

Fujitsu Services Contract ref: DWP VME 2020 Support Final

THIS AGREEMENT is dated 18th February 2020

BETWEEN

- (1) **FUJITSU SERVICES LIMITED** whose registered office is 22 Baker Street, London, W1U 3BW company number 96056 (“**Fujitsu**” or “**Supplier**”); 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 the Customer each a “**Party**” or “**party**” and collectively the “**Parties**” or “**parties**”)

Background

- A. The Customer separately licenses VME and Vitae from Fujitsu for its use under a separate licence agreement, [Reference Number: DWP VME 2020 Licence Final] (“Licence Agreement”).
- B. The Customer now wishes to enter into this Agreement with Fujitsu for support and maintenance services for that VME and Vitae at DWP (and to support hardware on which it runs where the same is provided by Fujitsu) for a period from 24th February 2020 to 31st December 2020. The term of this Agreement may be extended in accordance with the express provisions set out herein.
- C. The Supplier is entering into this agreement in consideration of the Customer warranting and representing that it has fully complied with and will fully comply 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 complied with all of the Customer’s obligations to the Supplier as to the Supplier’s intellectual property rights and rights of confidentiality to date and will also comply with all of the Customer’s obligations to the Supplier as set out below. In entering into this Agreement the Supplier reserves all its rights as to the Supplier’s intellectual property rights and rights of confidentiality.

Against this Background the Parties now agree as follows:

1. Agreement

The Customer warrants and represents that:

- it has prior to the date of this Agreement fully complied with all its obligations to the Supplier arising under earlier agreements between the Parties or otherwise as a matter of law (i) 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: and

- that as from the Effective Date of this Agreement it will fully comply with all its obligations to the Supplier as set out below including; (i) 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 (including all DWP 3rd Party Operator(s)) will also comply with the Customer's obligations to the Supplier as to the Supplier's intellectual property rights and rights of confidentiality.

In consideration of the agreement by the Customer to pay the sums in respect of Charges in accordance with Schedule 4 (Charges / Payment Schedule) Fujitsu agrees to provide the Customer during the Term with the services in Schedule 3 namely the provision of support and maintenance services for VME and Vitae used by DWP in accordance with DWP's separate licence agreement with Fujitsu. Such support is both for VME and Vitae in live service and used for Business Continuity purposes.

This agreement shall only come into full force and effect upon signature by both parties and upon the Customer providing the Supplier with a valid Purchase Order for the advance onetime payment of £3,399,314.

Provision of the purchase order shall be without prejudice to the commitment by the Customer to pay £3,399,314 in advance for support and maintenance during the Term.

[REDACTED]

2. Applicable terms

This Agreement and the services provided are subject to Schedule 1 Section A (General Terms and Conditions) and Schedule 1 Section F (Support Services) in both cases as amended by or supplemented with the Special Terms and Conditions set out in Schedule 2, the Services described in Schedule 3 and the Charges in Schedule 4.

For clarity, the order of precedence of the documents forming this Agreement (to the extent they conflict or contradict with each other) is as follows:

- the terms and conditions of this part of the Agreement; then
- Schedule 1 Clauses A9; A11; then
- Schedule 4 (Charges); then
- Schedule 3 (Services/Payment Schedule); then
- Schedule 5 (Definitions); then
- Schedule 2 (the Special Terms and Conditions); then
- The remainder of Schedule 1.

No other terms and conditions are applicable to this Agreement.

The Customer acknowledges that the support and maintenance services provided relate to VME and Vitae software separately licensed to DWP for use in live service and for Business Continuity purposes pursuant to the Licence Agreement and that DWP uses such VME and Vitae subject to the Licence Agreement. For the avoidance of doubt this Agreement does not license VME or Vitae for the Customer's use.

The Customer is entitled to appoint a 3rd Party Operator in accordance with the Licence Agreement between the Parties and as a consequence Fujitsu is entitled to assume that such 3rd Party Operator is the Customer's agent with full authority to act on behalf of the Customer in respect of all matters within the scope this Agreement.

3. Term

The Term of this Agreement shall be fixed and shall be the period from 24th February 2020 to 31st December 2020 unless extended pursuant to Clause 1 above.

4. Assignment and Novation

Save as expressly provided the Customer shall not be entitled to assign or novate this Agreement, in whole or in part, without the express written consent of Fujitsu.

5. General

The undersigned hereby acknowledge on behalf of the Parties that they have read and that they fully understand the terms of the Agreement and are duly authorised to sign the same on behalf of the party they represent.

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 Projects
Fujitsu Legal and Commercial

TITLE:

DATE: [] February 2020

DATE: [] February 2020

Schedule 1

General Terms and Conditions

This contract between Fujitsu and the Customer (referred to as the "Agreement") includes the following:

- (a) these General Terms and Conditions;
- (b) those Sections containing Special Terms and Conditions; and
- (c) 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 with or conform to 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 date of this Agreement the full and complete list of Services which constitute the entire set of support and maintenance services provided in respect of VME and Vitae on the Equipment supported.

A3 Not used

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, and to any other items supplied pursuant to this Agreement.

A4.2 The parties agree not to use or to disclose to any third party (other than for the purposes of performing or receiving the benefit of the Agreement), any secret or confidential information or method of working revealed by the other. 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 instructions of Fujitsu; and
- (c) acts in accordance with the reasonable instructions of Fujitsu and gives 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.

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 any or all of the following:

- (a) repay to the Customer any sums paid by the Customer in respect of the affected Products (and, if it so elects, to require the Customer to deliver up the Products to Fujitsu) and if Fujitsu does so it shall have no further liability whatsoever to the Customer under this Agreement in respect of or arising from such Products;
- (b) 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
- (c) 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 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 Right 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 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 The Customer may disclose the Confidential Information of the Supplier:

- (a) 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) 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, by-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, 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 (Charges / 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 Diagnostic Materials

- A8.1 Fujitsu may at its option make available the Diagnostic Materials. These Diagnostic Materials shall be held at the Customer's site as an aid to the carrying out of Services by Fujitsu. Diagnostic Materials used by the Customer are to be used solely in accordance with Clause A8.2.
- A8.2 The Customer will use the Diagnostic Materials solely in the manner and for the purpose specified by Fujitsu and will follow Fujitsu's advice concerning their use. The Customer will be liable to compensate Fujitsu for any additional expense incurred by Fujitsu through the Customer's failure to use or through the Customer's incorrect use of the Diagnostic Materials.
- A8.3 The Customer will keep the Diagnostic Materials, including results obtained by their use, confidential and will not disclose the same to any third party. The Customer will permit Fujitsu at all reasonable times to audit the use of Diagnostic Materials, and to remove the Diagnostic Materials whenever Fujitsu so requires.

A8A Service Recipients

- A8A.1 Fujitsu acknowledges and agrees that the benefit of the Services set out in this Agreement is primarily for DWP but such Services provide ancillary benefit for other recipients who benefit lawfully from the Services performed for DWP and its related entities (together, the "Service Recipients").

The following are the Service Recipients as at the Commencement Date:

- Department for Communities (DfC) – previously NISSA
- Her Majesty's Revenue and Customs (HMRC) – Child Benefit (ChB)
- Independent Review Service (IRS)
- Motability – an organisation incorporated by Royal Charter, granted on 18 May 1988
- Motability Operations Limited
- Route to Motability
- Occupational Pensions Advisory Service (OPAS)
- Occupational Pensions Ombudsman (OPO)
- The Pensions Regulator (PR) – (formerly Occupational Pensions Regulatory Authority)
- 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)
- Scottish Government

The Customer warrants and agrees that all such organisations and or their predecessors:

- Are organisations that only have the benefit of the Services as an ancillary effect of the provision of the Services to the Customer; and
- None of the Licence Recipients have had, have, or will have any access to the licenced Programs for VME and Vitae, any related documentation and or Fujitsu Intellectual Property or Confidential Information.

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

A8A.2 To the extent Fujitsu performs Services for the benefit of Service Recipients (other than the Customer):

- a. The Customer will ensure that it consolidates requirements from such Service Recipients and is the sole point of contact regarding the provision of Services to all Service Recipients;
- b. The Customer will be liable to Fujitsu for the acts or omissions of the Service Recipients to the extent they breach the Customer's obligations under this Agreement relating to the Services received by the Service Recipients or, that are otherwise stated in this Agreement to apply to such Service Recipients (other than the obligation to pay the Charges which remains with the Customer) ("Service Recipient Obligations") as if they were acts or omissions of the Customer.
- c. The Service Recipients shall not have rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but by allowing DWP to make the Services available the Service Recipients the Parties agree that any right or remedy or liability claimed by the Service 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.

A9 Customer Obligations

- A9.1 The Customer will at its own expense provide hosting in respect of VME and Vitae and will provide electrical supplies, environmental conditions, telecommunications facilities and cabling necessary for each of the Products to be used in accordance with its Product Description or as otherwise advised by Fujitsu.
- A9.2 To enable Fujitsu to fulfil its obligations to the Customer, the Customer will at its own expense give Fujitsu access to equipment or computer programs (including Equipment and Programs) in respect of which Fujitsu provides Services or in respect of which Fujitsu is delivering or installing Equipment or Programs (in this Clause A8, referred to as "Serviced Equipment"), provide such information and documents that Fujitsu reasonably requires in order to provide the Products, make available a sufficient number of appropriately trained staff who are familiar with the Customer's programs and/or applications, and provide suitable working space and facilities.
- A9.3 The Customer shall use and care for the Serviced Equipment in accordance with the applicable manufacturer's recommendations (in the case of the Equipment and Programs in the manner contemplated by the Product Description(s) and any other directions for their use issued by Fujitsu from time to time), save to the extent that Fujitsu is contracted to do so as part of the Services. The Customer shall supervise, manage and control the proper use of Serviced Equipment (including any routine Customer maintenance and any Customer enhancements or modifications authorised by Fujitsu) in the manner that Fujitsu may reasonably specify from time to time. The Customer shall also ensure that adequate backup plans, restart procedures, checks for accuracy and security of data together with other necessary procedures and controls are provided by the Customer to meet its requirements.
- A9.4 The Customer will accept full responsibility for the performance of the Serviced Equipment (including any additional costs incurred by Fujitsu in rectifying any such performance) if performance is adversely affected by the Customer's use of media and consumables which either are not suitable for use with the Serviced Equipment or have been treated with any substance (other than as requested by Fujitsu).
- A9.5 The Customer will be responsible for any loss or damage or reduction in performance is attributable to any equipment, programs or services not supplied by Fujitsu or to alterations or modifications made (other than by Fujitsu) to any Serviced Equipment.

A9.6 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.

A9.7 Where Fujitsu is providing the Service the Customer will, where applicable:

- (a) provide suitable storage for service equipment and spare parts;
- (b) pay Fujitsu for charges covering any additional service and parts necessitated by the Customer's use of media and consumables of the types identified in Clause A9.4 above;
- (c) not make or have made any repairs or adjustments to the Equipment other than by Fujitsu or with Fujitsu's written consent;
- (d) consent to and/or arrange for the temporary disconnection and/or isolation of any non-Fujitsu supplied equipment if in Fujitsu's reasonable opinion they are causing interactive problems.

A9.8 The Customer will at its own expense provide such telecommunication and other facilities as are reasonably required by Fujitsu for diagnostic and testing purposes and will bear the costs of the use of these facilities by Fujitsu.

A10 Limitation of Liability

A10.1 Subject only to Clause A10.1A, and notwithstanding anything to the contrary in this Agreement, the aggregate liability of Fujitsu to the Customer and its Service Recipients and the aggregate liability of the Customer to Fujitsu under or in connection with this Agreement (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors), whether arising from contract, tort (including negligence) or breach of statutory duty, misrepresentation, restitution or otherwise howsoever in connection with the performance or contemplated performance of this Agreement, 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 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 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 (that is software not described as "Third Party") (subject always to the provisions of A.4) or (ii) any liability of the Customer and its Service 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 Products throughout the duration of the Agreement 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 A10.2 below shall not apply to the heads of loss set out in sub-Clause (a) (unlimited liabilities) and sub-Clause (b) (IPR infringement) above.

A10.1A Nothing in clause A10 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.

A10.2 In no event will either party be liable 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;
- (c) any special, consequential or indirect loss or damage;

arising out of or in connection with this Agreement. This shall not affect (i) the liability of the Customer to pay the charges or any other sums falling due to Fujitsu under the terms of this Agreement, or (ii) any liability of the Customer arising from any breach by it of Fujitsu's Intellectual Property Rights, or (iii) Fujitsu's liability arising from Fujitsu's infringement of third party Intellectual Property Rights caused by Fujitsu software.

A11 Third Party Rights

A11.1 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.

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 the Customer is in breach of contract as a result of any failure by the Customer to pay a sum due to Fujitsu under this Agreement on the due date for payment and does not remedy that breach within fourteen days after receiving written notice from Fujitsu, or if Fujitsu terminates the Licence Agreement then Fujitsu may, at Fujitsu's option, immediately terminate this Agreement. Alternatively, Fujitsu may suspend the performance of its obligations under this Agreement until the breach is remedied.

A11.2 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 the contract 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 shall become immediately payable by the Customer without set-off or deduction.

A12.2 Upon completion of any work by Fujitsu or termination of any Service all copies of programs, manuals and documentation whether comprising the Diagnostic Materials or otherwise and used by Fujitsu for the purpose of providing such service or performing the work will forthwith be returned to Fujitsu.

A12.3 Upon termination for whatever reason, the Customer will 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 and which has the benefit of licenses for VME and Vitae.

A13.3 All notices hereunder shall be in writing addressed to the parties at their respective addresses set forth 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, 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 the 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.

A13.11 Until six months after completion of the Service or termination of the Agreement, whichever is the later, neither party will solicit the employment or services of any personnel of the other party who has been engaged in connection with the Service. A party in breach of this provision shall pay to the other by way of liquidated damages a sum equal to the gross salary or fees of that person for the first six months of its new employment or service contract. Nothing in this Clause A13.11 shall apply to any person engaged or employed as a result of a general recruitment initiative or public advertisement undertaken or placed on behalf of a party.

A13.12 Fujitsu will undertake appropriate security vetting of its personnel providing Services under this Agreement.

A13.14 Fujitsu confirms that it has and will follow appropriate ethical policies in delivering the Services in accordance with this Agreement.

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.

Section F - Support Services

F1 Definitions

F1.1 Not used.

F2 Fujitsu's Obligations

F2.1 Fujitsu shall provide the Service to the Customer described in Fujitsu's applicable Product Descriptions.

F2.2 Fujitsu shall provide the Service from the Commencement Date and warrants that it will conform in all material respects to the relevant Product Description.

F3 The Service

- F3.1 Where the Service provides for replacement of items (including parts) of Equipment then when replacement items are fitted the items removed become Fujitsu's property unless for security reasons the Customer requires to retain possession of replaced items, in which case Fujitsu will charge for the replacement items. If repair or replacement is normally effected by removal of the Equipment or Programs from the Customer's premises and the Customer refuses to permit this, Fujitsu will be entitled to recover additional costs incurred thereby and Fujitsu will incur no liability for any resultant delay or failure in providing the Service.
- F3.2 The Service will not include work caused by misuse, abuse, negligence, accident, work carried out by others, combination of the Products which are subject to the Service with other products where this is not recommended by the manufacturer of the Products or by Fujitsu, failure to observe correct operating and environmental conditions, or use of unsuitable items including media or consumables of a type other than as specified by Fujitsu or the manufacturer concerned. The repair or replacement of items which it is no longer economically practical to repair and the replacement of consumables is not included in the Service. Fujitsu shall be under no obligation to provide Services in respect of any Products that are Programs where the programs are neither the latest nor the immediately previous release of those Programs.
- F3.3 Where the Service relates to or includes the support of Equipment, the Customer will at all times keep a record of the nature of the interconnections and interactions between the Equipment and any other equipment (whether via telecommunications lines, network or otherwise) and provide to Fujitsu upon request a diagram of such connections.
- F3.4 At the time that a call for service is logged with Fujitsu, the Customer (or DWP 3rd Party Operator or DWP's Hosting Provider on behalf of the Customer) shall provide to Fujitsu information relating to the Product concerned reasonably requested by Fujitsu to enable Fujitsu to reclaim any applicable warranty sum or other refund from the manufacturer or licensor of the Product. Unless it is specifically stated in the description of applicable charges that the charges are not dependent on Fujitsu's ability to recover a warranty sum, if the Customer does not provide the required information then the Customer shall on Fujitsu's request pay an additional charge equivalent to the amount of the warranty that Fujitsu would otherwise have been able to reclaim.

F4 Change of Service

- F4.1 The Customer may request Fujitsu to provide a service other than the service option indicated in this Agreement and if it does so Fujitsu may at its sole discretion elect to provide such alternative service. Where it does so, Fujitsu shall prepare a revised description of the service option (where applicable) and advise the Customer of the likely impact of any requested or recommended change on the price and timescales for the Service.
- F4.2 Where the Customer agrees to such changes, the parties' agreement to the change will become valid as an amendment to this Agreement only when recorded in writing and signed by authorised representatives of both parties. The revised description prepared by Fujitsu shall constitute the Product Description and the Customer shall pay the revised charges as and from the agreed date. The revised charges shall include charges in respect of Fujitsu's reasonable costs incurred in changing (including reducing the level of) the service provided including the cost of materials used by Fujitsu in the then current service which are not suitable for use in the new service.
- F4.3 The Customer will accept changes to the Service which Fujitsu may introduce generally from time to time in response to changes in technology and resultant changes in Fujitsu's working practices whether or not these form a change pursuant to the terms of this Clause F4 provided Fujitsu gives the Customer reasonable notice of such changes and Fujitsu uses all reasonable endeavours to deliver such changes at nil cost to the Customer.

F5 Return for Repair

- F5.1 This Clause applies only to Equipment that is identified on the Agreement as being Warranty Return for Repair items or if the service option indicated for an item is a Customer Return for Repair Service.
- F5.2 The Customer, at its own expense and risk, shall return the Equipment requiring repair to the appropriate Fujitsu repair centre, together with diagnosis of the fault and/or a description of its symptoms, and shall collect the same promptly after notification from Fujitsu that the repair has been effected.
- F5.3 The Customer will use all reasonable care when dismantling or reassembling the Equipment by following Return for Repair instructions given by Fujitsu and having due regard for safety procedures, and the Customer will indemnify Fujitsu against any claims made against Fujitsu in respect of any damage or death or injury or other event arising out of or in connection with any failure by the Customer to use such reasonable care.
- F5.4 Fujitsu may dispose of any item of Equipment which remains uncollected after three months following Fujitsu's notification that the repair has been effected and shall have no obligation to the Customer in such a case.

F6 Charges

- F6.1 The Customer will pay charges for the Service in accordance with Schedule 4 (Charges / Payments Schedule).
- F6.2 Fujitsu reserves the right to make a charge for any work done by Fujitsu which is attributable to the Customer's failure to observe its obligations or which is not covered by Fujitsu warranty and/or the selected service option.
- F6.3 The Customer shall pay all amounts due within 30 days after receipt of Fujitsu's invoice.

F7 Representations and warranties

- F7.1 Fujitsu represents and warrants to the Customer that:
- a) the Services will be performed:
 - i) in such a way as not to cause any fault or malfunction in the Supported Software and the Supported Equipment;
 - ii) in such a way as not to cause any unreasonable interruption to the business processes of the Customer (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner);
 - iii) in accordance with all applicable laws and regulations; and
 - iv) with all reasonable skill and care;
 - b) the delivery of the Services will not infringe the Intellectual Property Rights of any third party;
 - c) Fujitsu shall take all reasonable precautions so as not to introduce any viruses onto the Customer's systems while performing the Services;
 - d) any modifications provided as a result of performing the Services under this Agreement will be of satisfactory quality and conform substantially to specification;
 - e) at the date of this Agreement, Fujitsu has obtained and will maintain for the duration of this Agreement all permissions, licences and consents necessary for Fujitsu to perform the Services; and
 - f) Fujitsu has adequate resources to meet its obligations under this Agreement in a timely and reliable manner.
- F7.2 If Fujitsu receives written notice from the Customer of any breach by Fujitsu of the representation and warranties contained in clause F7.1, Fujitsu shall, at its own expense,

remedy that breach within a reasonable time following receipt of such notice, failing which the Customer may pursue such rights and remedies as are available to it.

- F7.3 Fujitsu undertakes to defend the Customer from and against any claim or action that the receipt of the Services or any part of them infringes the Intellectual Property Rights of a third party (IPR Claim), and shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct losses, and any interest, penalties and reasonable legal and other professional costs and expenses) suffered or incurred by the Customer as a result of that IPR Claim.
- F7.4 Fujitsu warrants that it owns or possesses (or at the time of performance will own or possess) all necessary licences or rights required by Fujitsu in order to perform its obligations under this Agreement and that such licences and rights will extend to all enhancements, improvements or upgrades to such programs or data. Fujitsu shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct losses, and any interest, penalties and reasonable legal and other professional costs and expenses) suffered or incurred by the Customer as a result of that it does not own or possess such licences and rights.

SCHEDULE 2

Special Terms and Conditions

1. The parties acknowledge that because the Customer and DWP have already used the Programs to be licensed for several years there is no warranty period applicable to VME and or Vitae.
2. The Customer agrees to promptly perform any obligations detailed in this Agreement and Fujitsu shall be excused performance to the extent that such obligations cause any breach by Fujitsu.
3. SITES
 - 3.1 DWP, or DWP 3rd Party Operators or DWP's Hosting Provider shall be responsible for maintaining the physical security of the Sites in accordance with its standard security requirements. Fujitsu shall comply with all reasonable security requirements of DWP and DWP's Hosting Provider while on the Sites, and shall procure that all Fujitsu Personnel shall likewise comply with such requirements. Customer shall provide Fujitsu upon request with copies of such written security procedures.
 - 3.2 DWP shall notify Fujitsu of any health and safety hazards which may exist or arise at the Sites and which may affect Fujitsu. Fujitsu shall draw these hazards to the attention of all Fujitsu Personnel engaged by Fujitsu in the performance of this Agreement at the Sites and shall instruct such persons in connection with any necessary associated safety measures.
 - 3.3 Access to Sites will be made available to Fujitsu by DWP in connection with this Agreement free of charge and on the following terms:
 - 3.3.1 such access shall be used by Fujitsu solely for the purpose of performing this Agreement; and
 - 3.3.2 Fujitsu shall have the use of such Sites as an invitee on terms notified by DWP to Fujitsu and shall have no further access to the same upon the termination or expiry of this Agreement or (if earlier) upon Customer no longer requiring Fujitsu to deliver any Services to the Site in question; and
 - 3.3.3 DWP, DWP 3rd Party Operators or DWP's Hosting Provider reserves the right under this Agreement to refuse to admit to any Sites any Fujitsu Personnel whose admission would be, in the opinion of DWP, or DWP 3rd Party Operators or DWP's Hosting Provider, undesirable; and
 - 3.3.4 if and when directed by DWP, Fujitsu shall, to the extent it is legally entitled to do so, provide a list of the names and addresses of all members of Fujitsu Personnel who it is expected may require admission (in connection with the performance of this Agreement) to any Sites, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as DWP may reasonably require.
 - 3.4 The decision of DWP or DWP 3rd Party Operators or DWP's Hosting Provider as to whether any person is to be refused admission to any Sites in accordance with Clause 9.3 shall be final and conclusive.
 - 3.5 Notwithstanding any other provision in this Agreement, DWP reserves the right to refuse entry to the Sites to Fujitsu Personnel where DWP reasonably believes, or DWP 3rd Party Operators or DWP's Hosting Provider notifies DWP that it reasonably believes, such entry might give rise to a breach of any DWP Regulations or any Health and Safety Regulations.
 - 3.6 Where DWP, in breach of this Agreement or as an unreasonable exercise of DWP's or DWP 3rd Party Operator's or DWP's Hosting Provider's discretion refuses Fujitsu access to any Site or exercises its rights under Clause 9.1.3 or 9.5 in an unreasonable manner then to the extent that Fujitsu is prevented or delayed by such action from performing any of its obligations under this Agreement, DWP shall not be entitled to raise the resulting failure or delay as a breach of this Agreement.

4 SECURITY

- 4.1 Fujitsu shall not carry out any act or make any omission which has or could reasonably be expected to have an adverse impact upon the security of any of the Services or any systems or services of DWP or DWP's Hosting Provider.
- 4.2 In relation to any Data, including Personal Data, which Fujitsu processes in the course of providing the Services, Fujitsu shall ensure that:
- 4.2.1 it only processes the Data in accordance with the instructions of DWP, including those set out in this Agreement; and
 - 4.2.2 it has in place appropriate technological and organisational security measures against unauthorised or unlawful processing of the Data and against accidental loss, destruction of, or damage to the Data which shall reach, at a minimum, the prevailing standard of good industry practice; and
 - 4.2.3 it complies with all DWP and DWP's Hosting Provider's Data security policies, standards and procedures in place from time to time and, in particular, shall ensure that no Data is processed or stored on any removable media device; and
 - 4.2.4 it shall notify DWP promptly following any actual or suspected Data loss; and
 - 4.2.5 it shall co-operate with DWP and DWP's Hosting Provider in relation to the investigation of any actual or suspected Data loss or breach of the obligations in this Clause 14.
- 4.3 DWP may, on reasonable notice, audit Fujitsu's compliance with this Clause 4 at any time.
- 4.4 Fujitsu shall comply (and shall ensure that all Fujitsu Personnel and other persons carrying out Fujitsu's obligations shall comply) with all security policies and standards, including any requirements relating to Sites and any additional policies specified by DWP as being required.
- 4.5 Fujitsu shall, at no additional charge to Customer, fully co-operate with any investigation relating to security which is carried out by or on behalf of DWP.
- 4.6 Fujitsu shall, subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may be reasonably required by DWP for the purposes of an investigation relating to security. DWP shall have the right to retain any such material for use in connection with such investigation and shall provide Fujitsu with a copy of any material retained.
- 4.7 When accessing the VME and Vitae systems Fujitsu shall comply with all relevant Customer security and access policies as will be provided to Fujitsu from time to time but in any event shall be provided to Fujitsu no less than one (1) week prior to the commencement of any such activity. Any such activity by Fujitsu shall be undertaken in such a way as to cause minimum disruption to the Customer.

5 Data & Data Protection

- 5.1 Fujitsu shall not acquire any right in, or title to, any part of the Data whether existing prior to the Commencement Date, or created after such date.
- 5.2 Fujitsu shall not:
- 5.2.1 disclose, use, modify, store, copy or adapt the Data; nor
 - 5.2.2 merge or combine DWP Data or Personal Data with other Data; nor
 - 5.2.3 remove any proprietary or copyright notices contained within or relating to any Data, except as may be necessary for the performance by Fujitsu of its obligations under this Agreement or as otherwise expressly authorised by Customer.
- 5.3 Upon receipt or creation by Fujitsu of any Data and during any collection, processing, storage and transmission of Data, Fujitsu shall take all necessary precautions to preserve the integrity of the Data and to prevent its corruption or loss.

5A. PROTECTION OF PERSONAL DATA

5A.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Customer is the Data Controller. Fujitsu does not believe that in supplying the Services it is a Data Processor.

5A.2 However, to the extent, if any, that Fujitsu is or shall become a Data Processor, Fujitsu shall immediately inform the Customer and Fujitsu shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Agreement);
- (d) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with Fujitsu's duties under this Agreement;
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Customer within 5 Business Days if it receives:
 - (i) from a Data Subject (or third party on their behalf):
 - (A) a Data Subject Access Request (or purported Data Subject Access Request);
 - (B) a request to rectify, block or erase any Personal Data; or
 - (C) any other request, complaint or communication relating to the Customer's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint, communication or request made as referred to in Clause 5A.2(e), including by promptly providing:
 - (i) the Customer with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of

compliance with its obligations pursuant to this Clause 5A and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

5A.3 Fujitsu shall not Process or otherwise transfer any Personal Data in or to any Restricted Country. If, after the Commencement Date, Fujitsu or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:

- (a) Fujitsu shall submit a variation request to the Customer which, if the Customer agrees to such variation request, shall be dealt with in accordance with Clause A13.5 and Clauses 5A.3(b) to 5A.3(d);
- (b) Fujitsu shall set out in its variation request details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in any Restricted Country;
 - (ii) the Restricted Country or Countries which the Personal Data will be transferred to and/or Processed in; and
 - (iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how Fujitsu will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
- (b) in providing and evaluating the variation request, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Country; and
- (c) Fujitsu shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Agreement or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Country either enters into:
 - (A) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or
 - (B) a data processing agreement with Fujitsu on terms which are equivalent to those agreed between the Customer and the Sub-contractor relating to the relevant Personal Data transfer,

and in each case which Fujitsu acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

5A.4 Fujitsu shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Customer to breach any of the Customer's obligations

under the DPA to the extent Fujitsu is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

6 Freedom of Information

- 6.1 Supplier acknowledges that the Customer is subject to the requirements of the Freedom of Information Acts ("FOIA") and the Environmental Information Regulations ("EIR").
- 6.2 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:
- 6.2.1 if Supplier receives a purported RFI addressed to Customer it shall not respond unless authorised in writing to do so by the Customer;
 - 6.2.2 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;
 - 6.2.3 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;
 - 6.2.4 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
 - 6.2.5 Supplier shall incorporate into contracts with its Sub-Contractors an equivalent provision, mutatis mutandis, to the terms of this Clause 6, 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.
- 6.3 The Customer shall be responsible for determining at its absolute discretion whether any information requested in a RFI:
- 6.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
 - 6.3.2 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.
- 6.4 Where a RFI addressed to the Customer relates to Supplier Confidential Information, the Customer shall, prior to disclosing any of such Supplier Confidential Information:
- 6.4.1 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;
 - 6.4.2 consult with Supplier as to whether or not the information should be disclosed;
 - 6.4.3 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
 - 6.4.4 consider in good faith whether or not to apply any relevant exemption available under the FOIA or the EIR to Supplier Confidential Information.
- 6.5 The Customer acknowledges that Supplier Confidential Information may be the subject of an exemption within the FOIA or the EIR (as appropriate).
- 6.6 In relation to the processing of a RFI addressed to the Customer under this Clause 6, 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.

7 Transparency

7.1 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.

7.2 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.

7.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish this Agreement.

8 Prevention of Fraud and Bribery

8.1 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 Commencement 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.

8.2 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.

8.3 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 8.3(a) and make such records available to the Customer on request.

8.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 8.1 and/or 8.2, 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.

8.5 If the Supplier is in default under Clauses 8.1 and/or 8.2, 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.

8.6 Any notice served by the Customer under Clause 8.5 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).

9 **Official Secrets and Tax Compliance**

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
Services Schedule

The following descriptions which are attached to and form part of this Agreement describe the support and maintenance services being provided:

Support and Maintenance

[REDACTED]

The following Equipment is currently installed and in use by the Customer:

[REDACTED]

Schedule 4
Charges / Payments Schedule

The Customer agrees to pay Fujitsu for the support and maintenance of VME and Vitae by reference to the MIPS licensed.

The charges payable by DWP to Fujitsu for support and maintenance of VME and Vitae (Live and BC) for the Term of this Agreement (i.e. the period from 24/02/2020 to 31/12/2020) are as follows:

Charges			
		Period	Charges / Payment excluding VAT
Live and BC		24/02/2020 to 31/12/2020	£3,399,314

Payment is due in advance. Fujitsu will invoice at the start of the Term and all charges will be paid (together with VAT as applicable) in 30 days of receipt of the invoice.

For the avoidance of doubt, the Customer acknowledges and agrees that the charges are payable whether or not it uses anticipated MIPS and there will be no reduction in the Payments due from the Customer.

2021

[REDACTED]

Schedule 5

Definitions

"Commencement Date"	means 24 th February 2020
"Customer"	means the Department for Work and Pensions.
"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;
"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, intellectual property rights, 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(f) Information derived from any of the above, (including records and/or notes containing, comprising or relating to the Confidential Information), but not including any Information which the Recipient can demonstrate to the reasonable satisfaction of the Disclosing Party, a court or other authority of competent jurisdiction:<ul style="list-style-type: none">(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;

	<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>
"Data"	means any data in whatever form (including text, drawings, diagrams, plans, images, sounds and charts) which are embodied in any electronic or tangible medium and which are supplied, or in respect of which access is granted, to Fujitsu by DWP and/or DWP 3rd Party Operators in relation to the provision of the Services or which Fujitsu is required to generate, collect, process, store and/or transmit under this Agreement (including without limitation, the Personal Data);
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject"	has the meaning given in the DPA;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Diagnostic Materials"	means any diagnostic and test routines, programs, manuals, documentation and data.
"DPA"	means the Data Protection Act 1998 and any other applicable Laws relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or a relevant Central Government Body in relation to such Laws;
"DWP"	means the Department for Work & Pensions;
"DWP 3rd Party Operator"	means at the commencement of this Agreement DXC and BPDTS and any replacement appointed in accordance with the Licence Agreement between the Parties.
"BPDTS"	means BPDTS Ltd (or Benefits & Pensions Digital Technology Services Limited) whose registered office is at Caxton House, Tothill Street, London, United Kingdom, SW1H 9NA Registered in England Company number 10344843.
"DWP's Hosting Provider"	means Crown Hosting Data Centres Limited with Company number 09274699 with a registered office at Spring Park Westwells Road, Hawthorn, Corsham, Wiltshire, SN13 9GBand or Ark Data Centres Limited - company number

	5656968 and which has a R/O also at Spring Park Westwells Road, Hawthorn, Corsham, Wiltshire, SN13 9GB
"DXC"	means EntServ UK Limited (previously known as Hewlett Packard Enterprise Services UK Limited), of Royal Pavilion, Wellesley Road, Aldershot, Hampshire, United Kingdom, GU11 1PZ. Company number 00053419. And
"Effective Date"	means 24 February 2020;
"Equipment"	means the equipment referred to as equipment supported in Schedule 3.
"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, 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.
"Law"	means 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, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which in all cases the Supplier is bound to comply;
"Live"	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;
"Process"	has the meaning given to it under the DPA and "Processed" and "Processing" shall be construed accordingly;
"Products"	means the Services.
"Product Description"	means the product or service description applicable to the Services as set out in Schedule 3.
"Programs"	means those items referred to as programs or software in this Agreement (including any associated documentation which may be supplied with them).
"Restricted Country"	Means (a) any country outside the European Economic Area, and (b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;

"Service(s)"	means the support and maintenance services referred to in Schedule 3 which Fujitsu will perform and the associated items, if any, which Fujitsu will deliver, in support of the Equipment or Programs.
"Supported Equipment"	means the supported equipment as set out in Schedule 3.
"Supported Software"	means the supported VME and Vitae software or programs as licenced by DWP.
"Sub-Contractor"	means a third party with whom Fujitsu 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;
"Supplier Personnel"	means employees, directors, officers, consultants, contractors and agents of Fujitsu and of its Sub-Contractors assigned to deliver the Services (or any part of the Services);
"Term"	means a 10 month period from 24th February 2020 to 31 st December 2020 and in accordance with Clause 1, shall where applicable extend until the 23 rd February 2021 if the Customer uses VME and Vitae after 31 st December 2020 upon payment of the additional Charges then due;
"VME"	means the Fujitsu owned VME programs separately licenced to DWP by Fujitsu;
"Vitae"	means the VITAE programs separately licenced to DWP by Fujitsu;