

Fujitsu Services Limited Contract ref:

THIS AGREEMENT is dated 1st February 2018 and is made

BETWEEN

- (1) **FUJITSU SERVICES LIMITED** whose registered office is 22 Baker Street, London, W1U 3BW company number 96056 (the "Supplier" or "Fujitsu"); and
- (2) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** of Caxton House, 6 – 12 Tothill Street, London SW1H 9NA (the "Customer" or "DWP").
(Fujitsu and or DWP each a "Party" or "party" and collectively the "Parties" or "parties")

Background

- A. The Customer has previously licensed VME and Vitae for use in the live environment and for business continuity for the period from 24th February 2017 to 23rd February 2019 (the "2017/19 Licence").
- B. Separately DWP has since 2015 been engaged on a programme for VME replacement that will enable it to move its applications away from use of VME and Vitae before February 2020. As a consequence of this strategic decision on the part the Customer, its requirements for VME and Vitae licences for the period going forward are now established and set out in this Agreement.
- C. The Customer now wishes to replace the unexpired portion of the 2017/19 Licence with this new agreement (the "Agreement") direct with Fujitsu for VME and Vitae in a way that aligns to its strategic approach up to 23rd February 2019.
- D. The Supplier has launched its VPaaS services for VME and Vitae users that will support the operation of VME and Vitae using a Modern VME Environment. The Customer has decided not to take the Alternative VME and Vitae Services provided for as an option under the 2017/19 Licence. DWP confirms that it anticipates that it should have no requirement for VME and Vitae after 23rd February 2020.
- E. The Supplier is entering into this agreement in consideration of the Customer warranting and representing that it has fully complied with (i) all its obligations to the Supplier as to the Supplier's intellectual property rights and rights of confidentiality and (ii) that those granted access by the Customer to VME and Vitae have also complied with all of the Customer's obligations to the Supplier as to the Supplier's intellectual property rights and rights of confidentiality.

Against this Background the Parties now agree as follows:

1. Agreement

- 1.1 This Agreement replaces and extinguishes the 2017/19 Licence with effect from 24th February 2018.
- 1.2 The Term of this Agreement shall be fixed and shall be a 24 month period from 24th February 2018 to 23rd February 2020. "Year 1" is defined as the 12 month period from 24th February 2018 to 23rd February 2019, and "Year 2" is defined as the 12 month period from 24th February 2019 to 23rd February 2020.

2. In respect of "Year 1":

- 2.1 In consideration of the agreement by the Customer to pay the sums in respect of Charges in accordance with Schedule 4 and in particular the advance onetime annual payment of **twenty one million six hundred and thirty one thousand seven hundred and thirty five pounds (£21,631,735)** (the "Year 1 MIPS Value") Fujitsu agrees to provide the Customer during the period from 24th February 2018 to 23rd February 2019 with:
 - 2.1.1 the licences in Schedule 3 with the permitted MIPS reflecting the Year 1 MIPS Value as set out in Schedule 4, as deployed in Schedule 6 and as may be adjusted in accordance with Schedule 4; and
 - 2.1.2 the ability to move MIPS in accordance with Schedule 6.

3. In respect of "Year 2":

- 3.1 In consideration of the agreement by the Customer to pay the sums in respect of charges in accordance with Schedule 4 and in particular the advance onetime annual payment of **twenty one million six hundred and thirty one thousand**

seven hundred and thirty five pounds (£21,631,735) plus VAT (the "Year 2 MIPS Value") Fujitsu agrees to provide the Customer during the period from 24th February 2019 to 23rd February 2020 with:

- 3.1.1 the licences in Schedule 3 with the permitted MIPS reflecting the Year 2 MIPS Value as set out in Schedule 4, as deployed initially in accordance with Schedule 6 and as may be adjusted in accordance with Schedule 4 ; and
- 3.1.2 the ability to move MIPS in accordance with Schedule 6.
- 3.2 Fujitsu shall be given prompt access to the VME and Vitae systems to allow any reduction to the licenced MIPS prior to the first day of the month on which any reduction takes place.

4. From 24th February 2020

The Customer acknowledges and agrees that this Agreement gives it no rights to licence or use VME and Vitae in the period from 24th February 2020.

5. Post 2020 and Alternative VME and Vitae Services

Although the Supplier has launched its VPaaS services for VME and Vitae users that will support the operation of VME and Vitae using a Modern VME Environment after December 2020 the Customer has decided not to take the Alternative VME and Vitae Services provided for under the 2017/19 Licence and confirms that it anticipates that it will have no requirement for VME and Vitae after 23rd February 2020.

- 5.1 The Customer agrees that it has been advised that VME and Vitae will not be available in any circumstances after 31st December 2020 and agrees that it will not request any provision of VME and or Vitae after that date either directly or indirectly.

6. Applicable terms

- 6.1 This Agreement and the licences granted are subject to Section A (General Terms and Conditions) and Section D (Program Licences) of the General Terms and Conditions set out in Schedule 1 in both cases as amended by or supplemented with the Special Terms and Conditions* set out in Schedule 2. For clarity, the order of precedence of the documents to this Agreement (to the extent they conflict or contradict with each other) is as follows:

- 6.1.1 the terms and conditions of this part of the Agreement; then
- 6.1.2 Schedule 4 (Charges); then
- 6.1.3 Schedule 3 (Licensed Programs); then
- 6.1.4 the Special Terms and Conditions set out in Schedule 2; then
- 6.1.5 Schedule 1; then
- 6.1.6 Schedule 5; then
- 6.1.7 Schedule 6.

No other terms and conditions are applicable to this Agreement and for the avoidance of doubt the terms and conditions referenced in the document headed IONS241 do not apply to this agreement.

SIGNED FOR AND ON
BEHALF OF FUJITSU SERVICES LIMITED

SIGNED FOR AND ON BEHALF OF
THE SECRETARY OF STATE FOR WORK AND PENSIONS

NAME: David M Jones

NAME:

TITLE: Head of Legal UK & I

TITLE:

DATE: 1st February 2018

DATE: 1st February 2018

Schedule 1 - General Terms and Conditions

Section A - General Terms and Conditions

This contract between Fujitsu and the Customer (referred to as the “**Agreement**”) consists of the following:

- (a) the terms and conditions
- (b) these General Terms and Conditions;
- (b) those Sections containing Special Terms and Conditions that are expressed to apply; and
- (c) all schedules and any documents expressly incorporated into this contract.

This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them. Each party acknowledges that in entering into this Agreement it does not rely on any oral or written representation, warranty or other assurance that is not set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement shall be for breach of contract and waives all rights and remedies which might otherwise be available to it in respect thereof except that nothing in this Clause shall limit or exclude any liability for fraud.

A1 Definitions

Defined terms set out in this Agreement shall have the meaning given to them in Schedule 5 (Definitions).

A2 Supply

- A2.1 All Products are supplied by reference only to their Product Description. The Products shall not comply or conform with any performance or other requirements unless expressly stated in the relevant Product Description. Any other descriptive material provided by Fujitsu to the Customer is provided to assist the Customer, does not form part of the Agreement and Fujitsu is not legally responsible for its contents. The Customer acknowledges that it is solely responsible for selecting Products to achieve its required results including in combination with other equipment or software with which the Products are intended to be used.
- A2.2 Fujitsu warrants that Schedule 3 sets out as at the Effective Date the full and complete list of Programs which constitute the entire set of VME programs currently in support (excluding HostTalk).

A3 Licence to Use

- A3.1 Fujitsu grants to the Customer a licence on the terms set out in Section D - Program Licence.

A3.2 If:

- (a) any unauthorised use or modification is made of or to any Product(s); or
- (b) the Customer has not paid any of the charges in accordance with the terms of this Agreement,

then, subject to Clause A3.2A below, the Customer shall be in breach of contract and Fujitsu shall be entitled to suspend or terminate any licence applicable to any such Products, or all such Products in the case of non-payment. Fujitsu's failure to exercise, or delay in exercising, its entitlement to suspend or terminate shall not prevent Fujitsu from exercising such right at any time while the Customer continues to use such Products and Fujitsu shall be entitled to regard such use as unauthorised and a continuing breach of contract.

- A3.2A The parties acknowledge that the operation and functionality provided by the VME programs is dependent upon the Customer's ongoing compliance with the payment and licence terms of this Agreement. If the Customer is in breach of Clause A3.2 then prior to Fujitsu being entitled to suspend or terminate any licence applicable to the Products, including this Agreement, it shall first provide notice to the Customer in writing of the breach, along with such reasonable details which are available to Fujitsu in respect of the breach. If the Customer is not able to remedy the breach within:

- (a) 15 days of the provision of such notice by Fujitsu, then the Parties shall escalate the issue within their respective organisations in order to determine possible remedial actions to the breach; and

- (b) 30 days of the provision of the original notice by Fujitsu, then Fujitsu shall be entitled to suspend or terminate any such licences, including this Agreement.

- A3.2B In relation to the right to suspend the licence in Clauses A3.2 and A3.2A, Fujitsu shall be entitled to continue the suspension until the breach is remedied. The Customer will have no claim against Fujitsu on account of Fujitsu's suspension of performance of its obligations in these circumstances and Fujitsu shall be entitled to make such amendments to the provisions of this Agreement relating to delivery and payment dates as are appropriate to reflect the period of suspension.

- A3.3 If an authorised modification is made by or on behalf of the Customer which results in an enhanced level of capacity or performance of any equipment on which the Programs operate, the Customer agrees that in respect of all Programs in its possession it shall pay the rates of charges currently charged by Fujitsu for the use of

Programs in accordance with this Agreement on such equipment at the said enhanced level of capacity or performance.

A4 Intellectual Property Rights and Confidentiality

- A4.1 Fujitsu, or its licensors, shall retain the right and title to all Intellectual Property Rights and other rights in any Products, and to any work or material created by Fujitsu or its subcontractors in the course of providing the Products.
- A4.2 Fujitsu's programs (whether or not supplied as Programs) are expressly declared to be secret and confidential information for the purpose of this sub-clause.
- A4.3 The Customer shall follow all reasonable instructions that Fujitsu gives from time to time with regard to the use of Intellectual Property Rights of Fujitsu and/or its licensors.
- A4.4 Fujitsu shall indemnify and keep indemnified the Customer against any damages (including reasonable costs) that may be awarded by a court of competent jurisdiction to any third party in respect of any claim or action that the Customer's use of the Products infringes the Intellectual Property Rights of that third party provided that the Customer must:
- (a) promptly notify Fujitsu in writing of any allegation made by a third party that the Customer's use of the Products infringes its Intellectual Property Rights; and
 - (b) give Fujitsu the sole conduct of the defence to any claim or action in respect of any third party claim relating to Intellectual Property Right infringement and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express written instructions of Fujitsu; and
 - (c) act in accordance with the reasonable instructions of Fujitsu and give Fujitsu such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents (at Fujitsu's cost and expense).
- A4.5 Where any allegation is made or, in Fujitsu's opinion, is likely to be made, by a third party that its Intellectual Property Rights are being infringed by the Customer's use of Products supplied by Fujitsu, Fujitsu shall have the sole option to do either or both of the following:
- (a) at its own expense modify or replace the Products (in such a way that their functionality overall is not materially adversely affected) so as to avoid the infringement and the terms of this Agreement will continue to apply to the Products; and/or
 - (b) conduct and/or settle all negotiations and litigation with any such third party in which case the Customer shall not have any dealings with such third party in relation to its allegation but shall give Fujitsu all reasonable assistance (at Fujitsu's cost and expense) required by Fujitsu in such negotiations and/or litigation. The costs incurred or recovered in such negotiations and litigation will be for Fujitsu's account.
- A4.6 Save as provided in Clause A4.4, Fujitsu shall have no liability whatsoever to the Customer in respect of any infringement or alleged infringement of any Intellectual Property Rights or other rights and in any event Fujitsu shall have no liability to the Customer hereunder for any infringement if the same results from negligence of the Customer and/or is based on the use of any item supplied by Fujitsu other than in accordance with the terms of this Agreement, their respective Product Descriptions and any other written instructions Fujitsu may give concerning their use, or in combination with any goods or services not supplied by Fujitsu or any modification of any such item supplied by Fujitsu carried out by or on behalf of the Customer where such modification is not authorised by Fujitsu in writing in advance.
- A4.7 Nothing in this Clause A4 shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under the indemnity set out in Clause A4.4 above.

A5 Confidentiality

- A5.1 For the purposes of this Clause A5, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- A5.2 Except to the extent set out in this Clause A5 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

A5.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, and the Parties agree that Schedule 2, paragraph 7 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (1) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Agreement; or
 - (2) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Programs provided under this Agreement;
- (c) the conduct of a Central Government Body review in respect of this Agreement; or
- (d) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

A5.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

A5.5 Without prejudice to Clause A5.3, the Supplier may disclose the Confidential Information of the Customer on a confidential basis only to:

- (a) Supplier's personnel who are directly involved in the performance of this Agreement and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Customer pursuant to this Clause A5.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

A5.6 Without prejudice to the Customer's rights under Clause D2.3, The Customer may disclose the Confidential Information of the Supplier, other than the Products:

- (a) with the exception of technical information relating to the Products, on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body (and for clarity, the Customer shall be entitled to disclose Schedule 3 pursuant to this sub-clause);
- (b) with the exception of technical information relating to the Products, to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement (and for clarity, the Customer shall be entitled to disclose Schedule 3 pursuant to this sub-clause);
- (c) on a confidential basis to a professional adviser, consultant, or other persons engaged by any of the entities described in Clause A5.6(a) for any lawful purpose relating to or connected with this Agreement; and
- (d) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause A5. Further, prior to any disclosure by the Customer pursuant to Clause A5.6(b), the Customer shall reasonably consult with Fujitsu in respect of the content and nature of the disclosure, and any related public announcements.

A5.7 For the purposes of this Clause A5, "Law" shall mean any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972 (and or its replacement following from the European Union (Withdrawal) Bill 17-19), regulation, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.

A6 Taxes, Rates, Levies

- A6.1 The Customer shall pay, at the same time as the principal sums to which they relate, any taxes (including Value Added Tax, sales taxes, duties and other taxes of all kinds), rates or governmental levies (other than those assessed on the profits or gains of Fujitsu) which are payable in connection with the supply of Products.
- A6.2 Notwithstanding the provisions of Clause A6.1 all payments shall be made free of any tax withholding. In the event that any tax withholding is due on payments under the Agreement such tax shall be an additional cost for the Customer who shall promptly provide Fujitsu with a certificate of all tax paid.

A7 Payments

- A7.1 The Customer shall make payments to Fujitsu under this Agreement on the due dates for payments as specified in Schedule 4 (Payments Schedule). If any payment due to Fujitsu is not paid in full on the due date for payment, Fujitsu may charge interest on a day to day basis from the due date at the rate of 2% per annum over the Barclays Bank Base Rate in force from time to time until the payment is made in full, even if Fujitsu has brought proceedings for or entered judgment in respect of the payment.

A8 Customer Obligations

- A8.1 The Customer will be responsible for any loss or damage or reduction in performance that is attributable to any equipment, programs or services not supplied by Fujitsu.
- A8.2 The Customer will obtain all necessary consents, licences and approvals in relation to third party products (other than those supplied by Fujitsu as part of the Products) and will indemnify Fujitsu for any liability incurred by Fujitsu as a result of the Customer's failure to obtain such consents, licences and approvals.

A9 Not used

A10 Third Party Rights

- A10.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act. The Parties agree that there are no third party beneficiaries to this Agreement pursuant to the operation of the Act.
- A10.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

A11 Termination

- A11.1 If either party (a) being a company, has a petition presented for its liquidation or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to s.98 of the Insolvency Act 1986 or calls a meeting to propose a resolution for its liquidation or a resolution for its winding up is passed (other than solely for a bona fide solvent amalgamation or reconstruction) or an application is made for the appointment of an administrator to it or for an administration order, or a notice of intention to appoint administrators is given to any party or has a liquidator, administrator, receiver or administrative receiver or similar officer appointed over it or any of its assets or makes any voluntary arrangement with its creditors or a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986, or (b) being an individual (or if a firm or partnership, any of its partners or members), is the subject of an interim order (under section 252 of the Insolvency Act 1986), county court administration order, debt repayment plan, enforcement restriction order, debt relief order, voluntary arrangement, bankruptcy petition or order or any similar procedure or (in the case of a firm or partnership) proposes or has presented against it a petition for its dissolution or application for strike off or (c) in either case undergoes any analogous event in any jurisdiction where it is domiciled, then the other party may terminate this Agreement by written notice to the other taking immediate effect.

A12 Effects of Termination

- A12.1 Upon termination for any reason, all sums due to Fujitsu pursuant to this Agreement up to the date of termination shall become immediately payable by the Customer without set-off or deduction.
- A12.2 Not used.
- A12.3 Upon termination for whatever reason, the Customer will (subject to Clause D10) immediately deliver up any Fujitsu property which it has no contractual right to retain.

A13 General

- A13.1 Neither party will be liable for delay in or for failure to perform obligations if that delay or failure is caused by an event of Force Majeure.

- A13.2 Subject to Clause A13.2A below, the Customer may not assign or delegate any of its rights or obligations under this Agreement in whole or in part without the written consent of Fujitsu. Fujitsu may assign or delegate any of its rights or obligations under this Agreement to Fujitsu Limited or any subsidiary of that company.
- A13.2A The Customer may at its discretion assign this Agreement to a Central Government Body which replaces the Customer or which performs most of the functions previously performed by the Customer.
- A13.3 All notices hereunder shall be in writing addressed to the parties at their respective addresses as set out in this Agreement or such other address as may be notified from time to time by either party to the other.
- A13.4 No terms or conditions hereof shall be deemed waived and no breach or default excused unless such waiver or excuse shall be in writing and signed by the party issuing the same.
- A13.5 No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- A13.6 Each party shall comply with all applicable laws.
- A13.7 The construction, validity and performance of this Agreement and all non-contractual obligations arising from or in connection with this Agreement shall be governed by the laws of England and Wales and, without prejudice to Clause A14 (Dispute Resolution Procedure) and subject to the provisions of this Clause A13.7, the parties submit to the exclusive jurisdiction of the English courts. Notwithstanding the other provisions of this Agreement, Fujitsu shall be entitled to bring an action in any jurisdiction where this relates to the protection of its Intellectual Property Rights or other rights, or those of its licensors, in those jurisdictions.
- A13.8 The headings in this Agreement are inserted for convenience only and shall not constitute a part of or be referred to in interpreting the Agreement.
- A13.9 The Customer agrees that the Agreement does not impose on Fujitsu any obligation to verify the suitability of the Products for the Customer's particular purposes, whether or not those purposes have been expressed to Fujitsu or not and whether or not Fujitsu could reasonably have been aware of any such purposes. It is therefore the Customer's responsibility to ensure that the Products are suitable for its purposes. The Customer further agrees that no employee of or agent acting on behalf of Fujitsu (other than a director) is authorised to make any representation with regard to the suitability of the Products for any purpose of the Customer.
- A13.10 Nothing in this Agreement shall create a partnership or a fiduciary relationship or the relationship of employment between Fujitsu and the Customer.
- A14 Dispute Resolution Procedure**
- A14.1 Any issue or difference which may arise concerning the operation, meaning or effect of this Agreement, or any matter arising out of or in connection with this Agreement shall in the first instance be referred to a meeting of the representatives of Fujitsu and the Customer responsible for the Agreement (and/or expressly nominated for this purpose) for discussion and resolution as soon as reasonably possible and, in any event, within 21 days of such referral. If the matter is not resolved at this first meeting, the parties will use reasonable endeavours to resolve it by further escalation through two (2) more levels of management as soon as reasonably possible and, in any event, within a further 21 days. If the unresolved matter is having a serious effect on the performance of this Agreement, the parties will use reasonable endeavours to reduce the elapsed time in completing the process. Neither party may initiate any legal action until the process has been completed, unless such party has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have, including without limitation to seek injunctive relief in respect of any breach of its Intellectual Property Rights or similar rights.
- A14.2 If the dispute is not resolved by escalation in accordance with Clause A14.1, the parties may at their option agree to seek dispute resolution between them by an alternative dispute resolution technique recommended by the Centre for Effective Dispute Resolution in London.

Section B - NOT USED

Section C - NOT USED

Section D - Program Licence

D1 Additional Definitions

- D1.1 In this Section D, "Programs" means the software and programs set out in Schedule 3, which includes any modifications, corrections or updates supplied to the Customer by Fujitsu following its delivery or first use.

D2 Agreement

- D2.1 In consideration of the undertakings of the Customer in this Agreement, Fujitsu shall deliver to the Customer:

- (a) one copy of each Program in object code form only; and
- (b) one copy of any documentation for that Program,

and licences for the Customer to use the Programs for the purposes of loading, displaying, running, transmitting or storing the Programs only and copy (limited in each case solely for the purposes of archiving, backing-up, loading, displaying, running, transmitting or storing for the purposes of security and archiving) in order to utilise the Programs as permitted by this Agreement. Each Program is licensed on a non-exclusive, non-transferable basis for use for the Customer's internal purposes only. Such internal use excludes the use of the Programs by third parties acting on the Customer's behalf or their use for the purposes of providing a service to a third party organisation except where the provisions of Clause D8 have been fully complied with. Fujitsu shall have no obligation to provide new releases or versions of any Program unless expressly stated otherwise in this Agreement.

- D2.2 Subject to Clause D2.3 and unless expressly provided otherwise by the Product Description, use of the Program shall be limited to one copy of the Program. In addition the use of the Program is subject to any limitations contained in its Product Description.

- D2.3 As part of any transition away from its existing hosted environment, the Customer may create a single, duplicate copy of the Programs within its new hosted environment. Such copy shall, from the date of its creation, be used solely in order to system build, configure and test the applications being migrated to the new hosted environment, until such time as the cut-over of production from the existing environment to the new environment ("Transition Period"). As at the cutover date, the copy of the Programs within the Customers previously current environment shall be deleted, and the Customer shall provide evidence of the same to Fujitsu.

- D2.4 Subject to Clause D2.4A below, it is expected that the transition shall take place on a phased VME server basis, such that the Programs migrate from one live environment to a separate live environment (and these two live environments may be provided to the Customer by two separate third party suppliers), and the Parties agree that the Transition Period shall:

- (a) in respect of each VME server, last no more than 2 months from the initial migration date and until final, successful migration of such server; and
- (b) in respect of the total migration (from the migration of the first VME server to the migration of the final VME server), last no longer than 12 months.

- D2.4A The Parties acknowledge that during the Transition Period, each Program in support of the Customer's applications shall migrate with the server which hosts those applications from the old environment to the new environment, and therefore each Program can only be in a single, live environment at any one time.

- D2.5 For clarity and notwithstanding the Customer's rights in Clause D2.3 above, Fujitsu is under no obligation to provide support to the Customer as part of this anticipated transition.

- D2.6 The Customer may only use the Programs at the location and in respect of the equipment as agreed between the Parties in writing. The Customer shall be entitled to change the locations at and equipment on which the Programs are used, without charge, on written notice to Fujitsu. Fujitsu shall have no responsibility to the Customer for the performance of the Programs concerned if the Customer uses the Programs on any other equipment.

D3 Delivery

- D3.1 The Parties acknowledge that the Customer is, prior to the Effective Date, in receipt of the Programs.

- D3.2 Fujitsu may at the time of delivery substitute equivalent programs to the type ordered provided that they are of equivalent or greater functionality. Any equivalent program must be fully compatible with the VME products they replace or interact with.

D4 Use and Reproduction

- D4.1 The Customer may not reproduce the Programs or any parts thereof except as expressly set out in this Agreement. The Customer may make one copy of the Program for back-up purposes only and may make transient copies of the Programs as required in order to run them in accordance with their applicable Product Description, on the basis that all such reproductions are subject to the conditions of this Agreement. The

Customer may not make or permit to be made any copies of documentation for any purposes other than the licensed use without Fujitsu's written consent.

- D4.2 Except to the extent that the same may not be prohibited by law, the Customer shall not reverse assemble, decompile, decode or otherwise translate, adapt, arrange or alter the Programs, including any microcode or firmware, otherwise than as expressly permitted in writing by the legal department of Fujitsu.
- D4.3 It is not permitted to observe, study or test the functioning of the Programs in order to determine the ideas or principles which underlie any element of the Programs unless done in accordance with section 50BA of the CDPA while performing any of the acts of loading, displaying, running, transmitting or storing the program which DWP is entitled to do.
- D4.4 The Customer is not permitted:
- (a) to convert the Programs expressed in a low level language into a version expressed in a higher level language, or
 - (b) incidentally in the course of so converting the Programs, to copy them,
- save for the act of decompilation permitted if done in accordance with section 50B of the Copyright Designs and Patents Act 1988 as expressly limited to "the permitted objective" as defined in that section.
- D4.5 Save as permitted in this Agreement, the Customer is not permitted to copy or adapt the Programs save to the extent it is necessary for the Customer's lawful use of the Programs. In particular, the Supplier acknowledges that it may be necessary for the lawful use of the Programs to copy them or adapt them for the purpose of correcting errors in the Programs.

D5 Charges

- D5.1 The fees and payments due under this Agreement are as referenced in Schedule 4.

D6 Warranty

- D6.1 Fujitsu warrants that the Program will conform in all material respects to its Product Description during the Warranty Period (if any Warranty Period applies).
- (a) If the Customer notifies Fujitsu during the Warranty Period of any defect or fault in the Program in consequence of which it fails to conform in all material respects with its Product Description, Fujitsu shall, at Fujitsu's option, repair or replace the Program so as to cause it to conform in all material respects with its Product Description or alternatively refund the charges paid under this Agreement by the Customer in respect of the Program. This remedy shall be the Customer's sole remedy in respect of any breach by Fujitsu of the warranty in this Clause D6.1. This warranty together with the other warranties set out expressly in this Agreement excludes all other terms, conditions and warranties, express or implied, statutory or otherwise (including but not limited to fitness for any particular purpose).
 - (b) Fujitsu shall not be deemed to be in breach of the warranty provided for in this Clause D6.1 and shall be under no obligation to grant the Customer any remedy to the extent that any defect or fault in a Program is caused by or is a result of the Customer having amended the Program or having used it for a purpose or in a context other than the purpose or context for which it is designed (including, without limitation, any stipulations for use set out in the Product Description) or having used the Program with any unauthorised equipment.
- D6.2 Due to the nature of Programs, Fujitsu gives no guarantee of uninterrupted or error free running or that all errors will be rectified by error correction or avoidance action.

D7 Duration

- D7.1 The licence for each Program will commence on the Effective Date and continue for the duration of the Term.
- D7.2 In the event of termination of any licences granted pursuant to this Agreement for any permitted reason Clause A12.3 of this Schedule 1 shall apply.

D8 Use by a 3rd Party Operator

- D8.1 Subject always to D8.3 Fujitsu agrees that the Customer shall be entitled to provide 3rd Party Operator(s) with a right to use the Programs exclusively for the benefit of the Customer and the Licence Recipients for a service that operates VME and Vitae for the purposes of providing a VME and Vitae operating system infrastructure for DWP's applications requiring VME and Vitae (the "3rd Party Purpose"). Additionally a 3rd Party Operator shall have the right to use those parts of any Products exclusively required by them for the 3rd Party Purpose proving that their use in accordance with this Agreement is acknowledged by such 3rd Party Operator.

- D8.2 As at the Effective Date, such right to use shall extend to DXC and BPDTS for the 3rd Party Purpose. Fujitsu further agrees that, on reasonable notice provided by the Customer, it will not unreasonably withhold the right to use the Programs by other reputable 3rd Party Operators for the 3rd Party Purpose.
- D8.3 The Customer shall ensure that all 3rd Party Operators comply at all times with the terms of this Agreement. Notwithstanding any agreement between the Customer and 3rd Party Operators the Customer shall be liable to Fujitsu for any breach by a 3rd Party Operator operating under the right to use. For clarity, the rights of use granted under this Clause do not entitle the Customer or any 3rd Party Operator to make additional copies of the Programs other than expressly permitted elsewhere in this Agreement.
- D9 General Provisions**
- D9.1 The Customer will not make available the Programs or any part thereof to any other person in any form other than to facilitate licensed use and will only do so in confidence.
- D9.2 At Fujitsu's reasonable request the Customer shall provide Fujitsu with a statement verifying that the Programs are being used in accordance with this Agreement and including details of the locations of all equipment on which the Programs are used and which Programs are being used in each case. The Customer will permit Fujitsu, upon reasonable prior notice, to audit the use of the Programs including permitting Fujitsu to enter onto the Customer's premises, or any other premises under the Customer's control, to do so (including after termination of this Agreement until Fujitsu is satisfied that the Customer has complied with its obligations under Clause D10).
- D9.3 If any unauthorised alteration is made by or on behalf of the Customer to any Program then, without prejudice to Fujitsu's other rights or remedies, Fujitsu will have no further liability in respect of that Program and may at Fujitsu's option be released from any obligation regarding the provision of services whether under this Agreement (if any) or otherwise for the support and maintenance of VME and or Vitae..
- D9.4 If any unauthorised use is made of the Programs and such use is attributable to any act or default of the Customer (including, without limitation, any failure to pay the correct licence fees due for the use of the Programs made by or with the consent of the Customer) then, if Fujitsu deems it appropriate and without prejudice to Fujitsu's other rights or remedies, including the right to terminate the licence to use the Programs and claim damages the Customer will immediately be liable to pay Fujitsu an amount equal to three times the charges which would have been payable had Fujitsu granted a licence to the Customer permitting the unauthorised use, from the beginning of the period of unauthorised use until the date when it ceases.
- D10 Effects of Termination or Expiry**
- D10.1 Within thirty days after expiry or termination of this Agreement, or the licence for any Program (for any reason) the Customer will, as Fujitsu may direct, return or destroy all Programs, or the specific Program, and all copies or parts thereof (including parts modified or merged into other programs) and will certify to Fujitsu in writing that this has been done.
- D11 Resale and Exports**
- D11.1 In the event the Customer wishes to resell or export any equipment or Programs, it is the Customer's responsibility to obtain all such consents and licences as may be required from time to time under United Kingdom laws and regulations and under the laws and regulations of any other country including but not limited to the Export Administration Regulations of the United States of America that may affect or regulate such resale or export.
- D11.2 Without prejudice to the generality of Clause D11.1, no equipment or Programs may be exported or resold for export if the Customer has any grounds for suspecting that such equipment or Programs are intended to be used for any purpose related to nuclear, chemical or biological weapons, or missile technology.

Schedule 2

Special Terms and Conditions

1. Unless otherwise expressly agreed between the parties in writing the duration of this Agreement shall be limited to the Term.
2. The parties acknowledge that because the Customer has already used the Programs to be licensed for several years there is no Warranty Period applicable.
3. The Customer agrees to promptly perform any Customer Responsibilities detailed in this Agreement and Fujitsu shall be excused performance to the extent that such Customer Responsibilities cause any breach by Fujitsu.
4. The Customer shall not have any obligation to refresh VME processing hardware during the Term.
5. The following shall form Clause A8A of this Agreement:

A8A Licence recipients

A8A.1 Fujitsu acknowledges and agrees that the benefit of the licences set out in this Agreement is primarily for the Customer but such licences provide ancillary benefit for other recipients who benefit lawfully from the licences provided to the Customer and its related entities (together, the "Licence Recipients").

A8A.2 The following are the Licence Recipients as at the Effective Date:

- Department for Social Development (DSD NI) acting for the Northern Ireland Social Security Agency (NISSA)
- Office for the Deputy Prime Minister, Housing and Employment Services (HEMS)
- Her Majesty's Revenue and Customs (HMRC) – National Insurance Business (NIB)
- Her Majesty's Revenue and Customs (HMRC) – Working Families Tax Credit (WFTC)
- Her Majesty's Revenue and Customs (HMRC) – Child Benefit (ChB)
- Independent Review Service (IRS)
- Motability
- Motability Operations
- Route to Motability
- Motability Harlow
- Occupational Pensions Advisory Service (OPAS)
- Occupational Pensions Ombudsman (OPO)
- Pensions Regulator (PR) – (formerly Occupational Pensions Regulatory Authority)
- Services Personnel in Veterans Agency (SPVA)
- Child Maintenance Enforcement Commission (CMEC)
- Cabinet Office
- Pension Protection Fund (PPF) but only for the purpose of services delivered to the Financial Assistance Scheme Operational Unit (FASOU) or equivalent organisation
- Department for Education
- National Employment Savings Trust (NEST Corporation)
- MyCSP Limited
- Shared Service Connected Limited (SSCL)

A8A.3 Nothing in this Agreement shall create or be deemed to create a supplier - customer relationship between Fujitsu and any Licence Recipient. Any Licence Recipient takes the benefit subject to all terms and conditions applicable to the receipt of the licences by the Customer and the period for which the Licence Recipient may enjoy the benefit of the licences shall be the same duration as applied to the Customer.

A8A.4 The Customer will be liable to Fujitsu for the acts or omissions of the Licence Recipients to the extent they breach the Customer's obligations under this Agreement or, that are otherwise stated in this Agreement to apply to such Licence Recipients (other than the obligation to pay the charges which remains with the Customer) ("Licence Recipient Obligations") as if they were acts or omissions of the Customer.

A8A.5 The Licence Recipients shall not have rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but by allowing the Customer to make the licence available to the Licence Recipients the Parties agree that any right or remedy or liability claimed by the Licence Recipients shall be subject to the terms of this Agreement as if they were a party to it and to its limitations and exclusions of liability whether the same arise under the Agreement or in tort, breach of statutory duty or otherwise.

6. The following shall form Clause A9 of this Agreement:

A9 Limitation of liability

A9.1 Subject only to Clause A9.1A, and notwithstanding anything to the contrary in this Agreement, the liability of Fujitsu to the aggregate of the Customer and its Licence Recipients and the liability of the Customer to Fujitsu under or in connection with this Agreement, whether arising from contract, tort (including negligence), breach of statutory duty or otherwise howsoever, shall be limited as follows:

- (a) in the case of liability arising from death or injury to persons as a result of any act or omission of Fujitsu or the Customer which is negligent (as defined by the Unfair Contract Terms Act 1977 section 1) or to any proven fraud on the part of Fujitsu or the Customer or of others for which it is at law responsible, there shall be no limit;
- (b) there shall be no limit in the case of either (i) any liability of Fujitsu arising from Fujitsu's infringement of third party Intellectual Property Rights caused by Fujitsu software (subject always to the provisions of Clause A.4) or (ii) any liability of the Customer and its Licence Recipients arising from any breach by them of Fujitsu's Intellectual Property Rights;
- (c) in the case of liability arising from either party's breach of its confidentiality obligations, the limit of liability shall be the greater of (i) £10,000,000, or (ii) the aggregate charges paid or payable by Customer for the duration of the Agreement;
- (d) in the case of damage to physical or real property, the limit of liability shall be £10,000,000; and
- (e) in respect of any other liability, the limit of liability shall be the lesser of (i) the aggregate charges paid or payable for the duration of the contract and (ii) £10,000,000;

provided that Fujitsu's, and the Customer's overall maximum liability under this Agreement pursuant to sub-Clauses (d) and (e) shall be limited to £10,000,000 in aggregate.

For clarity, the Parties agree that the exclusions of the heads of loss of profits, loss of revenue and loss of business set out in this Clause A9.2 below shall not apply to the heads of loss set out in sub-Clause (a) (unlimited liabilities) and sub-Clause (b) (IPR infringement) above.

A9.1A Nothing in Clause A9 shall limit or exclude the Customer's obligation to pay or Fujitsu's right to claim the sums expressly payable together with fees, charges and/or any interest payable thereon in accordance with the terms of this Agreement, or Fujitsu's right to claim for such sums.

A9.2 Subject to Clause A9.1A in no event will either party be liable to the other party or Licence Recipients for:

- (a) loss of profits, loss of revenue or loss of anticipated savings;
- (b) loss of business or opportunity, loss of goodwill or injury to reputation; or
- (c) any special, consequential or indirect loss or damage,

arising out of or in connection with this Agreement. In accordance with Clause A9.1A this shall not affect the liability of the Customer to pay the charges or any other sums falling due to Fujitsu under the terms of this Agreement.

7. Freedom of Information

7.1 Supplier acknowledges that the Customer is subject to the requirements of the Freedom of Information Acts ("FOIA") and the Environmental Information Regulations ("EIR").

7.2 To the extent that any Request for Information ("RFI") received by the Customer or Supplier concerns information held by Supplier on behalf of the Customer, it is agreed between the Parties as follows:

- (a) if Supplier receives a purported RFI addressed to Customer it shall not respond unless authorised in writing to do so by the Customer;
- (b) if Supplier receives a RFI addressed to the Customer, it shall forward such RFI to the Customer as soon as reasonably practicable, but in any event within two (2) Business Days after receiving the same;
- (c) Supplier shall provide to the Customer such of the information requested in writing by the Customer and required by the Customer to comply with any RFI as is in Supplier's possession or under its control and shall do so within five (5) Business Days (or such greater or lesser period as the Parties shall agree in writing) of the Customer's written request therefore;
- (d) Supplier shall provide all necessary assistance to and cooperation with the Customer as is reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs; and
- (e) Supplier shall incorporate into contracts with its Sub-Contractors an equivalent provision, *mutatis mutandis*, to the terms of this Clause 7, requiring such Sub-Contractor to respond directly to the Customer and provide at the same time a copy of all correspondence and information requested and supplied to Supplier.

7.3 The Customer shall be responsible for determining at its absolute discretion whether any information requested in a RFI:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

- (b) is to be disclosed in response to such a RFI, and in no event shall Supplier respond directly to a RFI addressed to the Customer.
- 7.4 Where a RFI addressed to the Customer relates to Supplier Confidential Information, the Customer shall, prior to disclosing any of such Supplier Confidential Information:
 - (a) take reasonable steps to notify Supplier that it has received a RFI that relates to Supplier Confidential Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so;
 - (b) consult with Supplier as to whether or not the information should be disclosed;
 - (c) take account when deciding whether to disclose Supplier Confidential Information in response to a RFI of Supplier's classification of Supplier Confidential Information when considering the application of any exemption under the FOIA or the EIR; and
 - (d) consider in good faith whether or not to apply any relevant exemption available under the FOIA or the EIR to Supplier Confidential Information.
- 7.5 The Customer acknowledges that Supplier Confidential Information may be the subject of an exemption within the FOIA or the EIR (as appropriate).
- 7.6 In relation to the processing of a RFI addressed to the Customer under this Clause 7, Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information under the FOIA and EIR.

8. Transparency

- 8.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Customer shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 8.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Agreement agreed from time to time.
- 8.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish this Agreement.

9. Prevention of Fraud and Bribery

- 9.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier personnel, have at any time prior to the Effective Date:
 - (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 9.2 The Supplier shall not during the Term:
 - (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 9.3 The Supplier shall during the Term:
 - (a) establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

- (b) keep appropriate records of its compliance with its obligations under Clause 9.3(a) and make such records available to the Customer on request.
- 9.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 9.1 and/or 9.2, or has reason to believe that it has or any of the Supplier personnel have:
 - (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 9.5 If the Supplier is in default under Clauses 9.1 and/or 9.2, the Customer may by notice to the Supplier:
 - (a) require the Supplier to remove from performance of this Agreement any Supplier personnel whose acts or omissions have caused the default; or
 - (b) immediately terminate this Agreement.
- 9.6 Any notice served by the Customer under Clause 9.5 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Agreement shall terminate).

10. Official Secrets and Tax Compliance

- 10.1 The Supplier shall, solely to the extent applicable to the Supplier in relation to its performance of its obligations under this Agreement, comply with:
 - (a) the Official Secrets Act 1911 and the Official Secrets Act 1989; and
 - (b) all relevant tax laws.

Schedule 3
Licensed Programs

Part 1 – VME in Live Service

The Parties agree to the provision of a Program Licence for the VME Programs detailed below in the VME Software Library for the use by the Customer in Live service on the terms and subject to the sums payable as set out in this Agreement.

The following table shows the Programs being licensed for use in Live Service.

VME Software Library		
<i>Product Set</i>	<i>Description</i>	<i>Third Party</i>
VME System	Run Time Set for OpenVME	
OpenVME Library (DISA 1992)	Budgeting Option	
	Charging Option	
	VME/B Environment Option	
	Audit Option	
	Accounting Option	
	Work Scheduling Option	
	System Programming Option	
	Batch Recovery Option	
	Enhanced Filestore Option	
	Filestore Management Option	
	Restricted System Interface Option (RSI)	
	Performance Management Option	
	Concurrent Session Access Option (CSA)	
	COBOL Path Analysis	
	COBOL Interactive Testing System	
	COBOL Compiling System	
	C Compilation System	
	Program Master Interactive Program Development	
	FORTRAN 77 PLUS	
	FORTRAN Interactive Testing System	
	Program Activity Sampler	
	[No longer used]	
	S3 Compiling System (S3)	
	TPMSX RunTime	
	TPMSX Development	
	TPMSX Message Queuing	
	TPMS XE Opt	
	IDMSX Development	
	TPMS Development	
	Distributed Transaction Processing (DTS) (DMR & DAF)	
	CAFS Search Option (CSO)	
	IDMSX Utilities	
	IDMSX Run Time	

VME Software Library

<i>Product Set</i>	<i>Description</i>	<i>Third Party</i>
	IDMSX High Performance Option	
	IDMSX Multiple TP Option	
	IDMSX Development	
	IDMSX 610 Multi Node Ready Option	
	DDS User Extensibility	
	DDS SDL	
	DDS MPM	
	DDS User Access	
	Distributed OSI TP	
	QueryMaster Management System	
	Quickbuild Package (Version 3)	
	Quickbuild 3 Run Time Package	
	Quickbuild for OpenTP Package	
	QueryMaster DDS CAFS	
	QuickBuild Pathway	
	QuickBuild Pathway + ASG 250	
	QuickBuild Automatic System Generation 250	
	Network Simulator Option (NETSIM)	
	Automated System Operator Option (ASO)	
	Co-ordinated and Distributed Application Manager (CDAM)	
OpenVME Library (Post DISA Additions)	Advanced CAFS Option	
	Direct CAFS Interface PLUS (DCI PLUS)	
	Personal Identification Option	
	OpenVME LPR Option	
	VME Control Desk Central Control Option	
	VME Control Desk	
	VME Control Desk Software Management	
	[No longer used]	
	[No longer used]	
	RCSG Applications Software	
	OpenVME Tape Library Connector	
	Application Master 97	
	Application Master RunTime Library	
	INDEPOL	
	Sysop Librarian	Yes

The following are the Product Descriptions applicable to the Programs being licensed.

[REDACTED]

Schedule 3

Licensed Programs

Part 2 – VME for Business Continuity

The Parties agree to the provision of a Program Licence for the VME Programs detailed below in the VME Software Library for the use by the Customer in business continuity on the terms and subject to the sums payable as set out in this Agreement. These are not licenced for use in a Live Environment except where Business Continuity is invoked.

The following table shows the Programs being licensed for Business Continuity.

VME Software Library		
<i>Product Set</i>	<i>Description</i>	<i>Third Party</i>
VME System	Run Time Set for OpenVME	
OpenVME (DISA 1992) Library	Budgeting Option	
	Charging Option	
	VME/B Environment Option	
	Audit Option	
	Accounting Option	
	Work Scheduling Option	
	System Programming Option	
	Batch Recovery Option	
	Enhanced Filestore Option	
	Filestore Management Option	
	Restricted System Interface Option (RSI)	
	Performance Management Option	
	Concurrent Session Access Option (CSA)	
	COBOL Path Analysis	
	COBOL Interactive Testing System	
	COBOL Compiling System	
	C Compilation System	
	Program Master Interactive Program Development	
	FORTRAN 77 PLUS	
	FORTRAN Interactive Testing System	
	Program Activity Sampler	
	[No longer used]	
	S3 Compiling System (S3)	
	TPMSX RunTime	
	TPMSX Development	
	TPMSX Message Queuing	
	TPMS XE Opt	
	TPMS and IDMSX Development Package	
	Distributed Transaction Processing (DTS) (DMR & DAF)	
	CAFS Search Option (CSO)	
	Relational CAFS Interface	

VME Software Library

Product Set	Description	Third Party
	IDMSX Utilities	
	IDMSX Run Time	
	IDMSX High Performance Option	
	IDMSX Multiple TP Option	
	IDMSX Development	
	IDMSX 610 Multi Node Ready Option	
	DDS User Extensibility	
	DDS SDL	
	DDS MPM	
	DDS User Access	
	Distributed OSI TP	
	QueryMaster Management System	
	Interactive Data Handler	
	Quickbuild Package (Version 3)	
	Quickbuild 3 Run Time Package	
	Quickbuild for OpenTP Package	
	QueryMaster DDS CAFS	
	QuickBuild Pathway	
	QuickBuild Pathway + ASG 250	
	QuickBuild Automatic System Generation 250	
	Network Simulator Option (NETSIM)	
	Automated System Operator Option (ASO)	
	Co-ordinated and Distributed Application Manager (CDAM)	
OpenVME Library (Post DISA Additions)	Advanced CAFS Option	
	Direct CAFS Interface PLUS (DCI PLUS)	
	Personal Identification Option	
	OpenVME LPR Option	
	OpenVME Remote Spooling	
	VME Control Desk Central Control Option	
	VME Control Desk	
	VME Control Desk Software Management	
	[No longer used]	
	[No longer used]	
	UNIX Interworking for OpenVME	
	Application Master 97	
	Application Master RunTime Library	
	VME System Start-up Terminal Software	
	INDEPOL	
	Sysop Librarian	Y

In so far as referable to Business Continuity the following are the Product Descriptions applicable to the Programs being licensed.

VME Software Product Description:
[REDACTED]

Schedule 3

Licensed Programs

Part 3 –Vitae in Live Service

The Parties agree to the provision of a Program Licence for the Vitae Programs detailed below in the Vitae Software Library for the use by the Customer in Live service on the terms and subject to the sums payable as set out in this Agreement.

The following are the Programs being licensed for use in Live Service.

The VITAE product as defined in Fujitsu Product Description PD-MSS-318: Issue 4 Effective February 2012 and for the avoidance of doubt, shall also include any subsequent versions

The following are the Product Descriptions applicable to the Programs being licensed.

[REDACTED]

Schedule 3

Licensed Programs

Part 4 – Vitae for Business Continuity

The Parties agree to the provision of a Program Licence for the Vitae Programs detailed below in the Vitae Software Library for the use by the Customer in business continuity on the terms and subject to the sums payable as set out in this Agreement. These are not licenced for use in a Live Environment except where business continuity is invoked.

The following are the Programs being licensed for Business Continuity:

The VITAE product as defined in Fujitsu Product Description PD-MSS-318: Issue 4 Effective February 2012 and for the avoidance of doubt, shall also include any subsequent versions

In so far as referable to Business Continuity the following are the Product Descriptions applicable to the Programs being licensed.

[REDACTED]

Schedule 4

Payments Schedule

The Customer agrees to pay Fujitsu for the Programs by reference to the number of MIPS. The Parties acknowledge that the Year 1 and Year 2 charges have been adjusted to allow for equal payment in the two years despite the underlying MIPS charges not being evenly calculated.

MIPS	means Million Instructions Per Second being the measure of computing performance relating to the capacity to run work of a computer running VME.
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Year 1 Charges

The following will be the number of MIPS installed and paid for in respect of the period from 24th February 2018 to 23rd February 2019

Year 1 Table 1: the YEAR 1 MIPS are:

Number of Installed Live MIPS	3050 (of which 280 are Development MIPS)
Number of Installed Business Continuity MIPS	2770

Accordingly on the basis of these MIPS the Charges for Year 1 MIPS Value shall be £21,631,735 plus VAT.

Any additional MIPS requested above the minimum for Year 1 shall be purchased on an annual basis and the price per MIPS shall be calculated at the following annual MIPS price for any additional MIPS required over and above the committed MIPS shown in Year 1 Table 1 shall be charged at the following price per MIPS

Year 1 Table 2:

Annual MIPS Pricing for additional MIPS over the Year 1 Minimum MIPS	
	Per MIPS
VME + Vitae Live	[REDACTED]
VME + Vitae Business Continuity	[REDACTED]
VME + Vitae Development	[REDACTED]

Payment of the Year 1 MIPS Value of £21,631,735 plus VAT is due annually in advance.

The Customer will provide a Purchase Order for £21,631,735 plus VAT on or before 22nd February 2018.

Fujitsu will invoice at the start of the Term and all charges will be paid (together with VAT as applicable) within 30 days after receipt of the invoice.

Additional MIPS for Year 1 shall only be provided upon payment in advance of the additional annual charges for such additional MIPS.

Year 2 Charges

Subject to any right under this Agreement to increase the number of MIPS the following will be the minimum number of MIPS installed and paid for (the "Year 2 Minimum MIPS") in respect of the period from 24th February 2019 to 23rd February 2020:

Year 2 Table 1: the YEAR 2 Minimum MIPS are:

24th February 2019 to 23rd November 2019	
Number of Installed Live MIPS	3050(of which 280 are Development MIPS)
Number of Installed Business Continuity MIPS	2770
24 th November 2019 to 23 rd January 2020	

Number of Installed Live MIPS	1830 (of which 280 are Development MIPS)
Number of Installed Business Continuity MIPS	1550
4 th January 2020 to 23 rd February 2020	
Number of Installed Live MIPS	1780 (of which 280 are Development MIPS)
Number of Installed Business Continuity MIPS	1500

Accordingly, on the basis of the Year 2 Minimum MIPS, the Charges for the Year 2 MIPS Value shall be **£21,631,735** plus VAT.

Payment of the Year 2 MIPS Value of **£21,631,735** plus VAT is due annually in advance.

The Customer shall provide a Purchase order for **£21,631,735** plus VAT on or before 22nd February 2019.

Fujitsu will invoice at the start of Year 2 and all charges will be paid (together with VAT as applicable) within 30 days after receipt of the invoice.

Additional MIPS for Year 2 shall only be provided upon payment in advance of the additional charges for such additional MIPS for the months in which such MIPS are to be provided.

Any additional MIPS used above the Year 2 Minimum MIPS shall be chargeable on a monthly basis at the following MIPS prices:

Year 2 Table 2:

Monthly MIPS Pricing for additional MIPS over the Year 2 Minimum MIPS	
	Per MIPS
VME + Vitae Live	[REDACTED]
VME + Vitae Business Continuity	[REDACTED]
VME + Vitae Development	[REDACTED]

The additional charges for such additional MIPS shall be invoiced monthly on the second day of the monthly period and paid within 30 days along with VAT or any other applicable tax.

For the avoidance of doubt no credit shall be given for any unused MIPS in the Year 2 Minimum MIPS numbers.

General

In consideration of the payment of additional MIPS charges as above the Customer may at any time during the Term request an increase (but not a decrease) in the installed MIPS and upon payment Fujitsu shall provide such additional MIPS for the remainder of Year 1 if requested in Year 1 and for Year 2 if requested for Year 2.

Additional payments will apply in respect of each additional MIPS in excess of the total baseline of guaranteed MIPS set out above:

- In Year 1 additional MIPS shall be provided and shall be charged at the annual MIPS charges shown in **Year 1 Table 2**.
- In Year 2 additional MIPS shall be provided and shall be charged at the monthly MIPS charges shown in **Year 2 Table 2**.

The number of MIPS used can be reduced at any time during the Term below the baseline values for guaranteed MIPS set out above as the Year 1 Minimum MIPS and Year 2 Minimum MIPS but such adjustment will not reduce the sums payable.

For the avoidance of doubt, the Customer acknowledges and agrees that if it does not use MIPS specified during the Term, for whatever reason, there will be no reduction in the payments due from the Customer.

Schedule 5

Definitions

"Agreement"	means this contract as defined in Schedule 1 Section A (General Terms and Conditions);
"BPDTS"	means BPDTS Ltd (or Benefits & Pensions Digital Technology Services) whose registered office is at Caxton House, Tothill Street, London, United Kingdom, SW1H 9NA Registered in England Company number 10344843.
"Business Continuity"	means the continued processing of the Customer's VME applications workload in the event of a failure of the Live service, by switching that workload to an environment capable of delivering to the Customer user application services, excluding development workloads, or validation facilities, for the purposes of providing business continuity;
"Business Day"	means a day (other than a Saturday or Sunday) on which clearing banks in the City of London are open for a full range of banking business
"Central Government Body"	<p>means a body listed in one of the following sub categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none">(a) Government Department;(b) Non Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);(b) Non Ministerial Department; or(c) Executive Agency;
"Confidential Information"	<p>means:</p> <ul style="list-style-type: none">(a) Information, including all personal data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:<ul style="list-style-type: none">(i) the Disclosing Party Group; or(ii) the operations, business, affairs, developments, trade secrets, know-how and/or personnel of the Disclosing Party Group;(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom;(d) the routines, logic, tables, structure, algorithms and any other technical information including but not limited to ideas and principles of the Products,(e) documentation relating to the Products, and

	<p>(f) Information derived from any of the above, but not including any Information which:</p> <p>(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;</p> <p>(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;</p> <p>(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;</p> <p>(iv) was independently developed without access to the Confidential Information; or</p> <p>(v) relates to the Supplier's performance under this Agreement;</p>
"Customer"	means the party identified on the first page of this document;
"Data Controller"	has the meaning set out in section 1(1) of the Data Protection Act ("DPA");
"Disclosing Party"	has the meaning given in Clause A5;
"Disclosing Party Group"	means: <p>(a) where the Disclosing Party is the Supplier, Fujitsu Limited or any subsidiary of Fujitsu Limited; and</p> <p>(b) where the Disclosing Party is the Customer, the Customer and any Central Government Body with which the Customer or the Supplier interacts in connection with this Agreement.</p>
"DWP 3rd Party Operator(s)"	means at the commencement of this Agreement DXC and BPDTS and any replacement in accordance with Clause D8 being in all cases the supplier operating VME and Vitae for the 3 rd Party Purpose providing that it has agreed with the Customer to keep confidential all aspects of VME and Vitae to which they are permitted access and not use such information save for the 3 rd Party Purpose in accordance with this Agreement.
"DXC"	means DXC Technology Limited, of Suite 6, Business First Business Centre Millennium Road, Millennium City Park, Preston, Lancashire, England, PR2 5BL. Company number 10647394.
"Effective Date"	means 24 February 2018;
"EIR"	has the meaning given to it in Clause 7.1 of Schedule 2;
"FOIA"	has the meaning given to it in Clause 7.1 of Schedule 2;
"Force Majeure"	means a circumstance beyond the reasonable control of the party claiming the event of force majeure which results in that party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include, but are not limited to, refusal or revocation of licence, acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, industrial dispute or impossibility of obtaining materials;
"Intellectual Property Rights"	means any patents, trademarks, service marks, registered designs, including applications for, and renewals or extensions of, any of the foregoing, copyright, unregistered design rights, database rights, know-how, trade, business and/or domain names and any other similar or equivalent protected rights (whether registered or unregistered) in any country;

"Information"	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine readable medium (including CD ROM, magnetic and digital form);
"Licence Recipients"	has the meaning given to it in Clause A8A.1 of Schedule 2;
"Live" or "Live Environment(s)"	means those systems within the Customer's VME Environment capable of delivering user application services, development workloads, or validation facilities;
"Personal Data"	means data that is personal data within the meaning of the DPA and in respect of which DWP is the Data Controller;
"Products"	means the Programs together with the documentation made available for the 3 rd Party Purpose;
"Product Description"	means the descriptions set out in Schedule 3;
"Programs"	means those items described in Schedule 3;
"Prohibited Act"	means: <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) an offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or (d) any activity, practice or conduct which would constitute one of the offences listed under limb (c) above if such activity, practice or conduct had been carried out in the UK;
"Relevant Requirements"	means all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, a tax authority in the jurisdiction in which Fujitsu is established;
"Replacement Products and Services"	means any products and/or services which are provided in place of the Programs and related services provided by Fujitsu under this Agreement and/or the HPE SSBA.
"RFI"	has the meaning given to it in Clause 7.2 of Schedule 2;
"Sub-Contractor"	means a third party with whom Supplier has entered into a subcontract, directly or indirectly, and whose services and/or goods are used by Supplier within, or for the purposes of the Services;
"Term"	means the period from 24th February 2018 to 23rd February 2020;
"VME"	has the meaning given in Schedule 3;
"Vitae"	has the meaning given in Schedule 3.

Schedule 6 – MIPS moves

Schedule 6
Operational MIPS Transfers

1. In order to accommodate changes in workload the Customer may during the Term request the Supplier to transfer installed MIPS between the systems shown in table :

[REDACTED]

2. Any adjustment to MIPS for each system must result in all systems which conform to the following table:

Nodes	Adjustment units	Maximum	Minimum
4	40	920	200
	20	200	40
3	30	600	30
2	20	400	100
	10	100	20
1	10	200	50
	5	50	5

3. Such adjustments are only technically possible in so far as they result in all systems conforming to the following:

[REDACTED]

4. Subject to the availability of MIPS to transfer, and compliance with all of the above at all times, and unless otherwise agreed by the Parties in this Agreement, then if requested by the Customer in writing Fujitsu will perform MIPS moves as follows:

- a. Any move of MIPS will be carried out by Fujitsu at its absolute discretion having regard to good industry practice in the operation of systems using VME and Vitae, compliance with the terms of this Agreement and the licence granted, the operation of the Starburst Agreement for the move of the VME and Vitae systems and also having regard to any Fujitsu support and maintenance obligations. All systems using VME and Vitae must remain licenced for at suitable MIPS levels for both VME and Vitae. In the event that Fujitsu does not agree to move MIPS it shall provide details of the reasons why it does not believe it should agree to such a move. If such reasons are for good industry practice in the operation of systems using VME and Vitae and or support and maintenance obligations and the Customer wishes to proceed Fujitsu shall carry out the move provided the Customer agrees in writing to take full responsibility for the consequences of the move and shall release Fujitsu accordingly.
- b. Unless otherwise expressly stated each category of MIPS namely Business Continuity MIPS, Live/Production MIPS and Development MIPS are not inter changeable and transfers are not possible between different categories except:

- i. Live/Production system MIPS and Development MIPS may be redeployed either to another appropriate Live/Production or Development system or may be used as BC / Business Continuity system MIPS..
 - ii. MIPS installed on a BC / Business Continuity system may only be redeployed to another appropriate BC / Business Continuity system.
 - c. Where MIPS moves are possible between Development MIPS and Live/Production MIPS it is the Customer's responsibility to ensure that any resultant shortfall in BC MIPS is addressed and Fujitsu shall have no responsibility for any resultant risk to BC operation.
 - d. Each movement of MIPS, up or down, on each system is termed an 'Event'. Where a movement involves a reduction on one system and an increase on another (or vice versa) it will amount to two Events.
 - e. A minimum of five working days' notice will be required for each Event to be given in writing to the Fujitsu Service Delivery Manager. The notice must either be accompanied by a Purchase Order covering the charges for the Events or be the subject of an existing suitable blanket Purchase Order and in the absence of this Purchase Order cover any notification shall be ineffective and not accepted by the Supplier.
 - f. No Event will be implemented between the hours of 00:00 and 08:00 or on Bank Holidays
 - g. Implementation of any Event will be charged at £5,000 plus VAT per Event to be invoiced as soon as an Event is notified in writing to Fujitsu and agreed by Fujitsu. Each such invoice will be paid within 30 days of invoice.
 - h. The number of Events requested and implemented will be restricted to a maximum of six (6) in any one calendar month.
5. In the event that the Customer does not require any de-installed available MIPS to be immediately transferred onto another system, those surplus MIPS shall be held and remain available to be used for re-installation onto other system at a later time during each year of the Term providing that the MIPS remain within the available numbers and of the appropriate MIPS type. MIPS cannot be carried forward between years.
6. Where the Customer requires an increase to the MIPS available on a system and MIPS are not available for transfer then the Customer shall first purchase the additional MIPS required in accordance with Schedule 4 at the rates shown.

