

CONTRACT FOR THE PROVISION OF
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TERMS AND CONDITIONS

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DATED

30 JUNE 2021



GOODS AND SERVICES AGREEMENT

(1) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

AND

(2) EXPONENTIAL-E LIMITED

AGREEMENT

relating to the provision of service partner services,
including service management, helpdesk and
environment management

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SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

CONTENTS

Page

SECTION A - PRELIMINARIES	9
1 DEFINITIONS AND INTERPRETATION	9
2 DUE DILIGENCE	ERROR! BOOKMARK NOT DEFINED.
3 WARRANTIES	ERROR! BOOKMARK NOT DEFINED.
SECTION B – THE SERVICES	ERROR! BOOKMARK NOT DEFINED.
4 TERM	ERROR! BOOKMARK NOT DEFINED.
5 SERVICES	ERROR! BOOKMARK NOT DEFINED.
6 IMPLEMENTATION	ERROR! BOOKMARK NOT DEFINED.
7 PERFORMANCE INDICATORS	ERROR! BOOKMARK NOT DEFINED.
8 SERVICES IMPROVEMENT	ERROR! BOOKMARK NOT DEFINED.
9 MAINTENANCE	ERROR! BOOKMARK NOT DEFINED.
SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS	ERROR! BOOKMARK NOT DEFINED.
10 FINANCIAL AND TAXATION MATTERS	ERROR! BOOKMARK NOT DEFINED.
SECTION D - CONTRACT GOVERNANCE	ERROR! BOOKMARK NOT DEFINED.
11 GOVERNANCE	ERROR! BOOKMARK NOT DEFINED.
12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA	ERROR! BOOKMARK NOT DEFINED.
13 CHANGE	ERROR! BOOKMARK NOT DEFINED.
SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN	ERROR! BOOKMARK NOT DEFINED.
14 SUPPLIER PERSONNEL	ERROR! BOOKMARK NOT DEFINED.
15 SUPPLY CHAIN RIGHTS AND PROTECTIONS	ERROR! BOOKMARK NOT DEFINED.
SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY	ERROR! BOOKMARK NOT DEFINED.
16 INTELLECTUAL PROPERTY RIGHTS	ERROR! BOOKMARK NOT DEFINED.
17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER	ERROR! BOOKMARK NOT DEFINED.
18 LICENCES GRANTED BY THE AUTHORITY	ERROR! BOOKMARK NOT DEFINED.

ARP SERVICE PARTNER

OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

19	IPRS INDEMNITY	ERROR! BOOKMARK NOT DEFINED.
20	AUTHORITY DATA AND SECURITY REQUIREMENTS	ERROR! BOOKMARK NOT DEFINED.
21	CONFIDENTIALITY	ERROR! BOOKMARK NOT DEFINED.
22	TRANSPARENCY AND FREEDOM OF INFORMATION	ERROR! BOOKMARK NOT DEFINED.
23	PROTECTION OF PERSONAL DATA	ERROR! BOOKMARK NOT DEFINED.
24	PUBLICITY AND BRANDING	ERROR! BOOKMARK NOT DEFINED.
SECTION G - LIABILITY, INDEMNITIES AND INSURANCE		
25	LIMITATIONS ON LIABILITY	ERROR! BOOKMARK NOT DEFINED.
26	INSURANCE	ERROR! BOOKMARK NOT DEFINED.
SECTION H – REMEDIES AND RELIEF		
27	RECTIFICATION PLAN PROCESS	ERROR! BOOKMARK NOT DEFINED.
28	DELAY PAYMENTS	ERROR! BOOKMARK NOT DEFINED.
29	STEP-IN RIGHTS	ERROR! BOOKMARK NOT DEFINED.
30	AUTHORITY CAUSE	ERROR! BOOKMARK NOT DEFINED.
31	FORCE MAJEURE	ERROR! BOOKMARK NOT DEFINED.
SECTION I – TERMINATION AND EXIT MANAGEMENT		
32	TERMINATION RIGHTS	ERROR! BOOKMARK NOT DEFINED.
33	CONSEQUENCES OF EXPIRY OR TERMINATION	ERROR! BOOKMARK NOT DEFINED.
SECTION J - MISCELLANEOUS AND GOVERNING LAW		
34	COMPLIANCE	ERROR! BOOKMARK NOT DEFINED.
35	ASSIGNMENT AND NOVATION	ERROR! BOOKMARK NOT DEFINED.
36	WAIVER AND CUMULATIVE REMEDIES	ERROR! BOOKMARK NOT DEFINED.
37	RELATIONSHIP OF THE PARTIES	ERROR! BOOKMARK NOT DEFINED.
38	PREVENTION OF FRAUD AND BRIBERY	ERROR! BOOKMARK NOT DEFINED.
39	SEVERANCE	ERROR! BOOKMARK NOT DEFINED.
40	FURTHER ASSURANCES	ERROR! BOOKMARK NOT DEFINED.
41	ENTIRE AGREEMENT	ERROR! BOOKMARK NOT DEFINED.

ARP SERVICE PARTNER

OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

42	THIRD PARTY RIGHTS	ERROR! BOOKMARK NOT DEFINED.
43	NOTICES	ERROR! BOOKMARK NOT DEFINED.
44	DISPUTES	ERROR! BOOKMARK NOT DEFINED.
45	GOVERNING LAW AND JURISDICTION	ERROR! BOOKMARK NOT DEFINED.
46	COUNTERPARTS/DUPPLICATES	ERROR! BOOKMARK NOT DEFINED.

ARP SERVICE PARTNER

OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

SCHEDULES

1. **Definitions**

2. **Service Requirements**

- 2.1 Services Description
- 2.2 Performance Levels
- 2.3 Standards
- 2.4 Security Management
- 2.5 Insurance Requirements
- 2.6 Documentary Deliverables
- 2.7 Not Used
- 2.8 Future Services

3. **Authority Responsibilities**

4. **Supplier Matters**

- 4.1 Not Used
- 4.2 Commercially Sensitive Information
- 4.3 Notified Key Sub-contractors
- 4.4 Third Party Contracts

5. **Software**

6. **Implementation and Testing**

- 6.1 Implementation Plan
- 6.2 Testing Procedures

7. **Financial Matters**

- 7.1 Charges and Invoicing
- 7.2 Payments on Termination
- 7.3 Benchmarking
- 7.4 Financial Distress
- 7.5 Financial Reports and Audit Rights

8. **Governance**

- 8.1 Governance
- 8.2 Change Control Procedure
- 8.3 Dispute Resolution Procedure
- 8.4 Reports and Records Provisions
- 8.5 Exit Management
- 8.6 Service Continuity Plan and Corporate Resolution Planning
- 8.7 Conduct of Claims
- 8.8 Collaboration

9. **Employment**

- 9.1 Staff Transfer
- 9.2 Key Personnel

ARP SERVICE PARTNER

OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

- 10. **Bank Guarantee**
- 11. **Processing Personal Data**

ARP SERVICE PARTNER

OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

THIS AGREEMENT is made on 30 June 2021

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE** of 39 Victoria Street, London SW1H 0EU, acting as part of the Crown (the "**Authority**"); and
- (2) **EXPONENTIAL-E LIMITED** a company registered in England and Wales under company number 04499567 whose registered office is at 100 Leman Street, London, E1 8EU (the "**Supplier**"),
- (each a "**Party**" and together the "**Parties**").

INTRODUCTION

- (A) The ESMCP is replacing the current Airwave Network with the ESN.
- (B) The Authority is delivering additional programmes which, combined with the ESMCP, will create an end-to-end safety of life critical communications system for the English Ambulance Trusts, as well as providing options for other Service Recipients to receive Services under this Agreement.
- (C) The constituent programmes being delivered by the Authority are:
- **ESN** – the replacement of the Airwave network which is being delivered by the Home Office's ESMCP.
 - **CRS** – the delivery of the new integrated communications and control system to the English Ambulance Trusts, the Welsh Ambulance Service NHS Trust and the Scottish Ambulance Service. The contract for the delivery of CRS was awarded to Frequentis in May 2017.
 - **MDVS** – the delivering of the new NMA to the English Ambulance Trusts (and potentially the Welsh Ambulance Service NHS Trust and/or the Scottish Ambulance Service, if those bodies elect to participate in the MDVS programme). The scope of the MDVS programme also includes the delivery of Vehicle Hardware to run the NMA and the replacement of TETRA radio terminals with devices that can connect to the ESN.
- (D) Under this Agreement, the Authority now wishes to procure a supplier to fulfil the role of a service partner to support the Authority projects delivering the constituent programmes above and ensure that its supplier solution offers both flexibility and scalability to be able to support future Authority initiatives and product offerings.
- (E) The Supplier is a provider of service partner services, including service management, helpdesk and environment management and has previous experience delivering such services.
- (F) On 27 July 2020, the Authority advertised in the Official Journal of the European Union (reference 2020/S 145-358168), inviting prospective suppliers to submit proposals for the provision of service partner services, including service management, helpdesk and environment management.
- (G) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier to provide the Services and the Parties have agreed to contract with each other in accordance with the Terms and Conditions set out below.

IT IS AGREED as follows:

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SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Schedule 1 (*Definitions*), the terms and conditions of this Agreement or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry (including ITIL Guidelines V4.0 and PRINCE2, as amended from time to time) where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Agreement, unless the context otherwise requires or is expressly stated:
- 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 references to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time) any EU:
 - (a) regulation, decision, tertiary legislation or provision of the European Economic Area ("EEA") agreement ("**EU References**") which is to form part of domestic Law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic Law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic Law from time to time; and
 - (b) institution or authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
 - 1.3.6 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - 1.3.7 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.8 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
 - 1.3.9 unless otherwise provided and save for references in Annexes 1 and 2 of Schedule 5 (*Software*), Annex 2 of Schedule 7.3 (*Benchmarking*), Annexes 1 and 4 of Appendix 1 of

CONTRACT FOR THE PROVISION OF
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and Schedule 8.8 (*Collaboration*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear.

- 1.4 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink and/or provide the other Party with the updated hyperlink (whichever is easier).
- 1.5 If there is any conflict between the Clauses and the Schedules and/or any Annexes or Appendices to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.5.1 the Clauses and Schedule 1 (*Definitions*);
- 1.5.2 the Service Requirements, and Schedule 2.2 (*Performance Levels*) and their Annexes;
- 1.5.3 any other Schedules and their Annexes and Appendices (other than Part B of Schedule 2.1 (*Services Description*), which contains the Supplier's solution for the Services, and its Annexes);
- 1.5.4 the Documentary Deliverables; and
- 1.5.5 Part B of Schedule 2.1 (*Services Description*) and its Annexes (if any). Part B of Schedule 2.1 (*Services Description*) contains the Supplier's solution for the Goods and Services.
- 1.6 Notwithstanding Clause 1.5 (*Definitions and Interpretations*), where a Documentary Deliverable or Part B of Schedule 2.1 (*Services Description*) and its Annexes contains provisions which are more favourable to the Authority in relation to the rest of the Agreement, such provision of the Documentary Deliverable or Part B of Schedule 2.1 (*Services Description*) (as applicable) shall prevail. The Authority shall have the absolute right to determine whether any provision in a Documentary Deliverable or Part B of Schedule 2.1 (*Services Description*) is more favourable to it in relation to this Agreement.
- 1.7 The Schedules (and their Annexes and Appendices) form part of this Agreement.

Authority status

- 1.8 In entering into this Agreement the Authority is acting as part of the Crown.
- 1.9 The Authority shall not be deemed to be in Default pursuant to this Agreement to the extent that any such Default is due to the Default of the Supplier.

CONTRACT FOR THE PROVISION OF
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This Agreement has been duly executed by the Parties on the date which appears at the head of its page 8.

SIGNED for and on behalf of EXPONENTIAL-E LIMITED by a director	 Signature: [REDACTED] Name (block capitals): [REDACTED] Position: [REDACTED]
SIGNED for and on behalf THE SECRETARY OF STATE FOR HEALTH AND SOCIAL	 Signature: [REDACTED] Name (block capitals): [REDACTED] Position: [REDACTED]

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

CONTENTS

PART A – SERVICE REQUIREMENTS	5
1. INTRODUCTION	5
2. SCOPE	7
2.1 Background	7
2.2 Service Recipients	10
2.3 Overarching Service Requirements	11
2.4 Services	13
3. IMPLEMENTATION SERVICES	14
3.1 Mobilisation	14
3.1.1 Introduction	14
3.1.2 Planning and Workshops	14
3.1.3 Service Management Design	14
3.1.4 Service Desk	17
3.1.5 Environment Management	18
3.1.6 Transformative Service Improvement	18
3.1.7 Resource Plan	18
3.1.8 Training Strategy	19
3.1.9 Documentation Updates	19
3.1.10 Performance Reviews	20
3.2 Implementation	20
3.2.1 Introduction	20
3.2.2 Service Management Design	20
3.2.3 Service Desk	22
3.2.4 Environment Management	23
3.2.5 Transformative Service Improvement	23
3.2.6 Resource Plan	23
3.2.7 Training	24
3.2.8 Testing	24
3.2.9 Documentation Updates	24
3.2.10 Performance Reviews	25
3.3 Transition	25
3.3.1 Introduction	25
3.3.2 Service Management Transition	25
3.3.3 Service Desk Transition	26
3.3.4 Environment Management Transition	27
3.3.5 Performance Reviews	27
4. OPERATIONAL SERVICES	28

ARP SERVICE PARTNER

OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

4.1	Service Management Services	28
4.1.1	ARP Service Management Framework	28
4.1.2	Catalogue Management	29
4.1.3	Supplier Management	30
4.1.4	Service Level Management	31
4.1.5	Availability Management	33
4.1.6	Capacity Management	34
4.1.7	Change Management	35
4.1.8	Knowledge Management	36
4.1.9	Service Validation and Testing	37
4.1.10	Release and Deployment Management	38
4.1.11	CMDB and Configuration Management	38
4.1.12	Asset Management	39
4.1.13	Incident Management	40
4.1.14	Major Incident Management	42
4.1.15	Event Management	43
4.1.16	Problem Management.....	43
4.1.17	Service Request Management	44
4.1.18	Access Management	45
4.1.19	Service Operations Plan	46
4.1.20	Continual Service Improvement	46
4.2	Service Desk Services	51
4.3	Environment Management Services	53
4.3.1	Test Environment Management	53
4.4	Transformative Service Improvement Services	54
5.	AD-HOC SERVICES	55
5.1	Ad-Hoc Services	55
6.	FUTURE SERVICES	56
6.1	Future Services	56
PART B – SUPPLIER SOLUTION		61
1	INTRODUCTION	61
2	SCOPE	61
3	IMPLEMENTATION SERVICES	62
4	OPERATIONAL SERVICES	89
5	AD-HOC SERVICES	152
6	FUTURE SERVICES	155
ANNEX A OF PART B: METHOD STATEMENTS		156
Method Statement 1 (MS01): Implementation Services - Mobilisation		157
Method Statement 2 (MS02): Implementation Services - Implementation		166
Method Statement 3 (MS03): Implementation Services – Implementation Plan		190

ARP SERVICE PARTNER

OFFICIAL

SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

Method Statement 4 (MS04): Implementation Services - Transition	194
Method Statement 5 (MS05): Operational Services – Service Management	206
Method Statement 6 (MS06): Operational Services – Service Desk	236
Method Statement 7 (MS07): Operational Services – Environmental Management	248
Method Statement 8 (MS08): Operational Services – Transformative Service Improvements	254
Method Statement 9 (MS09): Workforce – Resource Plan	258
Method Statement 10 (MS10): Workforce – Training	263
Method Statement 11 (MS11): Governance and Collaboration – Security Management	269
Method Statement 12 (MS12): Governance and Collaboration - Change Management	274
Method Statement 13 (MS13): Governance and Collaboration – Governance And Back Office Services	277
Method Statement 14 (MS14): Governance and Collaboration – Service Continuity....	281
Method Statement 15 (MS15): Governance and Collaboration: Authority Responsibilities	286
Method Statement 16 (MS16): Governance and Collaboration: Collaboration	287
Method Statement 17 (MS17): Governance and Collaboration – Operational Services	291

ARP SERVICE PARTNER

OFFICIAL

SIGNATURE VERSION

OFFICIAL

This Schedule consists of a Part A and a Part B. Part A contains the Service Requirements of the Authority and Part B contains the Supplier Solution.

PART A – SERVICE REQUIREMENTS

1. INTRODUCTION

1.1 This Part A contains the Service Requirements.

1.2 The services under Part A of this Schedule are made up of the following:

1.2.1 Implementation Services;

1.2.2 Operational Services;

1.2.3 Ad-hoc Services; and

1.2.4 Future Services.

1.3 Scope of the Services

1.3.1 Unless different commencement dates are expressly identified in the Implementation Plan for any applicable parts of the Services, commencing on the Effective Date the Supplier shall fulfil the following services, functions, responsibilities, requirements and deliverables (as the same may evolve during the Term including adding, removing, supplementing, enhancing, modifying and/or replacing any services and/or activities or deliverables in accordance with this Agreement or as otherwise approved in writing by the Authority in accordance with the Change Control Procedure, from time to time):

- (a) the services, functions, responsibilities, requirements and deliverables that the Supplier is required to carry out as specified in Part A (Service Requirements) of this Schedule or any other part of this Agreement, including the relevant Schedules, Annexes and Appendices of this Agreement;
- (b) any incidental services, functions, responsibilities, requirements and deliverables not specified in the Agreement as within the scope of Supplier's responsibilities but that are reasonably and necessarily required for, or related to, the proper and timely performance and provision of the services, functions, responsibilities, requirements and/or deliverables set out in Paragraph 1.3.1(a) of Part A of this Schedule above;
- (c) any services, functions, requirements, responsibilities and/or deliverables agreed pursuant to Schedule 8.2 (*Change Control Procedure*); and
- (d) subject to Paragraph 1.4 of Part A of this Schedule, the services, functions, responsibilities, requirements and deliverables that the Supplier shall carry out as specified in Part B (Supplier Solution) of this Schedule, Schedule 2.4 (*Security Management*), Schedule 6.1 (*Implementation Plan*), and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).

1.4 If there is any conflict between the scope of the services, functions, responsibilities, requirements and deliverables under: (i) Paragraphs 1.3.1(a) and 1.3.1(b) of Part A of this Schedule above; and

ARP SERVICE PARTNER

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SIGNATURE VERSION

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

(ii) Paragraph 1.3.1(d) of Part A of this Schedule above, the provisions of Paragraphs 1.3.1(a) and 1.3.1(b) of Part A of this Schedule above shall apply and prevail.

- 1.5 The Supplier shall meet and fulfil all of the Service Requirements in this Part A (and the Supplier confirms that the Supplier Solution set out in Part B of this Schedule meets and fulfils all of the Service Requirements in this Part A), as the same may evolve during the Term and as they may be supplemented, enhanced, modified or replaced in accordance with this Agreement, but excluding any Authority Responsibilities and Dependencies.
- 1.6 If there is any conflict between the provisions of Part A of this Schedule and the provisions of Part B of this Schedule, the provisions of Part A of this Schedule shall apply and prevail, except that the Authority is entitled to accept the provision of any conflicting element of Part B where such conflict is in the favour of, or otherwise beneficial to, the Authority.

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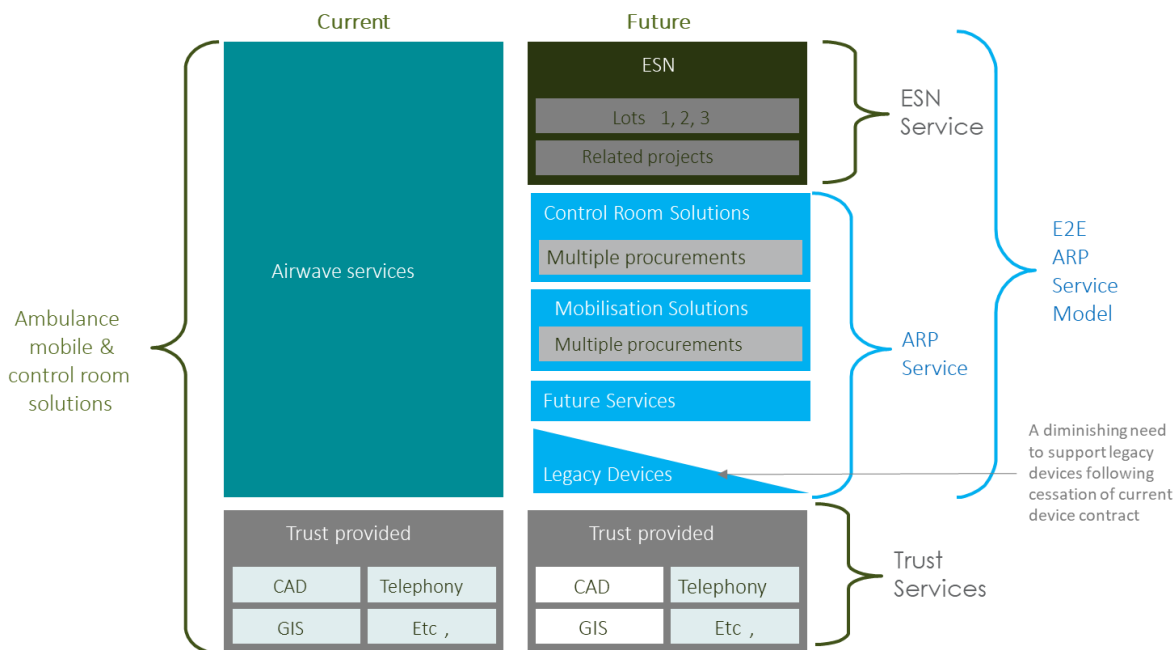
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2 SCOPE

2.1 Background

2.1.1 The diagram below is intended to indicate the scope of the Services set out in this Schedule. To the extent that there is a conflict between the diagram below in this Paragraph 2.1 and the provisions of this Schedule (excluding the diagram below), the provisions of this Schedule (excluding the diagram below) shall apply and prevail. The Parties agree that the diagram below is not legally binding and is for information purposes only.



2.1.2 The Ambulance Radio Programme (“ARP”) provides NHS ambulance services with a digital radio network and associated communications services. These include a managed service for the radio terminals, integrated communications control systems, and mobile data applications. The technology for critical voice communications as at the Effective Date is TETRA and the current provider is Airwave Solutions Limited. Additionally, Airwave Solutions Limited are providing a help desk service under an extension to their current contract to support the Authority’s National Mobilisation Application (NMA) and Control Room Solution (CRS) programmes, as such programmes are further described below.

2.1.3 A programme entitled the Emergency Services Mobile Communications Programme (ESMCP) has been established with the remit of delivering the future national mobile communication capabilities for all emergency services. This will be known as the “Emergency Services Network” (ESN). ESMCP is a cross government programme hosted by the Home Office and has representation from all the emergency services.

2.1.4 The ESMCP is replacing the “Airwave” TETRA network, which exists at the Effective Date, with the new ESN, which will have 4G LTE broadband capability.

2.1.5 The Authority is delivering additional programmes which, combined with the ESMCP, will create an end-to-end life critical communications system to the Service Recipients as set out in Paragraph 2.2 below.

CONTRACT FOR THE PROVISION OF
ARP FIELD SERVICES

OFFICIAL

2.1.6 One of the Authority programmes is the procurement and deployment of a 'National Mobilisation Application' (NMA) for every frontline emergency ambulance vehicle which will utilise the ESN. The contract for provision of the NMA was awarded to Terrafix Limited in December 2017 and is approaching service readiness. A separate procurement is underway for the Vehicle Hardware which will integrate with the NMA.

2.1.7 Whilst a number of factors have caused delays to the availability of the ESN, the Authority is continuing to deliver its Control Room Solutions (CRS) and Mobile Data and Vehicle Solutions (MDVS) programmes and, where possible, removing dependencies on the ESN. This will allow the delivery of these programmes to avoid being impacted by changes to the ESN's delivery dates.

2.1.8 The constituent programmes being delivered by the Authority are:

- **ESN** – the replacement of the Airwave network which is being delivered by the Home Office's ESMCP.
- **CRS** – the delivery of the new integrated communications and control system to the English Ambulance Trusts, the Welsh Ambulance Service NHS Trust and the Scottish Ambulance Service. The contract for the delivery of CRS was awarded to Frequentis in May 2017.
- **MDVS** – the delivering of the new NMA to the English Ambulance Trusts (and potentially the Welsh Ambulance Service NHS Trust and/or the Scottish Ambulance Service, if those bodies elect to participate in the MDVS programme). The scope of the MDVS programme also includes the delivery of Vehicle Hardware to run the NMA and the replacement of TETRA radio terminals with devices that can connect to the ESN.
- **HEMS** – the core function of the Helicopter Emergency Medical Service (HEMS) Air Ambulance is to deliver front line medical care to patients in the pre-hospital environment. All HEMS Air Ambulances in England are operated by charities and receive their tasking via Service Recipient control rooms under terms of individual memorandums of understanding which are in place.

2.1.9 The Authority requires the Supplier to fulfil the role of a service partner to support the Authority projects delivering the constituent programmes above and that can scale to support future Authority initiatives and product offerings.

2.1.10 The Authority is looking to partner with a provider who can demonstrate capabilities in "product management" – not simply providing "service desk" and "Service Management" functions – who can demonstrate an ability to integrate elements of discrete project deliverables as "service offerings" to Service Recipients. The scope will also involve environment management and ad-hoc services, as more particularly describe in this Schedule below.

2.1.11 The diagram in this Paragraph 2.1.11 shows the indicative scope of services required of the Supplier and is for information purposes only.

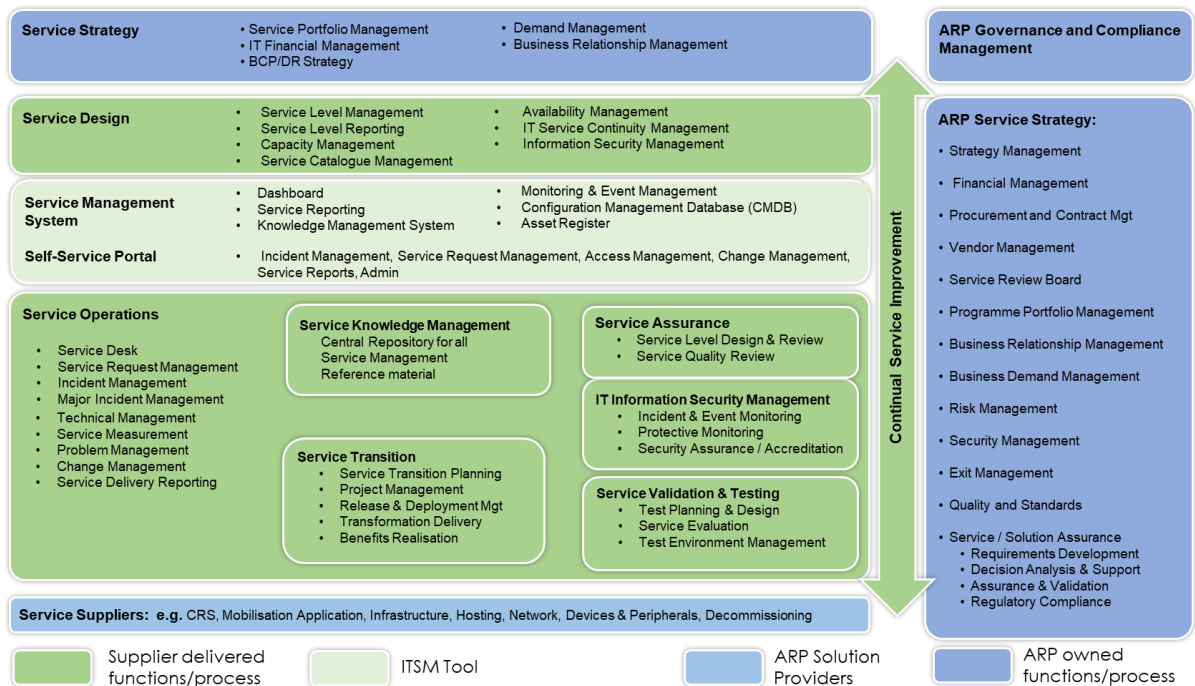
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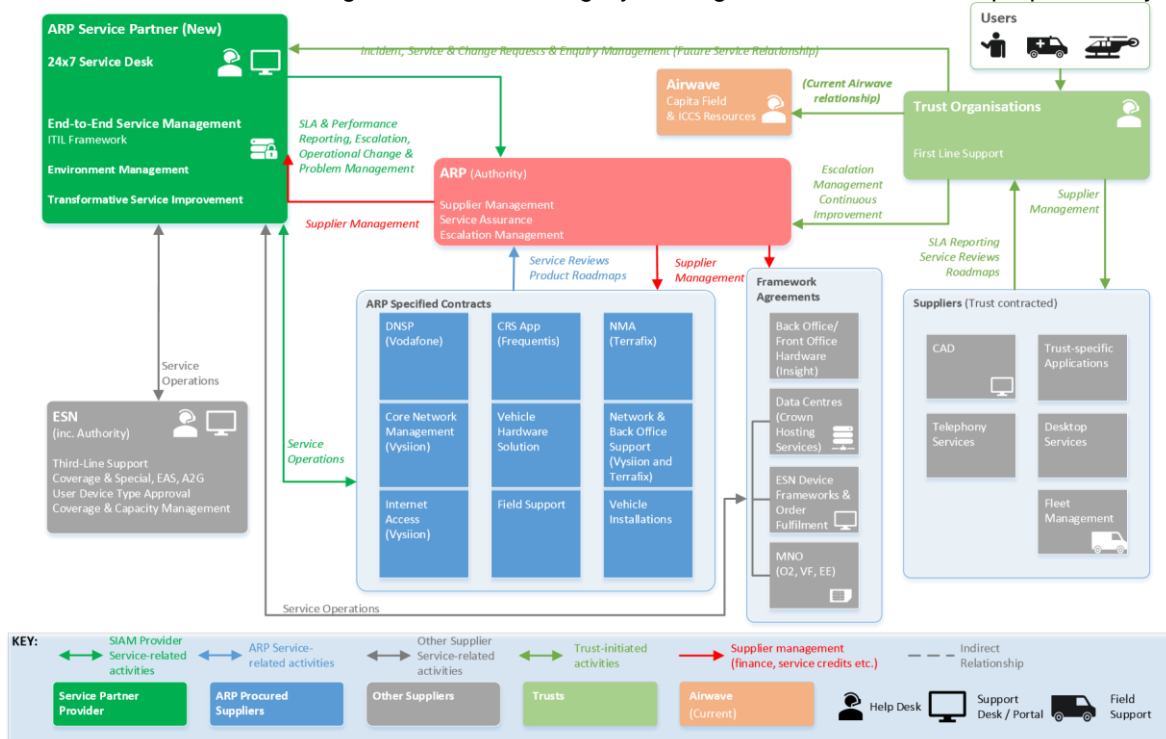
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OFFICIAL



2.1.12 The diagram below in this Paragraph 2.1.12 is intended to demonstrate the interoperation and logical relationships of the services required. To the extent that there is a conflict between the diagram below in this Paragraph 2.1.12 and the provisions of the Schedules (excluding the diagram below), the provisions of the Schedules (excluding the diagram below) shall apply and prevail. The Parties agree that the diagram below is not legally binding and is for information purposes only.



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