



Part of the Workforce Development Trust

E-Rostering Contract

Between

("The WD Trust Ltd")

The Workforce Development Trust Ltd trading

as Skills for Health

4th Floor, 1 Temple Way, Bristol, BS2 0BY

And

("the Licensee")

Product

E-Rostering

Contract Number



Background

The WD Trust Ltd is the owner of the Intellectual Property (the “Product”) made available to the Licensee under the terms set out in this contract. The Licensee has requested a licence to use the Intellectual Property for the Permitted Purpose. The WD Trust Ltd has agreed to grant such a licence to the Licensee on the terms set out in this contract.

Definitions

In this contract unless the context otherwise requires the following words and expressions shall have the following meanings:

Commencement Date

The start date of this contract (as defined in Schedule A).

Activity Baseline

A baseline for the year based on the number of staff, training needs and training plan.

Product Description

Product/s covered by this licence contract (as set out in Schedule A).

Intellectual Property

Means all patents, copyrights, rights in databases, sui generis rights, moral rights, topography rights, design rights, trade marks, documents, source code, trade secrets, know-how and all other intellectual property rights of a similar nature in any part of the world and all applications and rights to apply for the protection of any of the foregoing relating to both the Product and any other materials supplied by the WD Trust Ltd.

Term

The period of this contract as set out in Clause 2 below.

Licence and/or Access Fee

The fees which the Licensee shall pay to the WD Trust Ltd (as set out in Schedule A)

Implementation Support

Implementation consultant support during implementation period (as set out at Schedule A - where applicable).

Permitted User

Users whom the Licensee has identified as requiring an account to access the Product within the limits of the contract.

Permitted Use

The permitted use of the product (as set out in Schedule A).

Retail Price Index (RPI)

The General Index of Retail Prices (All Items) published by the Central Statistical Office or if the Retail Price Index ceases to be published or is not published in any month, such alternative index which produces, as nearly as possible, the same result.

Territory

Locations for the use of the product (as defined in Schedule A).

Scope

Permitted range of use (as specified in Schedule A)



Signed

.....

The Workforce Development Trust Ltd

Name:

Title:

Date:

.....

Name:

Title:

Date:

1 Grant of licence

- 1.1 In consideration of the performance by the Licensee of its obligations under this contract, the WD Trust Ltd grants to the Licensee a non-exclusive licence to use the Product for the Permitted Use during the Term.
- 1.2 The WD Trust Ltd reserves the right to grant licences of the Product within and outside of the Territory to other Licensees and to use the Intellectual Property in any other manner.
- 1.3 The Licensee agrees to comply with this contract and to fulfil the obligations detailed in the Schedules.
- 1.4 The WD Trust Ltd makes no representation as to the efficacy or usefulness of the Product to confer benefit on the business or other interests of the Licensee.

2 Terms of licence

- 2.1 This contract shall commence on the Commencement Date as specified in Schedule A, and shall continue in force until terminated in accordance with its provisions.
- 2.2 It will be deemed that the Licensee accepts the terms and conditions of this Licence and for the contract to be in effect, on the basis of the Licensee authorising this contract by signature or by payment of the initial subscription/invoice to The WD Trust Ltd.

3 Licence fee

- 3.1 In consideration of the rights granted by the WD Trust Ltd pursuant to Clause 1.1, the Licensee shall pay to the WD Trust Ltd the following sums:
 - a) The Annual Licence Fee as set out in Schedule A within 30 days of receipt of a valid invoice
 - b) Where the contract terms exceed one year the WD Trust Ltd maintains the right to increase the annual fee (where this is not paid in full up front) by the percentage increase in the Retail Prices Index (RPI) for the previous twelve month period.
 - c) With the exception of clause 11.2, no refund will be given to the Licensee in the event of early termination
 - d) Purchase Order details are to be provided by the Licensee as soon as this contract is signed.
- 3.2 The Licensee shall pay the Licence Fee into such bank account as the WD Trust Ltd may nominate to the Licensee from time to time in cleared funds without deduction or set off.
- 3.3 If the Licensee fails to make any payment due to the WD Trust Ltd under this contract within 30

days, the WD Trust Ltd shall be entitled (without prejudice to any other right or remedy it may have) to charge interest on any amount outstanding pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, such interest being charged as a separate, continuing obligation and not merging with any judgment.

- 3.4 The Licence Fee payable under this contract shall be exclusive of VAT, which if applicable will be charged at the prevailing rate.
- 3.5 Each licence fee is valid for the period of the contract.

4 Use of the product and protection of intellectual property

- 4.1 The Licensee shall not rent, lease, sub-licence or transfer the Product or reverse engineer, recompile or disassemble it (*subject to section 50B of the Copyright, Designs and Patents Act 1988*). The Licensee shall not make available, copy, distribute, encourage or assist the reproduction of the Product by any third party.
- 4.2 If the Licensee merges with another organisation that is not licenced to use the Product then Product use and scope shall be restricted to the Licensee's pre-merger use only. If wider use is required for the whole of the merged organisation then a new Licence shall be agreed.
- 4.3 The WD Trust Ltd is the owner / licence distributor of all the Intellectual Property and of all Intellectual Property rights in the Product as defined by the Copyright Designs and Patents Act.
- 4.4 The Licensee shall not do, or omit to do, anything to diminish the rights of the WD Trust Ltd in the Intellectual Property or impair any registration of the Intellectual Property.
- 4.5 The Licensee shall not, during the Term or at any time thereafter, apply for or obtain registration of the Intellectual Property or any other trade mark or certification mark which is similar to the Intellectual Property for any goods or services in any part of the world.
- 4.6 Nothing in this contract shall give the Licensee any right, title or interest in the Product and Intellectual Property, other than the right to use it in accordance with the terms and conditions of this contract. The Licensee recognises the WD Trust Ltd's title to the Intellectual Property and shall not do anything inconsistent with such title and shall not claim any right title or interest in the Intellectual Property or any part of it save as is granted by this contract.
- 4.7 The Licensee shall not assign or otherwise transfer this contract or any of its rights or obligations under it, or grant any sub-licence, without the prior written consent of the WD Trust Ltd.

- 4.8 The WD Trust Ltd may assign or otherwise transfer this contract or any of its rights or obligations under it, or grant any sub-licence, without the prior written consent of Licensee.
- 4.9 All goodwill and reputation generated in the Intellectual Property by the Licensee shall be generated on behalf of the WD Trust Ltd and be for the WD Trust Ltd's benefit and the Licensee shall hold any such goodwill generated as bare Licensee for the WD Trust Ltd.
- 4.10 The Licensee shall not dispute or challenge the validity of the Intellectual Property or any other rights of the WD Trust Ltd in relation thereto, either during the Term or at any time thereafter.
- 4.11 The Licensee shall provide such assistance as the WD Trust Ltd may reasonably require in relation to the maintenance and protection of the Intellectual Property or in relation to any application to register the WD Trust Ltd as proprietor of the Intellectual Property.

5 Accessing the product

- 5.1 Where the Product is made available via the Internet then the WD Trust Ltd will be responsible for making the Product accessible to a level reasonable for such an application. Subject to Clause 13.1, the WD Trust Ltd will not be liable to the Licensee if for any reason the Product is unavailable at any time or for any period when the Product is installed on the Licensee's premises or remote servers.
- 5.2 The Licensee acknowledges and agrees that:
 - a) The WD Trust Ltd may need to restrict the Licensee's access to some parts of or all of the Product at any time or for any period for the purposes of maintenance, upgrade or repair. The WD Trust Ltd will endeavour to notify the Licensee of such planned activity and to minimise any restriction or down-time where possible.
 - b) The WD Trust Ltd has the right to disable any access to for the Product at any time, if in the WD Trust Ltd's sole opinion the Licensee has failed to comply with the terms of this contract; and
 - c) the Licensee is responsible for making all arrangements necessary for it to have access to the Product.
- 5.3 The Licensee shall not:
 - a) misuse the Product by knowingly introducing viruses or other material which is malicious or technologically harmful; or
 - b) attempt to gain unauthorised access to the Product, the server on which the Product is stored or any server, computer or database connected to the Product; or

- c) divulge the Intellectual Property to any third parties without the prior written consent from the WD Trust Ltd.
- 5.4 Subject to Clause 13.1, the WD Trust Ltd will not be liable for any loss or damage caused by viruses or other technologically harmful or malicious material that may infect the Licensee's computer equipment, computer programs, data or other proprietary material due to the Licensee's use of the Product or to the Licensee's downloading of any material from the Product.
- 5.5 This clause is relevant for software provided by the WD Trust Ltd installed locally in the Licensee organisation. When the licence contract is terminated or at the end of the contract period and where the licenced software application has been installed locally on the Licensee's own systems, the Licensee shall ensure that use of the software ceases and it is decommissioned. The Licensee shall confirm to the WD Trust Ltd in writing within 30 days of the termination/end date, that all appropriate actions have been taken to remove the software from their systems and that it can no longer be accessed by their staff. Failure to comply with this clause will constitute a breach of this licence contract and result in a claim for damages from the WD Trust Ltd.
- 5.6 The terms set out above in this Clause 5 are without prejudice to any general terms of use which apply in respect of the Product.

6 Responsibility for data

- 6.1 The Product/System will report on the data that is loaded into it. The Licensee is responsible for the data that is loaded and any interpretation of reports produced. The WD Trust Ltd cannot be held responsible if any aspect of the data is incorrect, missing, corrupt, incorrectly formatted or in any other way unusable nor can the WD Trust Ltd be held responsible for any interpretation thereof.
- 6.2 The WD Trust Ltd are acting as a data processor for any data loaded into products made available via the internet, with the licensee being data controller. Any requests submitted under the Data Protection Act or Freedom of Information Act pertaining to data entered by the licensee will be the responsibility of the licensee as data controller. The WD Trust Ltd will provide reasonable assistance to the licensee in extracting data where it is not easily accessible directly from any product made available via the internet.
- 6.3 During the period of this contract, the WD Trust Ltd may receive from the Licensee such data and information necessary to undertake the work and provide the services commissioned. The WD Trust Ltd will treat such information as confidential.

7 Back up

- 7.1 Where the licenced software is installed locally on the Licensee's own system, the Licensee is responsible for all back up of the Product and associated data files. In the event that the Product is made available via the Internet then the WD Trust Ltd will undertake daily back up procedures.

8 Product support

- 8.1 The Licensee is responsible for providing skilled IT professionals to operate, administer and support the Product. In the event of technical support being required the Licensee will first make all possible investigations to ensure that the issue is one that requires the WD Trust Ltd to resolve and then log the issue in a way defined by the WD Trust Ltd.

9 Security

- 9.1 The Licensee has sole responsibility for all aspects of the security for the Product at its premises. In the event that the Product is made available to the Licensee via the Internet then the WD Trust Ltd will ensure the Product complies with relevant security standards. Without regard of the above, the WD Trust Ltd is not responsible for any breaches of security that occur due to inappropriate action by a Licensee such as but not limited to disclosure of security details or allowing access to the system to persons not directly employed by the Licensee.

10 Third party infringements

- 10.1 The Licensee shall promptly notify the WD Trust Ltd of any actual or suspected infringement within the Territory of the Intellectual Property that comes to its attention ("**Infringement**").
- 10.2 The WD Trust Ltd shall have the sole right to take action against third parties in respect of the Intellectual Property and, if required to do so by the WD Trust Ltd, the Licensee shall co-operate with the WD Trust Ltd in taking all steps reasonably required by the WD Trust Ltd in connection with any Infringement.
- 10.3 The Licensee shall in no circumstances settle any claim or action against third parties in respect of the Intellectual Property without the prior written consent of the WD Trust Ltd.

11 Termination

- 11.1 This contract shall commence on the date stated in Schedule A and remain in force for the Licence Period identified, so long as the Licensee gives the WD Trust Ltd 90 days notice in writing of their intention to end the contract on the contract end date. If this is not received the contract will automatically remain in effect for a further 12 months at the then current licence rate. The

licence will automatically renew for 12 months annually at the then current licence rate until notice is received

- 11.2 Notwithstanding clause 11.1 and 11.3 this licence may be terminated if the WD Trust Ltd defaults by failing to perform any substantial obligation on its part in such a manner that either party cannot reasonably be expected to continue to perform its obligations under the contract. That such default is not remedied to the reasonable satisfaction of the Licensee within three months of notice in writing requesting its remedy, provided that the default is capable of remedy in the reasonable opinion of both parties, and the WD Trust Ltd is diligently taking active and effective steps to do so. The period of three months may be extended for a reasonable period of time subject to the contract of the Licensee.

- 11.3 Termination of this contract for whatever reason shall not entitle the Licensee to any compensation or payment but shall be without prejudice to any rights or liabilities which have accrued prior to the date of termination.

- 11.4 The WD Trust Ltd may terminate this contract forthwith by giving written notice to the Licensee if:

- a) at any time the WD Trust Ltd shall cease to have the right described in Clause 1.1 to grant licences of the Intellectual Property or any part of it;
- b) the Licensee disputes or challenges the validity of the Intellectual Property or any other rights of the WD Trust Ltd in relation thereto;
- c) there is a failure on the part of the Licensee to perform any of its other obligations under this contract; or
- d) the Licensee ceases to exist or to carry on its business.

- 11.5 Where the WD Trust Ltd terminates the licensee contract as a consequence of 11.4 points b, c or d they shall be entitled to payment of the contract value in full. The WD Trust Ltd may (subject to the circumstances and reasons giving rise to such termination) accept a minimum payment commensurate with the value of the work undertaken up to the date of termination. This shall be without prejudice to any rights or liabilities which may have accrued prior to the date of termination.

12 Termination consequences

- 12.1 On termination of this contract for any reason the Licensee shall discontinue all use of the Product and delete all copies and documentation previously provided.
- 12.2 Termination of this contract for any reason shall be without prejudice to the rights and remedies of either party in respect of the breach by the other

party of any of its obligations under this contract.

13 Liability

- 13.1 Nothing in this contract shall operate so as to limit or exclude liability for death or personal injury caused by negligence, nor liability for fraudulent misrepresentation, nor any other liability which cannot be excluded or limited by law.
- 13.2 Subject to Clause 13.1, the Intellectual Property is provided to the Licensee without any guarantees, conditions or warranties as to its accuracy. To the extent permitted by law, the WD Trust Ltd hereby expressly excludes:
- a) all conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity;
 - b) any liability for any direct, indirect or consequential loss or damage incurred by the Licensee in connection with the Intellectual Property or in connection with the use or results of the use of the Intellectual Property, whether in contract, tort (including, without limitation, negligence or breach of statutory duty) or howsoever arising and including, without limitation, any liability for loss of use or loss of profits, business, contracts, income, revenues or anticipated savings.
 - c) any liability for any direct, indirect or consequential loss or damage incurred by the 'permitted user' in connection with the Intellectual Property or in connection with the use or results of the use of the Intellectual Property, whether in contract, tort (including, without limitation, negligence or breach of statutory duty) or howsoever arising and including, without limitation, any liability for loss of use or loss of profits, business, contracts, income, revenues or anticipated savings.
- 13.3 The WD Trust Ltd's aggregate liability to the Licensee, however caused, whether for breach of contract, negligence or otherwise (except in relation to death or personal injury), shall not in any event exceed either (i) £5,000 or (ii) that part of the fee that has been paid by the Licensee, whichever is the lower.

14 Confidentiality

- 14.1 Each party shall at all times treat as confidential any information it may acquire in relation to this contract or the business and affairs of the other party ("Confidential Information") provided that this clause does not apply in respect of Confidential Information which:
- a) is disclosed to the staff, officers, representatives or advisers of a party who need to know such Confidential Information for the purposes of carrying out their obligations under this contract; or

- b) is in or enters the public domain other than by breach of this contract; or
 - c) is obtained from a third party who is lawfully authorised to disclose such information; or
 - d) which is in the possession of a party prior to its receipt from another party, as evidenced by written evidence, and is not subject to a duty of confidentiality; or
 - e) is required to be disclosed by judicial, administrative governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.
- 14.2 With the exception of anonymised benchmarking data (clause 6.4) neither party shall use any Confidential Information of the other party for any purpose other than to carry out its obligations under this contract.

15 No waiver

No waiver by a party of any of the other party's obligations under this contract shall be deemed effective unless made in writing nor shall any waiver by a party in respect of any breach of this contract be deemed to constitute a waiver of or consent to any subsequent breach by the other party of its obligations.

16 Severance


In the event that any provision of this contract is declared by any judicial or other competent authority to be void, voidable or illegal, invalid or unenforceable the remaining provisions shall not be affected and shall continue to apply.

17 No agency or partnership

The parties to this contract are not partners or joint venturers, nor is either party entitled to act as the other party's agent, nor shall either party be liable in respect of any representation act or omission of the other party of whatever nature.

18 Notices

Any notice to be served on a party by the other party under this contract shall be sufficiently served if it is personally delivered or sent by registered post or through the recorded delivery system addressed to the address referred to above or such other address as may from time to time be notified to the other party, or sent by e-mail to the specified e-mail address of the addressee. Any notice referred to in this Clause 19 shall be deemed to have been served, if personally delivered, at the time of delivery, or if sent by registered post or through the recorded delivery



system, 48 hours after the time of posting (unless returned by the Post Office undelivered), or if sent by e-mail, 24 hours after the email is sent.

19 Transmission of benefit

This contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

20 Third parties

For the avoidance of doubt, no third party shall have any rights in respect of this contract by virtue of the contracts (Rights of Third Parties) Act 1999 and the parties shall not require the consent of any person to any variation of or amendment to this contract.

21 Force majeure

If, and to the extent that, either party is prevented or delayed from performing any of its obligations (other than an obligation to make payment) under this contract by circumstances beyond its reasonable control ("Force Majeure"), it shall promptly so notify the other party, specifying the matters constituting Force Majeure together with such evidence in verification of those matters as it can reasonably give and specifying the period for which it is estimated that the prevention or delay shall continue. The party so affected shall then be relieved of liability to the other for failure to perform, or for delay in performing (as the case may be), its obligations, but shall nevertheless use its best endeavours to resume full performance of its obligations under this contract provided that, if the Force Majeure continues for a period of two months or more following notification, the party not affected by the Force Majeure may terminate this contract by giving not less than 30 days' prior notice to the other party. Such notice of termination shall be of no effect if the party affected by the Force Majeure resumes full performance of its obligations under this contract before the expiry of the notice period.

22 Entire Contract

This contract, together with any documents referred to in it, constitutes the whole contract between the parties relating to its subject matter and supersedes any prior drafts, contracts, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

23 Variation

No variation of this contract shall be effective unless made in writing and signed by or on behalf of both parties.

24 Publicity

The Licensee consents to the WD Trust Ltd referring to the Licensee as a Licensee of the Product. The WD Trust Ltd reserves the right to make a reference on its website and notify any interested third party if this contract is terminated as is necessary to protect the integrity of its Intellectual Property.

25 Remedy

The parties agree that any breach of the Licensee's obligations contained in this contract may cause irreparable harm to the WD Trust Ltd and the WD Trust Ltd shall be entitled to injunctive relief without the necessity of proving damages or the inadequacy of money damages, posting any bond or other security in addition to all other legal or equitable remedies.

26 Governing law

This contract shall be governed by and construed in accordance with the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

27 Supplementary clauses

Any additional clauses agreed between the WD Trust Ltd and the licensee to be inserted here.

E-Rostering Contract

SCHEDULE A

Licensee name & address:	Licensee contact details:
	Name of contact: Email address:
Address:	
Product description	DRS is a web based solution that supports the generation and population of rotas for junior doctor staff. The tool helps ensure that shifts are performed within legal European Working Time Directive (EWTD) 2009.
Commencement date	
Term	Start Date: End Date:
Licence / access fee total	£
Invoicing arrangements	
Territory	
Scope	
Implementation support	£
Permitted use Internal, non-commercial use in the Territory by the Licensee to help with reporting performance outcomes on workforce training, but "use" shall not include disclosure, sharing or distributing the Product software, documentation, methods or Intellectual Property with any third party in any way, form, manner or media.	

** Note this licence fee excludes VAT which, if applicable, will be charged at the prevailing rate. Our interpretation of the rules surrounding NHS contracted out services is that the recipient organisation can recover the VAT under contracted out rule no.45: Operation of hospitals, healthcare establishments and health care facilities and the provision of any related services. However, WDT Trust Ltd cannot be held responsible in the event that HMRC interpret the contracted out rules differently. The Licensee takes full responsibility for interpretation of VAT legislation and VAT recovery rules in relation to this contract.*