2006.

Signed :

Name:

Job title:

The Common Seal of theWales
 Fire and Rescue Authority was hereunto affixed
 in the presence of:

.....

[designation]

.....

[designation]

25 August 2010