

DATED

1st April 2019

(1) [HEAVY ENERGY LTD]

- and -

(2) [HEALTH EDUCATION ENGLAND]

**SOFTWARE LICENCE &
MAINTENANCE AGREEMENT**

relating to
eWorkforce Data Collection Tool

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THIS LICENCE AGREEMENT is made on

2015

BETWEEN:

- (1) **HEAVY ENERGY LIMITED**, a company incorporated and registered under the laws of England and Wales (registered number 03390656) which has its registered office at 139 Starkholmes Road, Matlock, Derbyshire. DE4 5JA ("**Heavy Energy**"); and
- (2) **HEALTH EDUCATION ENGLAND**, which has its registered office at Stewart House, 32 Russell Square, London, WC1B 5DN ("**HEE**").

BACKGROUND:

- A Heavy Energy is the legal and beneficial owner of rights in and supplier of, the eWorkforce Data Collection Tool and is willing to license HEE to use the eWorkforce Data Collection Tool on the terms and conditions of this Agreement.
- B The parties acknowledge that HEE receives the benefit of the licence hereunder to use all Heavy Energy's Intellectual Property Rights in respect of the eWorkforce Data Collection Tool on the terms and conditions of this license.

IT IS AGREED:

1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this license:

"**Affiliate**" means in relation to either party each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party;

"**Authorised Agent**" means each and any agent, employee, contractor or subcontractor of HEE, or any Affiliate who is engaged or employed by HEE or any Affiliate to provide Relevant Services;

"**Claim**" has the meaning set out in clause 10.2;

"**Correction**" has the meaning given in clause 5.5;

"**Date of Disposal**" means the date on which a Divested Entity ceased to be an Affiliate or ceased to be owned by HEE or an Affiliate (as the case may be).

"**Divested Entity**" means any:

- (a) company which at any time during the term of this licence is an Affiliate, and which ceases to be an Affiliate; and
- (b) business or undertaking which at any time during the term of this licence is owned by HEE or any Affiliate, and which ceases to be owned by HEE or any Affiliate;

"**Escrow**" means the deposit with, and retention by the Escrow Agent of, the Source Code Materials;

"Escrow Agent" means [Escrow agent agreed by HEE & Heavy Energy];¹

"Escrow Agreement" means an escrow agreement [in the form attached to this licence which is to be] entered into by the parties and the Escrow Agent in accordance with clause 4;

"Export Control Laws" has the meaning given in clause 7.1;

"Fault" a fault in the eWorkforce Data Collection Tool which substantially hinders or prevents HEE from using the functionality of the eWorkforce Data Collection Tool;

"Fee" means the licence fee payable by HEE to Heavy Energy under clause 3.1.

"Holding company" and **"subsidiary"** have the meaning as defined in section 1159 of the Companies Act 2006;

"Insolvency Event" means the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:

- (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- (b) the appointment of an administrator of or, the making of an administration order in relation to, the entity or the appointment of a receiver, manager, sequestrator, administrative receiver or other similar officer of, or an encumbrancer taking possession of or is appointed over, or any distress, execution, attachment or other process is levied or enforced upon, against or in respect of the whole or any part of the entity's undertaking, assets, rights or revenue;
- (c) the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or the entity taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors;
- (d) the entity being unable to pay its debts or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) the entity ceases to trade or threatens to cease to carry on the whole or a substantial part of its business or if the entity is dissolved;

"Intellectual Property Rights" means:

- (a) patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets); and
- (b) any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of;

- (c) rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

"Licence" means the licence granted under clause 3.5 and clause **Error! Reference source not found.**;

"Maintenance Release" means a release of the eWorkforce Data Collection Tool which corrects faults, adds functionality or otherwise amends or upgrades the eWorkforce Data Collection Tool, but which does not constitute a New Version;

"Maintenance Services" means the support and maintenance services to be performed by Heavy Energy as set forth in this license;

"Modification" means any Maintenance Release or New Version;

"eWorkforce Data Collection Tool" means the computer programs listed in part A of the schedule hereto and all user documentation in respect of such programs and any Modification which is acquired by HEE during the subsistence of this licence;²

"New Version" means any new version of the eWorkforce Data Collection Tool which from time to time is publicly marketed and offered for purchase by Heavy Energy in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;

"Relevant Services" means any services (including the services of consultant programmers, system maintainers, outsourcing, or disaster recovery or other service suppliers) which are provided to HEE or any Affiliate for the purpose of, or in connection with, the permitted use, development, modification or maintenance of the eWorkforce Data Collection Tool;

"Source Code Materials" means the source code of the eWorkforce Data Collection Tool and all technical information and documents required to enable HEE to modify and operate the eWorkforce Data Collection Tool;

"Warranty Period" has the meaning set out in clause 8.2.2.

1.2 In this license (unless the context otherwise requires):

- 1.2.1 the words **"including"**, **"include(s)"**, **"in particular"**, **"for example"** and words of similar effect shall not be deemed to limit the general effect of the words which precede them;
- 1.2.2 reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated;
- 1.2.3 words importing persons shall include natural persons, firms, companies and bodies corporate, unincorporated associations and vice versa;
- 1.2.4 words importing the singular shall include the plural and vice versa;
- 1.2.5 words importing any one gender shall include either other gender;

² **Note:** Heavy Energy to provide details for inclusion in part A of the schedule

- 1.2.6 construction of this license shall ignore the headings, contents list and front sheet (all of which are for reference only);
- 1.2.7 references to a numbered clause, schedule or paragraph are references to the clause, schedule or paragraph of or to this license so numbered;
- 1.2.8 any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision; and
- 1.2.9 reference to "**parties**" means the parties to this license and, save where the context requires otherwise, reference to "**party**" means one of those parties.

2. DELIVERY, ACCEPTANCE AND INSTALLATION

- 2.1 Heavy Energy shall deliver and install on HEE's equipment one or more copies of the eWorkforce Data Collection Tool electronically or on disk or on CD-ROM or on thumb drive to HEE at the address for HEE stated above and such installation and delivery shall take place within three (3) days of signature of this license.
- 2.2 Time shall be of the essence regarding the delivery date specified in clause 2.1.
- 2.3 For a period of twenty eight (28) days commencing on installation of the eWorkforce Data Collection Tool, HEE may discontinue this licence of the eWorkforce Data Collection Tool if it does not perform to HEE's satisfaction. If HEE does so, Heavy Energy shall immediately refund all monies paid by HEE under this licence and, on receipt of that refund, this licence shall terminate.
- 2.4 HEE may reject any Modification delivered by Heavy Energy, by written notice, within three months of delivery, if tests carried out by HEE establish on reasonable grounds that its use would result in any diminution of the performance or functionality of the eWorkforce Data Collection Tool.
- 2.5 Upon such rejection:
 - 2.5.1 Heavy Energy shall either correct the Modification and re-issue it or withdraw it;
 - 2.5.2 in the case of a Maintenance Release, HEE may within a reasonable time require Heavy Energy to supply, free of charge, such additional services as are required to rectify any defect in the eWorkforce Data Collection Tool which the Maintenance Release was intended to rectify; or
 - 2.5.3 in the case of a New Version, HEE may reject the New Version and recover any sums which it may have paid to Heavy Energy in respect thereof.
- 2.6 Risk in the media on which the eWorkforce Data Collection Tool or Modification is delivered shall not pass to HEE until, respectively, the period specified in clause 2.3 or clause 2.4 has expired (unless, respectively, HEE has discontinued this licence beforehand or HEE has rejected the Modification beforehand and, in either of these circumstances, risk shall not pass).

3. LICENCE AND DURATION

- 3.1 The licence fee payable HEE and arrangements for payment is specified within the Financial Agreement Schedule 2.

- 3.2 This Agreement does not include any additional sums payable for the provision of any activities identified over and above those specified.
- 3.3 The Finance Schedule will be agreed as per the terms set out in the Financial Agreement Schedule 2.
- 3.4 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, which shall be charged in accordance with the relevant local regulations in force at the time of making the relevant taxable supply and shall only be payable by HEE after receipt of a valid VAT or local sales tax invoice.
- 3.5 In consideration of HEE's obligation to pay the Fee under clause 3.1, Heavy Energy grants to HEE and its Affiliates a non-exclusive, licence for a term of one year commencing on, and including, the date of this licence:
 - 3.5.1 to use the eWorkforce Data Collection Tool;
 - 3.5.2 to develop, modify and maintain the eWorkforce Data Collection Tool (but only after the occurrence of an Insolvency Event);
- 3.6 In relation to assignment and sub-licensing:
 - 3.6.1 HEE shall not grant sub-licences
 - 3.6.2 HEE shall be permitted to assign or novate the benefit and burden of this licence as a whole to any company which at the time in question is an Affiliate of HEE or to any entity which succeeds to all or substantially all of HEE's assets and business, subject to that assignee or new company first undertaking in writing to Heavy Energy that it will perform all the obligations of HEE under this licence. All references in this licence to HEE shall be construed as including any such company. Heavy Energy shall continue to comply with the provisions of this licence after any such assignment or novation.
- 3.7 Subject to clause 3.6, HEE shall not:
 - 3.7.1 sub-license, assign or novate the benefit or burden of this licence in whole or in part;
 - 3.7.2 allow the eWorkforce Data Collection Tool to become the subject of any charge, lien or encumbrance; and
 - 3.7.3 deal in any other manner with any or all of its rights and obligations under this licence,without the prior written consent of Heavy Energy, such consent not to be unreasonably withheld or delayed.
- 3.8 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 3.9 Notwithstanding clause 6, a party assigning any or all of its rights under this license may disclose to a proposed assignee any information in its possession that relates to this license or its subject matter, the negotiations relating to it and the other party which is necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to

this clause 3.9 shall be made until notice of the identity of the proposed assignee has been given to the other party.

4. [ESCROW]³

- 4.1 Heavy Energy and HEE mutually undertake to sign the Escrow Agreement promptly following signature of this licence.
- 4.2 Heavy Energy and HEE mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:
 - 4.2.1 the Source Code Materials shall constitute the ["Material"];
 - 4.2.2 this licence shall constitute the ["Licence Agreement"]; and
 - 4.2.3 the eWorkforce Data Collection Tool shall constitute the ["Package"].]

5. NEW VERSIONS, MAINTENANCE RELEASES AND MAINTENANCE SERVICES

- 5.1 Heavy Energy shall promptly inform HEE of any New Versions and shall provide such New Versions to HEE free of charge.
- 5.2 Heavy Energy will provide HEE with all Maintenance Releases generally made available to its customers. Heavy Energy warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the eWorkforce Data Collection Tool.
- 5.3 During the Term of this license, Heavy Energy shall provide the Maintenance Services.
- 5.4 The Maintenance Services shall comprise the following:
 - 5.4.1 ad-hoc advice requested by HEE (including via email and telephone) on the use of the eWorkforce Data Collection Tool;
 - 5.4.2 the diagnosis of Faults in the eWorkforce Data Collection Tool; and
 - 5.4.3 the rectification of Faults in the eWorkforce Data Collection Tool by the creation and provision to HEE of Corrections to the eWorkforce Data Collection Tool.
- 5.5 Following the identification of a Fault (whether by Heavy Energy and/or HEE), Heavy Energy shall thereafter endeavour to resolve the Fault by producing a repair or workaround for the eWorkforce Data Collection Tool (a "**Correction**") as soon as practicable. Such Correction may take the form of:
 - 5.5.1 a corrected version of the eWorkforce Data Collection Tool;
 - 5.5.2 a repair patch to fix the eWorkforce Data Collection Tool; or
 - 5.5.3 a work-around and accompanying instructions to HEE which, if followed, will prevent the Fault from re-occurring.

³ **Note:** Escrow in relation to the eWorkforce Data Collection Tool to be discussed between HEE and Heavy Energy.

- 5.6 Where the Supplier provides Corrections of the types set out in clause 5.5 above, Heavy Energy shall ensure that a corrected version of the eWorkforce Data Collection Tool is provided at regular intervals to ensure work-arounds do not remain in place for long periods of time.

6. CONFIDENTIALITY AND PUBLICITY

- 6.1 Each party agrees to, during the term of this licence and thereafter, keep confidential, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless:

6.1.1 such information is public knowledge; or

6.1.2 already known to such party at the time of disclosure; or

6.1.3 subsequently becomes public knowledge other than by breach of this licence; or

6.1.4 subsequently comes lawfully into the possession of such party from a third party,

and each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

- 6.2 Heavy Energy may not refer to HEE or this licence in any publicity or advertising material without first obtaining HEE's written consent.

7. EXPORT

- 7.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this license (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

- 7.2 Each party undertakes:

7.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

7.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

8. SUPPLIER'S WARRANTIES

- 8.1 Heavy Energy acknowledges that HEE has entered into this licence in reliance upon Heavy Energy's expertise in selecting and supplying software fit to meet HEE's business requirements.
- 8.2 Heavy Energy warrants that:

- 8.2.1 it has the right to enter into this licence and to grant to HEE a licence or sub-licence to use the eWorkforce Data Collection Tool as contemplated by this licence;
- 8.2.2 the eWorkforce Data Collection Tool will conform in all material respects to the Specification and be free from defects for a period of 12 months from delivery of the eWorkforce Data Collection Tool ("**Warranty Period**");
- 8.2.3 the eWorkforce Data Collection Tool and the media on which the eWorkforce Data Collection Tool is delivered are free from viruses and other malicious code.
- 8.3 If, within the Warranty Period or as soon as reasonably practicable thereafter, HEE notifies Heavy Energy of any defect or fault in the eWorkforce Data Collection Tool in consequence of which it fails to conform to any of the warranties in clause 8.2, Heavy Energy shall, at Heavy Energy's option, promptly repair or replace the eWorkforce Data Collection Tool.
- 8.4 The warranties in clause 8.2 shall apply to any Modification that is acquired by HEE during the course of this licence as though the references to the date of this licence were references to the date on which such Modification was acquired.

9. LIMITATION OF LIABILITY

- 9.1 Subject to clause 2, neither party shall in any circumstances have any liability for any losses or damages which may be suffered by the other or any Affiliate or any Divested Entity of the other (or any person claiming under or through the same), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within any of the following categories:

- 9.1.1 special damage even though that party was aware of the circumstances in which such special damage could arise;
- 9.1.2 loss of profits;
- 9.1.3 loss of anticipated savings;
- 9.1.4 loss of business opportunity and management time;
- 9.1.5 loss of goodwill,

provided that this clause 9.1 shall not prevent claims for direct financial loss that are not excluded by any of categories 9.1.1 to 9.1.5 inclusive.

- 9.2 The exclusions in clause 9.1 shall apply to the fullest extent permissible at law but neither party excludes any liability for death or personal injury caused by its negligence, or the negligence of its employees or agents, or for fraud or fraudulent misrepresentation or the deliberate default or wilful misconduct of that party, its employees or agents or subcontractors.

10. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 10.1 All Intellectual Property Rights in the eWorkforce Data Collection Tool and any Modification belong, and shall belong, to Heavy Energy.
- 10.2 Heavy Energy undertakes to defend HEE from and against any claim or action that the possession, use, development, modification or maintenance of the eWorkforce Data Collection Tool (or any part thereof) infringes the Intellectual Property Rights of a third party ("**Claim**") and shall fully indemnify and hold harmless HEE from and against any losses, damages, costs

(including all legal fees) and expenses incurred by or awarded against HEE as a result of, or in connection with, any such Claim.

10.3 If any third party makes a Claim, or notifies an intention to make a Claim against HEE, HEE shall:

10.3.1 as soon as reasonably practicable, give written notice of the Claim to Heavy Energy, specifying the nature of the Claim in reasonable detail;

10.3.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Heavy Energy (such consent not to be unreasonably conditioned, withheld or delayed);

10.3.3 give Heavy Energy and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of HEE, so as to enable Heavy Energy and its professional advisers to examine them and to take copies (at Heavy Energy's expense) for the purpose of assessing the Claim; and

10.3.4 subject to Heavy Energy providing security to HEE to HEE's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as Heavy Energy may reasonably request to avoid, dispute, compromise or defend the Claim.

10.4 Without prejudice to clause 10.2, if any Claim is made, or in Heavy Energy's reasonable opinion is likely to be made, against HEE, Heavy Energy may, at its sole option and expense:

10.4.1 procure for HEE the right to continue using, developing, modifying or maintaining the eWorkforce Data Collection Tool (or any part thereof) in accordance with the terms of this licence;

10.4.2 modify the eWorkforce Data Collection Tool so that it ceases to be infringing;

10.4.3 replace the eWorkforce Data Collection Tool with non-infringing software; or

10.4.4 repay to HEE all sums which HEE has paid to Heavy Energy under this licence,

provided that if Heavy Energy modifies or replaces the eWorkforce Data Collection Tool, the modified or replacement eWorkforce Data Collection Tool must comply with the warranties contained in clause 8.2 and HEE shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

11. TERMINATION

11.1 In relation to termination:

11.1.1 this licence may be terminated only:

11.1.1.1 by HEE at any time by written notice to Heavy Energy in line with terms set out in the Financial Agreement Schedule 2;

11.1.1.2 by Heavy Energy immediately by written notice to HEE if HEE is in material or persistent breach of any of the conditions of clause 3.1, clause 3.6, clause 6 or clause 7 and either that breach is incapable of remedy or HEE shall have failed to remedy that breach within thirty (30) days after receiving written notice requiring it to remedy that breach; or

11.1.1.3 by either party in the event of the occurrence of an Insolvency Event affecting the other party.

11.1.2 termination of this licence by either party in accordance with the rights contained in clause 11.1.1 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

11.2 On termination or expiry of this license, the following clauses shall continue in force: clause 1, clause 6, clause 7, clause 9 and this clause 11 and the schedule.

11.3 Termination or expiry of this license shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the license which existed at or before the date of termination or expiry.

12. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this license or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13. RIGHTS AND REMEDIES

Except as expressly provided in this license, the rights and remedies provided under this license are in addition to, and not exclusive of, any rights or remedies provided by law.

14. ENTIRE AGREEMENT

14.1 This licence, the schedule and the documents annexed as appendices to this licence or otherwise referred to herein, contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

14.2 Each party acknowledges that, in entering into this license, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this license or not) (Representation) other than as expressly set out in this license.

14.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this license.

15. DATA PROTECTION

15.1 In this clause 16, the terms Personal Data, Data subject, Data Control, Data Controller, Information Commissioner, Data Processor and Sensitive Personal Data have the meanings

given in the Data Protection Act 1998 and processing, process and processed shall be construed accordingly.

- 15.2 In carrying out its obligations under the Agreement, each Party shall comply in all material respects with all current data protection legislation, including the Data Protection Act 1998 including but not limited to the management and retention of any Personal Data.
- 15.3 HEE and Heavy Energy acknowledge and agree that Heavy Energy is a Data Controller for the Personal Data for those individuals whose data is processed as part of the Services.
- 15.4 It acknowledges that in some instances HEE may have cause to act as both Data Controller and Data Processor.
- 15.5 Heavy Energy (as Data Processor) shall put in place:
 - 15.5.1 appropriate technical and organisational measures for processing of Personal Data and against unauthorised, accidental or unlawful access to the Personal Data (having regard to the state of technological development and the costs of implementing any such measures) as well as reasonable security programmes and procedures for the purpose of ensuring that only authorised personnel have access to the Personal Data processing facilities to be used to process the Personal Data, and that any persons whom it authorises to have access to the Personal Data shall respect and maintain all due confidentiality, a level of security programmes and procedures which reflect:
 - 15.5.1.1 the authorised or unlawful possession of the Personal Data or the loss or destruction of or damage to the Personal Data; and
 - 15.5.1.2 the state of technological development and the costs of implementing such programmes and procedures; and
 - 15.5.1.3 as required by the Data Protection Act 1998, such security programmes and procedures which specifically address the nature of any Sensitive Personal Data.

To the extent that it is a Data Processor in respect of the any Personal Data processed under this Agreement Heavy Energy shall:

 - 15.5.1.4 only process Personal Data as is necessary to perform its obligations under this Agreement and such data shall be held and processed only in accordance with relevant legislation; and
 - 15.5.1.5 process the Personal Data only for such purposes as are instructed by HEE.
- 15.6 Heavy Energy shall indemnify HEE against all costs, claims, damages, demands or expenses suffered or incurred by HEE in connection with any claim by a third party that Personal Data has been lost, obtained, used or transferred by Heavy Energy (other than in accordance with the terms of this Agreement) in breach of the Data Protection Act 1998 or the equivalent laws of the jurisdiction to which the Personal Data is transferred.
- 15.7 HEE shall indemnify Heavy Energy against all costs, claims, damages, demands or expenses suffered or incurred by Heavy Energy in connection with any claim by a third party that Personal Data has been lost, obtained, used or transferred by HEE (other than in accordance

with the terms of this Agreement) in breach of the Data Protection Act 1998 or the equivalent laws of the jurisdiction to which the Personal Data is transferred.

16. FREEDOM OF INFORMATION

16.1 The parties each acknowledge that the other Party to this Agreement is subject to the requirements of the Code of Practice on Government Information and the Freedom of Information Act 2000 (“the FOIA”) and shall assist and co-operate with the other Party to enable that Party to comply with its Disclosure obligations. Accordingly the Parties agree that:

16.1.1 this Agreement is subject to the obligations and commitments of under the Code of Practice on Openness in the NHS and the FOIA as may be amended from time to time and updated;

16.1.2 where a request for Information is received by Heavy Energy, it will transfer the Request for Information to HEE as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information.

17. VARIATION

No variation of this license shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. SEVERANCE

18.1 If any provision or part-provision of this license is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this license.

18.2 If any provision or part-provision of this license is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. COUNTERPARTS

This license may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one license.

20. THIRD PARTY RIGHTS

20.1 HEE and any of its Affiliates may enforce the terms of this licence subject to and in accordance with this clause 20, this licence and the Contracts (Rights of Third Parties) Act 1999.

20.2 It is agreed that it is intended to confer a benefit on HEE and its Affiliates by making the eWorkforce Data Collection Tool available to them in accordance with this licence, provided that the rights of such Affiliates under this licence shall only be enforceable by HEE on their behalf. HEE will owe no duty to them to enforce such rights and it may conduct or compromise any relevant proceedings as it sees fit.

20.3 Except as provided in clause 20.1, a person who is not a party to this license shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this license, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

20.4 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this license is not subject to the consent of any person that is not a party to this license.

21. NO PARTNERSHIP OR AGENCY

21.1 Nothing in this license is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

21.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22. NOTICES

22.1 Any notice or other communication given to a party under or in connection with this license shall be in writing and shall be:

22.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

22.1.2 sent by fax to its main fax number.

22.2 Any notice or communication shall be deemed to have been received:

22.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

22.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

22.3 if sent by fax, at 9.00 am on the next Business Day after transmission.

22.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "**writing**" shall not include e-mail.

23. EXPERT DETERMINATION

23.1 Any technical dispute, including interpretation of the Specification or relating to the functions or capabilities of the eWorkforce Data Collection Tool, shall be referred for final settlement to an expert agreed by the parties or, if not agreed within 14 days of either party's written request to the other, as determined, at the written request of either party, by the President of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. The expert's decision shall, in the absence of manifest error, be final and binding on the parties.

23.2 The parties are entitled to make submissions to the expert and will provide (or procure that others provide) the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision.

- 23.3 Each party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties equally or in such other proportions as the expert shall direct.

24. GOVERNING LAW AND JURISDICTION

- 24.1 Subject to clause 23, this licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 24.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this license or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this license has been signed by the authorised representatives of the parties on the day and year first written above.

SCHEDULE

PART A : EWORKFORCE DATA COLLECTION TOOL

eWorkforce is a configurable data collection platform supporting custom, multi-contributor data collections. The entire collection process is task orientated, configurable and secure.

The proposal is to provide an extended set of features within its framework and processes to support the native capture and staging of Excel file data specifically, but not limited to, Student Data Census data.

Signed for and on behalf of [**HEAVY
ENERGY LTD**] by:

)
)

Signature

Name (block capitals)

Signed for and on behalf of [**HEALTH
EDUCATION ENGLAND**] by:

)
)

Signature

Name (block capitals)