

(1) **HIGHER EDUCATION STATISTICS AGENCY LTD**

and

(2) 

**PILOT PARTICIPATION AGREEMENT FOR
HEP ORGANISATIONS IN RESPECT OF THE DATA FUTURES PROGRAMME**

Table A (as referred to in clause 4.1)

HESA Pilot Participant Category (To be marked as applicable)	Mark to apply
1. Alpha HEP Pilot Participant	
2. Beta HEP Pilot Participant	
3. Both Alpha HEP Pilot Participant and Beta HEP Pilot Participant	



THIS AGREEMENT is made on the date of the last signature to this Agreement

BETWEEN:

- (1) **THE HIGHER EDUCATION STATISTICS AGENCY LTD** ("HESA") of 95 Promenade Cheltenham GL50 1HZ registered company number 2766993; and
- (2) {●} ("**the Provider**") of {●} registered company number {●}.

RECITALS:

- (A) HESA is a company limited by guarantee and a registered charity with the charitable object of the advancement of education for the public benefit, with specific powers relating to the collection and dissemination of data relating to the higher education sector in the United Kingdom.
- (B) HESA currently collects data at the request of, and in exercise of statutory powers of, government or statutory bodies within the United Kingdom with responsibility for policy, provision, funding, and/or regulation of funding for higher education in the United Kingdom or particular parts of the United Kingdom (these government or statutory bodies together being referred to in this Agreement as the Statutory Customers. From 1 April 2018 HESA will be the designated data body for England under paragraph 3(3) of Schedule 6 of the Higher Education and Research Act 2017. HESA will be operating as the designated data body for England under transitional arrangements from 1 April 2018 to 31 July 2018.
- (C) HESA is in the process of developing the HESA Data Platform and is operating the Data Futures Pilot prior to implementing the HESA Data Platform in 2019/20.
- (D) The Provider has agreed to participate in the Data Futures Pilot and elected to submit information to HESA as an Alpha HEP Pilot Participant and/or Beta HEP Pilot Participant and provide feedback to HESA in accordance with the terms of this Agreement.
- (E) The Provider will allow HESA and the Statutory Customers to use the data submitted to HESA for the purposes as set out and permitted in this Agreement.
- (F) This Agreement is being entered into to enable personal data to be used lawfully and in accordance with all Data Protection Legislation.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS & INTERPRETATION

In this Agreement defined terms and phrases shall have the meanings set out in Schedule 1.

2. GENERAL TERMS AND CONDITIONS

2.1 The terms and conditions in Schedule 2 shall have effect.

2.2 The parties acknowledge that under this Agreement each of them acquires benefits and accepts commitments and restrictions with regard to use of data in consideration of the other party accepting the same. In this clause, for the avoidance of doubt the acceptance by one party of a commitment or restriction with regard to the basis on which data is held or the use of data constitutes a "benefit" to the other party.

3. COMMENCEMENT & DURATION

3.1 This Agreement shall commence when signed by both parties ("**the Commencement Date**") and shall remain in force for the period specified in clause 3.1.1 or clause 3.1.2 below (as applicable):

3.1.1 Where the Provider is solely an Alpha HEP Pilot Participant on the Commencement Date the Agreement shall remain in force for:

3.1.1.1 as long as the Provider remains an Alpha HEP Pilot Participant; and/or

3.1.1.2 the duration of the Alpha Phase

(whichever is later); or

3.1.2 Where the Provider is both an Alpha HEP Pilot Participant and Beta HEP Pilot Participant on the Commencement Date the Agreement shall remain in force for:

3.1.2.1 as long as the Provider remains an Alpha HEP Pilot Participant and Beta HEP Pilot Participant; and/or

3.1.2.2 the duration of the Alpha Phase and Beta Phase; or

(whichever is later); or

3.1.3 Where the Provider is a Beta HEP Pilot Participant on the Commencement Date the Agreement shall remain in force for:

3.1.3.1 as long as the Provider remains a Beta HEP Pilot Participant; and/or

3.1.3.2 the duration of the Beta Phase

(whichever is later),

subject in each case to any earlier termination in accordance with clause 14 (Termination) (the earlier of the date of termination under clause 14 or the date determined under clause 3.1.1, 3.1.2 or 3.1.3 (as the case may be) being the "**Termination Date**").

3.2 Following commencement under clause 3.1, this Agreement shall have immediate effect.

3.3 Any existing agreement between the Provider and HESA or HESA Services Limited (Registered Company No 3109219) shall not be terminated, amended or otherwise affected by this Agreement.

4. OBLIGATIONS OF THE PROVIDER

4.1 By signing this Agreement the Provider agrees to become a HESA Pilot Participant in the category marked in Table A and as defined in Schedule 1 (Definitions) and to comply with the associated obligations as set out in this Agreement.

- 4.2 If this Agreement is terminated under clause 14, the Provider shall cease to be a HESA Pilot Participant or have access to any benefits or other status available to organisations on the basis or condition that they are a HESA Pilot Participant.
- 4.3 The Provider shall procure that any Data Futures Pilot Provider Participant User must enter into the Data Futures Pilot Provider Participant Agreement for Users (a copy of which is incorporated into this Agreement in Schedule 3) through the HESA IDS System before they access the Pilot Environment and/or submit any data to HESA.

Appointment of a Lead User

- 4.4 The Provider must appoint and retain a Lead User who may either administer the Pilot Data Submissions for the Provider or delegate this activity by granting Data Futures Pilot Provider Participant Users roles ("**the Lead User**"). The Lead User shall be the primary point of contact for the Provider in relation to matters arising from this Agreement, and obligations of the Lead User shall include, but not be limited to:
 - 4.4.1 responsibility for carrying out the organisation and user administration for the Provider and its Data Futures Pilot Provider Participant Users;
 - 4.4.2 responsibility for managing accounts for the Provider's Data Futures Pilot Provider Participant Users, including verifying and adding accounts, and removing accounts which are no longer needed or for people who either no longer act for the Provider or no longer have a role in the submission of data to the Data Futures Pilot;
 - 4.4.3 responsibility for overseeing the Provider's data submissions to HESA in accordance with the Pilot Operational Documentation;
 - 4.4.4 liaising with HESA and ensuring that deadlines are achieved;
 - 4.4.5 ensuring that the HESA Student Collection Notice has been made available to data subjects prior to personal data being submitted to HESA for the Data Futures Pilot; and
 - 4.4.6 ensuring that any Data Futures Pilot Provider Participant User enters into the Data Futures Pilot Provider Participant Agreement for Users through the HESA IDS System before they access the Pilot Environment and/or submit any data to HESA.
- 4.5 Should the Lead User appointed by the Provider pursuant to Clause 4.4 cease to be the Provider's Lead User, the Provider shall promptly inform HESA in writing of the name and contact details for the new Lead User within seven (7) days of the Lead User ceasing to hold office. The Provider shall procure that in the event the Lead User ceases to hold office that they will not have access to the Pilot Environment in their capacity as Lead User.
- 4.6 The Provider shall procure that any Lead User it appoints must enter into the Data Futures Pilot Provider Participant Agreement for Lead Users (a copy of which is incorporated into this Agreement in Schedule 4) through the HESA IDS System before they access the Pilot Environment and submit any data to HESA.

Submission of data

- 4.7 The Provider shall supply the Pilot Data Submission to HESA in accordance with the Pilot Operational Documentation including any specified data quality assurance process.
- 4.8 Being a pilot, it is important that data submitted by the Provider is true and correct and submitted in accordance with the Pilot Operational Documentation to ensure the best possible test of the Data Futures System. In particular, without prejudice to the generality of clause 4.7, the Provider shall ensure that the Pilot Data Submission:
- 4.8.1 is supplied in accordance with the timescales specified in the Pilot Operational Documentation or as otherwise specified by HESA in writing;
 - 4.8.2 contains data which represents the complete Coverage of all Required Pilot Data. In identifying the individuals falling within the Coverage for any Required Pilot Data, the Provider shall apply the definitions and criteria specified in the Pilot Operational Documentation (subject to any clarifications, additions or amendments as may be notified to the Provider by HESA from time to time) and shall not make any additional or alternative judgements or decisions as to the inclusion of individuals within the Pilot Data Submission or any part thereof;
 - 4.8.3 contains only data which is true and correct i.e. a true reflection of the factual position in respect of all relevant students, courses and staff members, in accordance with the definition of the relevant data fields and the Coverage as specified in the Pilot Operational Documentation; and
 - 4.8.4 complies with the Code of Practice for Higher Education Data Collections <https://www.hesa.ac.uk/code-of-practice-for-higher-education-data-collections> , as amended from time to time.
- 4.9 HESA is reliant on the Providers to seek clarification or explanation with regard to any aspect of the Pilot Operational Documentation which the Provider does not understand or which the Provider considers to be unclear or ambiguous within a reasonable time prior to relevant deadlines specified in the Pilot Operational Documentation.
- 4.10 The Provider shall co-operate with HESA as reasonably required to ensure that it is able to supply the Pilot Data Submission in accordance with the processes and systems set out in the Pilot Operational Documentation. Such reasonable co-operation shall include (but not be limited to):
- 4.10.1 undertaking induction and training as made available by HESA on HESA's processes for the Data Futures Pilot, covering the new model and new system and what HESA want to achieve in the Alpha and Beta Pilots;
 - 4.10.2 complying fully with the quality assurance processes as detailed within the Pilot Operational Documentation;
 - 4.10.3 checking and re-submitting any data within the Pilot Data Submission at the reasonable request of HESA or a Statutory Customer.

4.11 Where HESA acting reasonably:

4.11.1 considers that the Provider is utilising a disproportionate amount of HESA staff time in order to enable the Provider to make a Pilot Data Submission which complies with this Agreement, or

4.11.2 HESA has significant concerns as to whether the Pilot Data Submission meets the requirements as to quality and accuracy of data submitted under clauses 4.7 or 4.8,

HESA shall notify the Provider identifying the Required Pilot Data Collection which appears to be causing difficulty to the Provider and specifying any actions which HESA acting reasonably considers is required either: to enable the Provider to submit the Pilot Data Submission in accordance with this Agreement; or to achieve the aims of the Data Futures Pilot. Such actions will be at HESA's discretion and exercised on a case by case basis, so will likely vary, but may range from requesting the Provider to attend a meeting to requiring members of the Provider's staff to undergo additional training, to exercising HESA's rights under clause 13.1.

4.12 Subject to clause 4.19, the Pilot Data Submission shall be signed off by the Provider's Accountable Officer as detailed within the Pilot Operational Documentation.

Access to the Pilot Environment

4.13 The Pilot Environment is a controlled environment and access to the Pilot Environment granted to the Provider is only to access Provider Information. The Provider agrees and acknowledges it is not intended that it should have access to any information (including personal data) which relates to another participant provider and the Provider shall not attempt to access any information (including personal data) which relates to another participant provider in the Pilot Environment.

4.14 In the event that the unexpected does happen and the Provider inadvertently accesses information (including personal data) which relates to another participant provider, the Provider must immediately stop processing the data and notify HESA (in any event within twenty four (24) hours) together with details of what information has been accessed. This shall not be treated as a Personal Data Breach pursuant to the Data Protection Legislation.

4.15 In the event that a Provider becomes aware that a member of staff has deliberately accessed information (including personal data) which relates to another participant provider, the Provider must immediately stop processing the data and notify HESA (in any event within twenty four (24) hours) together with details of what information has been accessed. Such deliberate access shall be treated as:

4.15.1 a Personal Data Breach which may be required to be notified to the Information Commissioner's Office or to a data subject in accordance with the Data Protection Legislation. For the avoidance of doubt, the decision to notify the Information Commissioner's Office or a data subject shall be at the absolute discretion of HESA; and

4.15.2 a breach of this Agreement.

- 4.16 The Provider warrants and undertakes that it will procure that its employees, agents and contractors or any natural person acting under their authority who has access to Pilot Environment comply with the provisions of this Agreement and has entered into an HEP Individual User Agreement prior to accessing the Pilot Environment.

General

- 4.17 The Provider recognises that its feedback is invaluable to ensuring the Data Futures Pilot achieves the Programme Benefits as detailed in the Pilot Operational Documentation and agrees to co-operate with HESA as reasonably required to provide such feedback in the format requested by HESA. Such reasonable feedback may include (but not be limited to): attending workshops or checkpoint teleconferences during the Alpha Phase, or participating in surveys and workshops, or attending webinars during the Beta Phase (as applicable to the Provider's HESA Pilot Participant Category).
- 4.18 The Provider shall respond to all correspondence and communications from HESA or a Statutory Customer within reasonable timescales.

Status of the Provider

- 4.19 Clauses 4.20 and 4.21 apply where the Provider is a member of a group of companies as defined in the Companies Act 2006 or where the teaching and learning facilities for any courses to which the Pilot Data Submission relates are owned, funded or otherwise provided by a company or other organisation which has a separate legal identity to that of the Provider.
- 4.20 The Provider warrants that it has the legal authority and power to enter into the Agreement and to ensure compliance with the Agreement in respect of all of the courses to which the Pilot Data Submission relates.
- 4.21 In particular, the Provider warrants and undertakes that the Provider has the capacity and authority to disclose any data in the Pilot Data Submission to be processed for the Permitted Purposes.
- 4.22 The Provider warrants that it is a data controller of the data to be submitted to HESA.

5. OBLIGATIONS OF HESA

The data collection process

- 5.1 HESA shall provide a data collection system for the submission of the Pilot Data Submission pursuant to this Agreement which is compatible with HESA's obligations under clause 8 below.
- 5.2 HESA shall carry out the collection and collation of the Pilot Data Submission in accordance with the Pilot Operational Documentation.
- 5.3 HESA shall provide appropriate specification of the content of the Pilot Data Submission and the process for submitting the Pilot Data Submission, including:

- 5.3.1 the data fields within each Required Pilot Data Collection and the Coverage which applies to each Required Pilot Data Collection for each HESA Pilot Participant Category;
- 5.3.2 the timescales by which HESA shall carry out particular steps or make available particular information or functionality within its systems;
- 5.3.3 the timescales by which the Provider shall be required to undertake particular activities or provide information;
- 5.3.4 the relative roles and responsibilities of HESA, the Provider and any third parties with respect to the submission of the Pilot Data Submission;

provided that nothing in this clause 5.3 shall reduce the obligations of the Provider under clause 8 to ensure compliance with the Data Protection Legislation.

- 5.4 HESA shall comply with its obligations under clause 5.3 by:
 - 5.4.1 publishing the Pilot Operational Documentation for each Required Pilot Data Collection a reasonable period prior to the commencement of each collection;
 - 5.4.2 providing such clarification or explanation of the Pilot Operational Documentation as the Provider may reasonably request.
- 5.5 HESA shall provide reasonable support and direction to the Provider in relation to its submission of data in accordance with HESA processes and systems, as provided for in the Agreement and the Pilot Operational Documentation.
- 5.6 HESA shall provide reasonable day to day support and assistance to the Provider through the operation of a team of individuals with the designated role of providing such support. Members of that team will usually be contactable on Monday, Tuesday, Wednesday, Thursday and Friday between 09.00 and 17.00, by telephone (01242 211144) or by email (liaison@hesa.ac.uk). Immediate responses to contact cannot be guaranteed and the obligation of HESA is to provide sufficient resource to enable responses to communications from Providers within a reasonable period, having regard to the nature of the communication, the workload of the team at the time, the timing of the communication in relation to the Required Pilot Data Collection and any need for HESA to consult with a Statutory Customer before responding substantively to communications.
- 5.7 Subject to clause 5.6, HESA shall respond to all correspondence and communications from the Provider within reasonable timescales.

6. USE OF PROVIDER INFORMATION BY HESA AND ITS CUSTOMERS

HESA use of Provider Information

- 6.1 By submitting the Pilot Data Submission to HESA the Provider:
 - 6.1.1 acknowledges that HESA may already hold or may in the future further collect Provider Information other than that contained in the Pilot Data Submission from sources other than the Provider pursuant to separate agreements which

HESA may have entered into or may enter into with such sources in accordance with HESA's charitable purpose and its company objects and powers; and

- 6.1.2 agrees that HESA may link information and data in the Pilot Data Submission to other Provider Information for the purposes of quality assuring the data within the Pilot Data Submission and to supplement the Pilot Data Submission. Quality assurance includes but is not limited to checks on the accuracy of individual data items within the Pilot Data Submission compared to data submitted against the same or similar data fields within Provider Information collected from other sources as referred to in clause 6.1.1.
- 6.2 Subject to clause 6.1, the Provider agrees that HESA may process the Provider Information for and only for the Permitted Purposes.
- 6.3 HESA shall not use the Provider Information or any part thereof to inform a decision to be made about any individual. For the avoidance of doubt, HESA will not be undertaking any processing activities which would constitute automated individual decision making or profiling pursuant to the General Data Protection Regulation.
- 6.4 The Provider Information will be retained by HESA in accordance with the Pilot Operational Documentation for up to six (6) months following the end of the Beta Phase (as notified by HESA to the Provider and Statutory Customers) for post submission analysis.
- 6.5 HESA reserves the right to provide a report to the Programme Board and/or HESA Board which may include reporting on a provider basis to enable the Programme Board to evaluate the Data Futures Pilot in accordance with the Permitted Purposes, particularly the Programme Benefits as set out in the Pilot Operational Documentation. The Provider acknowledges and accepts that observers are invited to attend the meetings of the Programme Board and HESA Board and that reports to these boards permitted by this clause shall be made available to such observers.
- 6.6 HESA reserves the right to publish outcomes of the Data Futures Pilot on an aggregated basis. HESA may also ask participant providers whether they would be willing to provide feedback from the Data Futures Pilot to be used in case studies for HESA's communications with the sector.

Sharing of Provider Information by HESA and Use of Provider Information by Third Parties

- 6.7 The Provider acknowledges and accepts that HESA shall make onward provision of the Provider Information to Statutory Customers pursuant to Statutory Customer Agreements for the purposes of:
 - 6.7.1 testing and assessing the Data Futures Pilot and Data Futures System;
 - 6.7.2 the Data Futures Pilot carrying out quality assurance activities concurrently with quality assurance processes operated by HESA (including linking data in the Pilot Data Submission in a similar manner to linking by HESA as described in clause 6.1.2); and

- 6.7.3 testing the ability of the Statutory Customers to use the data within their systems and databases.
- 6.8 Where HESA supplies the Provider Information or any part thereof to any Statutory Customer or any other third party (as described under clause 6.7):
 - 6.8.1 such supply shall be subject to requirements on the Statutory Customer or other third party to use the Provider Information only for Permitted Purposes;
 - 6.8.2 the Statutory Customer as recipient of some or all of the Provider Information from HESA shall be acting as a data controller in common of that received information where it is personal data and shall use the Provider Information only for the Permitted Purposes;
 - 6.8.3 HESA shall maintain control on who receives data generated by the Provider Information and the purposes for which it is used;
 - 6.8.4 Provider Information may be retained by Statutory Customers for up to six (6) months following the end of the Beta Phase (as notified by HESA to the Provider and the Statutory Customers) for post submission analysis and reference.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Following completion of the HESA quality assurance process and final submission of the Pilot Data Submission, all Intellectual Property Rights in the Pilot Data Submission and any other Provider Information are vested and shall remain vested in HESA under the Copyright Rights in Databases Regulations 1997.
- 7.2 HESA to the extent that it is the author of any materials comprising the Pilot Data Submission, hereby asserts its right to be identified as the author of such materials in accordance with s.78(2) of the Copyright, Designs and Patents Act 1988.
- 7.3 Nothing in this Agreement shall assign or transfer to the Provider any Intellectual Property Rights owned by HESA.
- 7.4 Nothing in this Agreement shall assign or transfer any Intellectual Property Rights owned by the Provider in its logo and/or in its name to HESA.
- 7.5 Save as is permitted by the terms and conditions of any licence permitting re-use of the Intellectual Property Rights of HESA, the Provider shall not use the Intellectual Property Rights belonging to HESA for any purposes whatsoever.

8. DATA PROTECTION

- 8.1 The parties each warrant and undertake that they will comply with the provisions of the Data Protection Legislation so far as such provisions apply to processing carried out under this Agreement and that each will procure that its employees, agents and contractors or any natural person acting under their authority who has access to personal data comply with the provisions of the Data Protection Legislation.

- 8.2 Each party shall ensure and warrants that it is registered with all relevant data protection authorities to process personal data in accordance with this Agreement.
- 8.3 All parties shall fully co-operate with each other to ensure compliance with the Data Protection Legislation.

Legal Basis for Processing

- 8.4 Under this Agreement the parties would be processing:
 - 8.4.1 from the Commencement Date until 25 May 2018 under the Data Protection Act 1998, personal data and sensitive personal data; and
 - 8.4.2 from 25 May 2018 under the General Data Protection Regulation, personal data and special categories of data.
- 8.5 In order for the processing of the data described in clause 8.4.1 to comply with the Data Protection Act 1998 it must be fair and lawful and at least one of the conditions in both Schedule 2 and Schedule 3 must be met.
- 8.6 In order for the processing of data described in clause 8.4.2 to comply with Article 5 of the General Data Protection Regulation it must be fair and lawful and at least one of the conditions in both Article 6 and Article 9 must be met.
- 8.7 Without prejudice to the generality of clauses 8.5 and 8.6 the Provider shall ensure and warrants that the terms of the most recent Student Collection Notice shall be provided to any data subjects whose personal information is contained in the Provider Information or make those terms readily available to them in accordance with any HESA guidance. The steps required by this clause 8.7 shall be taken by the Provider a reasonable period in advance of the Provider first providing any data to HESA for the purposes of this Agreement.
- 8.8 HESA shall keep the Student Collection Notice under review to check that they continue to fairly describe how personal data collected under this agreement will be used.
- 8.9 Processing as part of the Data Futures Pilot is necessary for the public and statutory functions of HESA, the Statutory Customers and Providers. The Parties agree that:
 - 8.9.1 the processing of personal data by the Provider, HESA and the Statutory Customers from the Commencement Date until 25 May 2018 in accordance with this Agreement is permitted under schedule 2, paragraph 5(b), 5(c) and/or 5(d) of the Data Protection Act 1998 (processing for statutory or governmental or public functions);
 - 8.9.2 the processing of sensitive personal data by the Provider, HESA and the Statutory Customers from the Commencement Date until 25 May 2018 in accordance with this Agreement is permitted under schedule 3, paragraph 7(1)(b) and/or 7(1)(c) of the Data Protection Act 1998 (processing for statutory or governmental functions);

- 8.9.3 the processing of personal data by the Provider, HESA and the Statutory Customers from 25 May 2018 in accordance with this Agreement is permitted under Article 6 (1) paragraph (e) of the General Data Protection Regulation (public interest or in the exercise of official authority);
- 8.9.4 the processing of special category data by the Provider, HESA and the Statutory Customers from 25 May 2018 in accordance with this Agreement is permitted under Article 9 (2) paragraph (g) (substantial public interest) of the General Data Protection Regulation.
- 8.10 Where any personal data within the Pilot Data Submission is processed by the Provider for any purposes (including submission to HESA under this Agreement) the Provider is the data controller of the data in relation to that processing and is responsible for ensuring that the processing complies with the Data Protection Legislation and all other relevant laws (including but not limited to fair processing notice requirements). For the avoidance of doubt, this clause applies regardless of the format or source of the data being processed by the Provider and includes processing of any copy or extract of the Pilot Data Submission or data within the Pilot Data Submission which has been provided by HESA to the Provider on request. Any such provision of data by HESA to the Provider is made on the basis that Provider is satisfied that its receipt and use of the data will be fair and lawful.
- 8.11 The Provider shall provide all reasonable assistance to HESA in the preparation of any Data Protection Impact Assessment prior to commencing any processing.

Security

- 8.12 HESA shall take and warrants that it will take appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it. This includes the measures set out in clauses 8.13 and 8.14.
- 8.13 In ensuring the security of the personal data within the Provider Information within HESA, HESA will restrict access to such personal data to a limited number of authorised individuals. Access shall be restricted to only those persons who have received appropriate training regarding data protection and security.
- 8.14 The Pilot Environment is a controlled environment and the following protective security measures have been put in place by HESA:

Alpha Phase

- 8.14.1 Restricted access to the Pilot Environment to only specified IP addresses and therefore limited to a specified number of computers; and

8.14.2 restricted access via IDS to the Pilot Environment to a limited number of individuals who would have a set of credentials for gaining access;

Beta Phase

8.14.3 restricted access via IDS to the Pilot Environment to a limited number of individuals who would have a set of credentials for gaining access; and

8.14.4 restricted access to the Pilot Environment to designated individuals with personal logins;

8.15 The Provider shall take all reasonable steps to ensure the reliability and integrity of any personnel who have access to personal data and ensure that they:

8.15.1 are aware of and comply with the Provider's obligations under this Agreement;

8.15.2 are informed of the confidential nature of the personal data and are subject to appropriate confidentiality undertakings with the Provider or any sub-processor; and

8.15.3 have undergone adequate training in the use, care, protection and handling of personal data.

8.16 In the event information (including personal data) is inadvertently accessed in accordance with clause 4.14, this shall not be treated as a Personal Data Breach.

Notification

8.17 Each party shall notify the other parties promptly upon receiving, and the parties shall assist one another in complying or responding to the following insofar as they relate to the provision of data by the Provider under this Agreement or the processing of such data by HESA:

8.17.1 an information notice, or any other notice (including in particular any enforcement notice) or communication served by the Information Commissioner;

8.17.2 complaints from or concerns expressed by data subjects; or

8.17.3 a data subject Access Request (or purported data subject Access Request);

8.17.4 receives a request to rectify, block or erase any personal data;

8.17.5 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;

8.17.6 receives 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; or

8.17.7 any investigation of any breach or alleged breach of the Data Protection Legislation.

- 8.18 Each party shall promptly report to the other parties if it becomes aware of any Security Incident affecting the Provider Information which can reasonably be considered to be not minor or trivial in nature having regard to the significance of data protection and data security to the performance of the parties' obligations under this Agreement and their reputations.
- 8.19 The obligation to notify under clauses 8.17 and 8.18 shall include the provision of further information in phases, as details become available.
- 8.20 Each party shall promptly report to the other parties any circumstance that it becomes aware of which:
- 8.20.1 may mean that this clause 8 has not been complied with;
 - 8.20.2 may cause any party to breach the Data Protection Legislation as a result of processing carried out in connection with this Agreement; or
 - 8.20.3 may mean that there has been unauthorised processing of personal data in connection with this Agreement.
- 8.21 Subject to clause 8.22, the Provider shall indemnify HESA for any Losses arising as a result of:
- 8.21.1 the Provider breaching the Data Protection Legislation;
 - 8.21.2 the Provider causing HESA to be in breach of any of the Data Protection Legislation;
 - 8.21.3 the Provider breaching any warranty given in this clause 8; and
 - 8.21.4 HESA having reasonable grounds for concern that the Data Protection Legislation may have been breached.
- 8.22 The indemnity in clause 8.21 is limited to fifty thousand pounds (£50,000). For the avoidance of doubt, the Losses are not subject to a liability cap.
- 8.23 The Provider must maintain complete and accurate records and information to demonstrate its compliance with this clause.8 HESA, or its representative, is entitled to require the Provider to evidence its compliance with its obligations under this Agreement on reasonable notice. If the Provider does not provide prompt evidence of compliance with this clause 8 on reasonable request, HESA shall be regarded as having reasonable grounds for concern that the Data Protection Legislation may have been breached.

User personal data

- 8.24 The Provider acknowledges and accepts that HESA will process the personal data of individual users who submit data to HESA under this Agreement or who respond to queries in respect of the Provider Submission. Such data will be used by HESA only for the purposes of administering and monitoring the Data Futures Pilot.

9. CONFIDENTIALITY

- 9.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party which it holds as a result of the relationship of the parties under this Agreement.
- 9.2 Subject to clause 10.3, neither party shall disclose Confidential Information save:
 - 9.2.1 as otherwise necessary for the purposes of the proper performance of this Agreement; or
 - 9.2.2 with the prior agreement of the other party.
- 9.3 The obligations of confidentiality in clauses 10.1 and 10.2 shall not extend to any matter which:
 - 9.3.1 is lawfully in, or has become lawfully part of, the public domain other than as a result of a breach of this Agreement;
 - 9.3.2 was independently disclosed to a party to this Agreement by a third party, which, in that receiving party's reasonable opinion, was legally entitled to disclose the same;
 - 9.3.3 was known to the receiving party before the information was disclosed to it by the disclosing party; or
 - 9.3.4 is required to be disclosed under any applicable law, including a valid request under the Freedom of Information Legislation, or by order of a court or governmental or regulatory body or authority of competent jurisdiction.

10. VARIATION

- 10.1 The Required Pilot Data Collection and Coverage for any HESA Pilot Participant Category may be amended by HESA on reasonable notice of the amendments to the Provider. It is essential for the purposes of the Data Futures Pilot that HESA is able to test and evaluate the data specification and therefore must have full discretion to make adjustments to the Required Pilot Data Collection and Coverage at any time.
- 10.2 HESA shall provide reasonable assistance to the Provider in meeting any amended or additional requirements.
- 10.3 Save as provided for in clause 10.1 above, any variation to this Agreement shall be valid only if agreed in writing by the authorised representatives of all relevant parties. For the avoidance of doubt "writing" includes an email sent from the usual business email address of the authorised representative.

11. ASSIGNMENT & SUBCONTRACTING

- 11.1 Each of HESA and any Statutory Customer's rights and obligations under this Agreement shall transfer automatically without the permission of the other parties to any successor body.

- 11.2 The Provider shall not assign or sub-contract its rights or obligations under this Agreement save as set out in this Agreement without the prior written consent of HESA.
- 11.3 Subject to clause 11.5, the Provider may supply data to HESA through a third party, including but not limited to any company owned by or within the same group of companies as the Provider, provided HESA gives written consent in advance to such supply, such consent not to be unreasonably withheld.
- 11.4 HESA is authorised to appoint the sub-contractors it sees fit and in its absolute discretion in order to fulfil its obligations for the provision of the Data Futures Pilot and Pilot Environment, such obligations may include, but are not limited to processing personal data on behalf of the Provider as data controller. In addition to HESA's Microsoft Azure tenancy which hosts the Pilot Environment with effect from the Commencement Date, such sub-contractors include:
- 11.4.1 Civica UK Limited incorporated and registered in England and Wales with Company Number 01628868 whose registered office is at 2 Burston Road, Putney, London SW15 6AR;
- 11.4.2 Welldata Limited incorporated and registered in England and Wales with Company Number 03728729 whose registered office is at 18 Kingsmill Business Park, Chapel Mill Road, Kingston Upon Thames, Surrey KT1 3GZ;
- 11.5 If the Provider engage any sub-contractor after 25 May 2018 which has access to personal data processed under or in connection with this Agreement, the Provider must impose on its sub-contractor obligations which meet the requirements set out in Article 28 of the General Data Protection Regulation.

12. PUBLICITY

The Provider shall not without the prior written consent of HESA communicate by way of press release or otherwise to any third party anything which relates to the services provided under this Agreement, save as is necessary for its execution.

13. CONSEQUENCES OF BREACH

- 13.1 Where HESA reasonably considers that the Provider is or may be in breach of clauses 4.8.2, 4.8.3, 4.14, 4.15, 7.5 or 8 (Data Protection) it may:
- 13.1.1 suspend the Provider's rights of access to the Pilot Environment; and/or
- 13.1.2 suspend the Provider's participation in the Data Futures Pilot from a specified date;
- if it considers such steps necessary or appropriate in order to enable HESA to investigate the potential breach, avoid unnecessary cost to HESA, ensure compliance with the Data Protection Legislation and/or ensure the accuracy and integrity of its Required Pilot Data Collections.
- 13.2 Where HESA takes action under clause 13.1, it shall investigate the breach or potential breach as quickly as reasonably possible in order to determine whether the

circumstances constitute a material breach and what action, if any, HESA wishes to take under clause 14 (Termination) below. Where HESA concludes that a breach has taken place but this is not material, it shall notify the Provider of any actions it requires the Provider to take to remedy the breach or to avoid similar breaches in the future and the Provider shall comply with any such reasonable request.

- 13.3 Where HESA takes action under clause 4.11, it shall as quickly as reasonably possible determine whether HESA wishes to:
- 13.3.1 suspend the Provider's rights of access to the Pilot Environment; or
 - 13.3.2 suspend the Provider's participation in the Data Futures Pilot from a specified date; or
 - 13.3.3 terminate under clause 14.4.6 (Termination).
- 13.4 Where the Provider fails to submit the Pilot Data Submission, or any Required Pilot Data Collection within it, on time in compliance with clauses 4.7, 4.8, 8.7 HESA may, in its absolute discretion:
- 13.4.1 refuse to accept late delivery of the Pilot Data Submission or part thereof, in which case the Provider's Data shall not be included in any Datasets, reports or analysis created by HESA in respect of the relevant HEP Pilot Participant Category; or
 - 13.4.2 subject to consultation with the Statutory Customer permit the Provider to make a late supply of the Pilot Data Submission or part thereof, subject to terms which may be imposed at HESA's absolute discretion.
- 13.5 Where the Pilot Data Submission, or any Required Pilot Data Collection within it, contains a material error or omission or otherwise fails to pass HESA's quality assurance processes as required by clauses 4.7, 4.8 and 8.7:
- 13.5.1 HESA shall be entitled to delete the Pilot Data Submission or any part thereof from its systems entirely and/or exclude it from the data delivered to Statutory Customers; and
 - 13.5.2 may process a Fixed Database Submission for the Provider to replace the Pilot Data Submission.
- 13.6 For the avoidance of doubt, the provisions in clauses 13.4 and 13.5 for HESA to accept late Pilot Data Submissions or operate a Fixed Database in relation to a Pilot Data Submission are subject to the discretion and permission of HESA as described in those clauses. The Provider acknowledges and accepts that where clause 13.4 or 13.5 applies, it has breached clauses 4.7 and 4.8 of this Agreement. The provisions of clause 13.4 and 13.5 are without prejudice to HESA's rights under clause 14 (Termination) of this Agreement.

14. TERMINATION

- 14.1 Where the Provider commits a material breach of contract, HESA may in its absolute discretion:

- 14.1.1 give the Provider written notice that such breach must be remedied within seven (7) days, giving such directions as HESA considers appropriate as to how that breach should be remedied; or
- 14.1.2 if HESA reasonably considers that the breach is irremediable, terminate this Agreement immediately without liability by serving a notice of termination on the other parties.
- 14.2 HESA may also terminate this Agreement immediately without liability by serving a notice of termination on the other parties if the Provider has failed to remedy a breach in accordance with a notice under clause 14.1.1.
- 14.3 For the avoidance of doubt, the following shall always be regarded as a material breach of contract: any breach of clause 8 (Data Protection) and any breach of clause 4.8.2 or 4.8.3 if HESA has reasonable grounds for believing that any employee or agent of the Provider intended data to be submitted in breach of that clause.
- 14.4 HESA may terminate this Agreement without liability with immediate effect by serving a notice of termination on the other parties if:
 - 14.4.1 an Insolvency Event occurs in relation to the Provider, provided that in deciding in its absolute discretion whether to exercise the right under this clause 14.4.1 HESA shall consider:
 - 14.4.1.1 the impact on Statutory Customers and the Data Futures Pilot of not continuing with this Agreement; and
 - 14.4.1.2 the impact on the Provider of either continuing with the Agreement or terminating it, including in particular the nature and extent of the burdens which would fall on the Provider if this Agreement continues notwithstanding the Insolvency Event;to be determined through such consultation with those parties, including the Provider, as HESA in its absolute discretion considers appropriate;
 - 14.4.2 the Provider ceases, or threatens to cease, to carry out business;
 - 14.4.3 HESA determines, in its own absolute discretion but acting in good faith, that the Provider is acting or has acted in a manner materially prejudicial to HESA's goodwill and reputation;
 - 14.4.4 the Provider or any employee or agent therefore commits a Prohibited Act;
 - 14.4.5 the Data Futures Pilot is cancelled; or
 - 14.4.6 HESA determines, in its own absolute discretion, that termination is reasonable under clause 4.11.
- 14.5 The Provider may terminate this Agreement without liability by serving a notice of termination on the other parties if HESA commits a material breach of contract and in the sole and reasonable opinion of the Provider this is irremediable or (if such breach

is remediable) has not been properly remedied within seven (7) days of written notice of the remediable breach being given by the Provider.

14.6 The Provider may terminate this Agreement without liability with immediate effect by giving written notice to the other parties if:

14.6.1 HESA or any employee or agent thereof commits a Prohibited Act; or

14.6.2 an Insolvency Event occurs in relation to the Provider.

14.7 The Provider may terminate this Agreement by giving at least fourteen (14) days written notice to HESA if it no longer wishes to participate in the Data Futures Pilot provided that any data submitted to HESA prior to the Termination Date may be processed by HESA and the Statutory Customers for up to six (6) months period following the end of the Beta Phase (as notified by HESA to the Provider and Statutory Customers) for the Permitted Purposes.

15. CONSEQUENCES OF TERMINATION

15.1 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

15.2 Any Provider Information held by HESA at the time of termination shall be retained in accordance with the Pilot Operational Documentation for up to six (6) months following the end of the Beta Phase (as notified by HESA to the Provider and Statutory Customers) for the Permitted Purposes. At the expiry of this period it shall be deleted in accordance with HESA's deletion policies and procedures.

15.3 The following clauses shall survive the termination of this Agreement:

15.3.1 this clause 15;

15.3.2 clause 1 and Schedule 1;

15.3.3 clause 6 (Use of Provider Information by HESA and its customers);

15.3.4 clause 7 (Intellectual Property Rights);

15.3.5 clause 8 (Data Protection);

15.3.6 clause 12 (Publicity);

15.3.7 clause 12 (Retention of Provider Information);

15.3.8 paragraphs 3 to 6 of Schedule 2.

15.4 For the avoidance of doubt, nothing in this Agreement shall require HESA to process data if it considers that such processing would not be in accordance with the Permitted Purposes, the Student Collection Notice or the Data Protection Legislation.

16. EXECUTION OF THIS AGREEMENT

- 16.1 This agreement 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 agreement.
- 16.2 The following shall take effect as delivery of an executed counterpart of this agreement:
- 16.2.1 This agreement or a counterpart of this agreement; or
- 16.2.2 the signature page of this agreement or of a counterpart of this agreement;
- where it is transmitted through a digital signature programme to a party to this agreement following electronic signature by another party using that digital signature programme.
- 16.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.
- 16.4 The Provider acknowledges and accepts that the digital signature system will track and retain the personal data of individuals who use the system. Such personal data is retained within the digital signature system, and may be accessed by HESA only for the purposes of monitoring progress towards signature of this Agreement and for standard records management and audit. The Provider shall be responsible for notifying the retention and use of such personal data to individuals employed or engaged by them as necessary to ensure compliance with the fair processing requirements within the Data Protection Legislation.

SIGNATURE PAGE

Signed for and on behalf of HESA

Name

Position

Date

Signed for and on behalf of the Provider

Name

Position

Date

SCHEDULE 1
DEFINITIONS

1. DEFINITIONS

1.1 In this Agreement the following terms and phrases shall have the following meanings:

"Accountable Officer"	For English registered higher education providers the individual who has been identified as the Provider's accountable officer. For higher education providers based in other UK countries the Accountable Officer shall be the chief executive of the provider or individual fulfilling an equivalent role within the provider.
"Agreement"	This agreement.
"Alpha HEP Pilot Participant"	If the Provider has selected this HESA Pilot Participant Category in Table A on the cover of this Agreement, then the Provider shall be participating in the Alpha Phase of the Data Futures Pilot and shall be required to comply with the Pilot Operational Documentation relevant to the Alpha Phase.
"Alpha Phase"	The Alpha Phase is the first stage of the Data Futures Pilot which shall be sub-divided into four phases: 1) Proof of concept prototypes of the submission and collection solution; 2) Assessment of data collection; 3) Assessment of data dissemination; 4) Assessment of data management portal; each defined as a "Phase" . The detail for each Phase is set out in the Pilot Operational Documentation, including the timetable, data and process requirements of each Phase.
"Beta HEP Pilot Participant"	If the Provider has selected this HESA Pilot Participant Category in Table A on the cover of this Agreement, then the Provider shall be participating in the Beta Phase of the Data Futures Pilot and shall be required to comply with the Pilot Operational Documentation relevant to the Beta Phase.
"Beta Phase"	The Beta Phase of the Data Futures Pilot as detailed in the Pilot Operational Documentation. The Beta Pilot will take place in November 2018 and be a full test of the HESA Data Platform i.e. submission of student data over an entire academic year using three reference points.
"Coding Manual"	The suite of material that supports the Provider in their submission and understanding of HESA data collections as set out in the Pilot Operational Documentation.
"Commencement Date"	Has the meaning given in clause 3.1 of this Agreement.

"Confidential Information"	Any information in respect of which one party has given to the other party a specific indication that it should be regarded as confidential or commercially sensitive. The Pilot Data Submission will not be regarded as Confidential Information.
"Coverage"	The population for which the Provider is required to supply the data fields which comprise the Required Pilot Data Collection for the relevant HEP Pilot Participant Category, as specified in the Pilot Operational Documentation.
"Data Futures Pilot"	<p>HESA is in the process of developing the HESA Data Platform and will operate a pilot of the HESA Data Platform in two phases, Alpha and Beta. The pilot for the avoidance of doubt includes (but is not limited to) a pilot of:</p> <ul style="list-style-type: none"> (i) the latest version of the HESA Data Platform; (ii) the latest version of the Coding Manual; (iii) data specifications, collection methods and processes; and (iv) Pilot Operational Documentation and associated guidance.
"Data Futures Pilot Provider Participant User"	Data Futures Pilot Provider Participant user means an individual employee, agent or contractor of the provider which has been approved by the provider.
"HESA Data Platform"	The collection system by which the Provider shall be submitting its pilot data submission for the Alpha Phase and/or Beta Phase (as applicable). This platform shall be updated throughout the duration of the Data Futures Pilot.
"Data Protection Legislation"	<p>All applicable data protection and privacy legislation, regulations and guidance including:</p> <ul style="list-style-type: none"> (i) prior to 25 May 2018, the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the Information Commissioner from time to time (all as amended, updated or re-enacted from time to time); and (ii) from 25 May 2018 onwards Regulation (EU) 2016/679 (the "General Data Protection Regulation" or "GDPR") and the Privacy and Electronic Communications (EC Directive) Regulations including any law based on or seeking to enact essentially any equivalent provisions in the United Kingdom to the GDPR and any applicable guidance or codes of practice issued by the European Data Protection Board or Information Commissioner from time to time (all as amended, updated or re-enacted from time to time).

"Fixed Database"	The database which may open following the closure of a live Data Collection to enable a Fixed Database Submission to be completed and made available in accordance with the Student Collection Notice. This will be outlined in the Pilot Operational Documentation and will be known as the historical amendments process.
"Fixed Database Submission"	A late or additional submission of any or all Required Pilot Data Collection in order that failure to meet required timetables for submission or failures to meet quality requirements in the data can be rectified
"Freedom of Information Legislation"	Any or all of the Environmental Information Regulations 2004, the Environmental Information (Scotland) Regulations 2004, the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002, or any subsequent legislation which amends or replaces them.
"HESA Board"	The board of directors of HESA.
"HESA Pilot Participant Category"	<p>A HESA Pilot Participant Category as specified in Table A on the cover of this Agreement and defined as:</p> <ul style="list-style-type: none"> (i) Alpha HEP Pilot Participant; or (ii) Beta HEP Pilot Participant; or (iii) both. <p>References to "the relevant HESA Pilot Participant Category" are to the Category selected by the Provider as applicable to it under this Agreement, as marked in Table A.</p>
"HESA Website"	HESA's website located at http://www.hesa.ac.uk .
"Information Commissioner"	The Information Commissioner as defined in the Freedom of Information Act 2000.
"Insolvency Event"	<ul style="list-style-type: none"> (i) a winding up petition is presented or an application is made for the appointment of a provisional liquidator or an administrator or a receiver, or a notice of intention to appoint an administrator is filed at court, or a provisional liquidator or an administrator or an administrative receiver or a receiver, is appointed, or a scheme of arrangement or a voluntary arrangement is proposed, or any moratorium comes into effect; (ii) a shareholders' meeting is convened for the purpose of considering a resolution to wind up (except for a members' voluntary liquidation exclusively for the purposes of a bona fide solvent reconstruction or amalgamation and where the resulting entity agrees to be bound by, or assumes, the obligations of such insolvent party under this Agreement) a resolution to wind up is passed or a winding up order is made;

		<ul style="list-style-type: none"> (iii) a party to this Agreement is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or (iv) an encumbrancer takes possession of, or a receiver, administrative receiver or similar officer is appointed over, the whole or any part of a party's business or assets or any other similar process in any relevant jurisdiction which has a similar or analogous effect.
"Intellectual Property Rights"		Copyrights and related rights, design rights, database rights, patents, rights to inventions, know-how or trade secrets (whether patentable or not), trade and domain and business names, logos and devices, trade and service marks, moral rights or similar intellectual property rights (whether registered or unregistered and wherever in the world enforceable) together with any extensions, revivals or renewals thereof, and all pending applications therefore and rights to apply for any of the foregoing in each case as may now or in the future exist anywhere in the world.
"Losses"		Any and all losses, liabilities, costs, claims, proceedings, actions, judgments, damages and expenses including (without limitation) any awards and/or penalties or fines imposed by any regulator including the Information Commissioner to the extent recoverable at law (and any associated costs thereto) and any legal and other professional fees, consultancy fees and expenses on a full indemnity basis.
"Permitted Purposes"		<p>The use of any Provider Information for the following purposes:</p> <ul style="list-style-type: none"> (i) to perform the obligations or exercise any right set out in this Agreement; (ii) for testing, assessment and quality assurance of the HESA Data Platform and its outputs; (iii) to assess the Data Futures Pilot to achieve the Programme Benefits as detailed in the Pilot Operational Documentation; and (iv) post submission analysis; (v) reporting to the Programme Board and HESA Board. <p>The Provider Information may not be used for regulatory or business as usual purposes.</p>
"Personal Data Breach"	Data	Shall have the same meaning as set out in the GDPR i.e. a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.
"Pilot Submission"	Data	The data which the Provider is required to submit under this Agreement comprising the Required Pilot Data Collection with the Coverage for the relevant HESA Pilot Participant Category.
"Pilot Environment"		The information technology systems used by HESA to operate the Data Futures Pilot and securely host the HESA Data Platform and the other collection, storage and communication systems used for

	the Alpha Phase and the Beta Phase. These information technology systems reside in HESA's Data Futures cloud infrastructure using HESA's Microsoft Azure tenancy.
"Pilot Operational Documentation"	The information published on the HESA Website and/or in the Pilot Environment and/or as otherwise made available by HESA (including, but not limited to via email, workshops or webinars) for each Required Pilot Data Collection necessary for the supply of the Pilot Data Submission to HESA for each relevant HESA Pilot Participant Category as updated from time to time. For the avoidance of doubt the Provider will need to refer to the operational documents for each relevant individual Required Pilot Data Collection. Each Data Collection is ascribed a collection number and the documentation will make clear which collection number relates to which Required Pilot Data Collection.
"Programme Board"	The Programme Board will provide strategic oversight for the Data Futures Pilot and will include representatives from HESA and key stakeholder groups as outlined at https://www.hesa.ac.uk/innovation/data-futures/programme-management .
"Prohibited Act"	Any act which constitutes an offence under the Bribery Act 2010, which contravenes paragraph 2.2 of Schedule 2 or which is an offence under legislation or common law provisions in respect of fraudulent acts, to the extent that such acts relate to this Agreement or any other Agreement with HESA.
"Provider Information"	Includes: <ul style="list-style-type: none"> (i) the Pilot Data Submission; (ii) any information (including personal data) received by HESA from a source other than the Provider which relates to the Provider (iii) information derived by HESA from the Pilot Data Submission; or (iv) feedback and reports produced by HESA on the Pilot Data Submission and any information received by HESA from a source other than the Provider which relates to the Provider
"Required Pilot Data Collection"	The collections of data and data requirements associated with each HESA Pilot Participant Category (subcategorised as Alpha Pilot Required Data and Beta Pilot Required Data) which the Provider is required to supply pursuant to this Agreement, as identified in the Pilot Operational Documentation.
"Security Incident"	An actual, suspected or threatened unauthorised exposure, access, disclosure, use, communication, deletion, revision, encryption, reproduction or transmission of any personal data contained within the Provider Information or unauthorised access or attempted access or apparent attempted access (physical or otherwise) to any personal data therein.

"Statutory Customer"	Government or statutory body within the UK with responsibility for higher education policy and the regulation of funding for, and the provision of, higher education in the UK or particular parts of the UK as specified in the Pilot Operational Documentation.
"Statutory Customer Agreement"	An agreement between HESA and a Statutory Customer for the provision of data by HESA to the Statutory Customer.
"Student Collection Notice"	The HESA student collection notice as published on the HESA Website and updated from time to time.
"Subject Access Request"	means a request made by, or on behalf of, a data subject in accordance with rights granted pursuant to the Data Protection Legislation to access their personal data.
"Table A"	The table on the front page of this Agreement which indicates the HESA Pilot Participant Category.

- 1.2 The terms "Article" "data controller", "data processor", "data subject" "personal data", "process", "processing", "special categories of data" and "sensitive personal data" shall have the meanings set out in the Data Protection Legislation.
- 1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this Agreement includes the Schedules.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written does not include faxes or e-mail unless it is notifying of changes made to the Pilot Operational Documentation.
- 1.11 "Or" shall be interpreted as meaning "and/or".
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

- 1.13 Any words following the terms including, include, in particular or for example or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.14 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in the Schedules, the provision in the body of this Agreement shall take precedence.
- 1.15 If any of the parties to this Agreement is replaced by a successor body or has its relevant powers and responsibilities transferred to another body then references to it in this Agreement shall be taken to apply to its successor until such time as this Agreement can conveniently be updated to reflect the change, to the extent that the assignment or transfer of powers and responsibilities is permitted under clause 11.

SCHEDULE 2 GENERAL TERMS AND CONDITIONS

1. FREEDOM OF INFORMATION LEGISLATION

- 1.1 The Provider acknowledges that information collected or generated pursuant to this Agreement will be held by one or more organisations which are subject to the Freedom of Information Legislation.

2. BRIBERY AND FRAUD

- 2.1 The parties warrant that they understand their obligations under the Bribery Act 2010 and shall comply with those obligations.
- 2.2 No party nor any employee or agent of that party shall offer, give or agree to give to another party, its staff or agents any inducement or reward for doing or refraining from doing or having done or refrained from doing any act in relation to the obtaining or execution of this Agreement or any other agreement or for showing or refraining from showing any favour or disfavour to any person in relation to this Agreement or any other agreement.

3. ALTERNATIVE DISPUTE RESOLUTION

- 3.1 This clause applies to any dispute arising between the Provider and HESA in connection with this Agreement, including for the avoidance of doubt any dispute as to whether HESA has complied with a duty under this Agreement to act reasonably.
- 3.2 Where a dispute as referred to in paragraph 3.1 arises from a concern or complaint on the part of the Provider, the Provider shall refer the matter to be considered within HESA's complaints process as published on its website and as amended from time to time. If the Provider remains dissatisfied with HESA's position following completion of this process, the provisions of paragraphs 3.3 to 3.5 shall apply.
- 3.3 This paragraph 3.3 and, if applicable, paragraphs 3.4 and 3.5, apply either where a dispute as referred to in paragraph 3.1 arises from a concern or complaint on the part of HESA, or where the Provider remains dissatisfied with HESA's position following completion of HESA's complaints process under paragraph 3.2. Directors or other senior representatives of each party with authority to settle the dispute will, within 10 working days of a written request from one party to the others, meet in a good faith effort to resolve the dispute.
- 3.4 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**ADR notice**") to the other parties to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 20 working days after the date of the ADR notice.

- 3.5 No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or one of the other parties has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 3.6 Nothing in this paragraph shall prevent any party seeking a preliminary injunction or other judicial relief at any time, if in its judgement such action is necessary to prevent irreparable damage.

4. LIABILITY

- 4.1 HESA has no obligations to the Provider, whether in contract, tort, breach of statutory duty or otherwise, beyond its obligations expressly set out in this Agreement.
- 4.2 HESA shall have no liability (however caused) for any loss of profit, business, contracts, revenues, increased costs or expenses or any indirect or consequential loss arising under this Agreement.
- 4.3 Subject to paragraph 4.4 the total aggregate liability of HESA to the Provider in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, any loss or damage of any kind arising from this Agreement shall not in any event exceed one thousand pounds (£1,000) plus VAT in each contract year.
- 4.4 HESA does not exclude or limit liability to the Provider for:
- 4.4.1 death or personal injury caused by negligence;
 - 4.4.2 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 4.4.3 any matter for which it would be unlawful for the parties to exclude liability.

5. NOTICES

- 5.1 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service providing proof of delivery to

HESA: Higher Education Statistics Agency Limited

95 Promenade

Cheltenham

GL50 1HZ

marked for the attention of the Chief Executive

The Provider: marked for the attention of the Head of Provider at its address stated on page 1;

or as amended from time to time by notice in accordance with this clause.

- 5.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or otherwise at 9.00 am on the second working day after posting.
- 5.3 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.

6. GENERAL

- 6.1 Nothing in this Agreement shall constitute a partnership, joint venture or other co-operative entity between any of the parties.
- 6.2 No delay or omission by any party in exercising any right, power or remedy provided by law or under this Agreement shall affect that right, power or remedy or operate as a waiver of it. The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 6.3 Subject to the provisions of clause 10 (Variation) no variation to this Agreement shall take effect unless it is in writing and signed by all parties to this Agreement.
- 6.4 Without prejudice to clause 4.19 to 4.21 of the main body of this Agreement, each party warrants and undertakes that it has the capacity and full legal authority to enter into this Agreement, this Agreement has been executed by its duly authorised representative, the making of this Agreement does not conflict with any of its existing obligations and once signed, this Agreement shall constitute its legal, valid and binding obligations.
- 6.5 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any accrued rights, powers and remedies.
- 6.6 The Parties acknowledge that this Agreement contains the whole agreement between them in relation to the subject matter of this Agreement and this Agreement supersedes any prior agreement between the parties whether written or oral.
- 6.7 Each Party acknowledges and agrees that it has not relied upon, and shall have no right or remedy in respect of, any representation, statement, warranty, undertaking, promise or assurance other than as expressly stated in the Agreement. Nothing in this clause is intended to limit or exclude any party's liability for fraud or fraudulent misrepresentation.
- 6.8 If at any time any provision of this Agreement is or becomes illegal, invalid, unenforceable or unreasonable in any respect under the law of any jurisdiction it shall, to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.
- 6.9 If any party ("the Restricted Party") is prevented from complying with its obligations under this Agreement due to an event beyond its reasonable control which cannot be

reasonably foreseen, or if foreseeable, cannot be avoided ("Force Majeure Event") then the following provisions apply:

- 6.9.1 Upon giving prompt notice of the nature and extent of the circumstances in question to the other parties (the "Non-restricted Parties") it shall be excused from performance to the extent of the prevention, restriction or interference, subject only to paragraph 6.9.3.
- 6.9.2 Should the non-performance continue such that the ability of the Non-Restricted Party to fulfil their functions or responsibilities to others is significantly affected notwithstanding both parties' compliance with paragraph 6.9.3 and the parties are unable to agree a solution to the situation through amendment to this Agreement or otherwise, subject to paragraph 6.9.3 the Non-Restricted Party may terminate this Agreement by immediate written notice to the Restricted Party.
- 6.9.3 Notwithstanding the provisions of paragraphs 6.9.1 and 6.9.2, both parties shall:
 - 6.9.3.1 use their reasonable endeavours to continue to perform their obligations under this Agreement for the duration of a Force Majeure Event; and
 - 6.9.3.2 where a Force Majeure Event has a significant effect on the ability of the Non-Restricted Party to fulfil its functions or responsibilities as described in paragraph 6.9.2, before the Non-Restricted Party may terminate this Agreement as provided for in paragraph 6.9.2 both parties must use their reasonable endeavours to reach an alternative solution to termination. The alternative solutions to be considered in these circumstances shall include but not be limited to suspending this Agreement for the remainder of any Required Pilot Data Collection in which the Force Majeure Event occurred or which is affected by the Force Majeure Event or for any other appropriate period, on the basis that the suspension will cease and the parties will resume their rights and obligations under the Agreement in relation to future Required Pilot Data Collections following resolution of the Force Majeure Event.
- 6.10 Save as expressly provided in this Agreement, the parties do not intend that any term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party.
- 6.11 This Agreement shall be governed by and construed in accordance with the laws of England & Wales and all parties irrevocably agree and submit to the exclusive jurisdiction of the courts of England & Wales.

SCHEDULE 3

DATA FUTURES PILOT PROVIDER PARTICIPANT AGREEMENT FOR USERS

ROLE DESCRIPTION

1. You have been selected to be a Data Futures Pilot Provider Participant User. This role allows you to access the Pilot Environment on behalf of your [organisation] (the "**Provider**").

DEFINITIONS

2. Terms used in this Agreement shall have the meaning specified in Schedule 1 of the Data Futures Pilot Participation Agreement for HEP Organisations in respect of the Data Futures Programme a copy of which can be found at www.hesa.ac.uk/innovation/data-futures/pilot-agreement ("**the Pilot Participant Agreement**")

AGREEMENT

3. By accepting this role you agree to abide by this agreement. If you do not agree, do not accept this role and no access to the Pilot Environment shall be granted.
4. HESA may, from time to time, change or amend these terms. If we do, we will notify you, either through the user interface, in an email notification, or through other reasonable means. Your continued use of your HESA Identity for this role after such notification will be your consent to the changed terms. If you do not agree to the amended terms, you must relinquish this role and your access to the Pilot Environment shall be revoked.

PURPOSE AND DURATION OF THIS AGREEMENT

5. Higher Education Statistics Agency Limited ("**HESA**") is in the process of developing the HESA Data Platform and is operating the Data Futures Pilot prior to implementing the HESA Data Platform in 2019/20.
6. Your employing Provider has signed the Pilot Participant Agreement and has agreed to participate in the Data Futures Pilot in accordance with its terms. This Agreement sets out the terms and conditions on which you will be allowed to access the Pilot Environment. In particular, it sets out the terms and conditions which apply to your access to the Pilot Environment.
7. This Agreement shall commence on the date you agree these terms and shall remain in force until you have ceased to use the Pilot Environment or any part thereof in any manner whatsoever subject to any earlier termination in accordance with clause 13.
8. Access to the Pilot Environment will be available to you until this Agreement is terminated in accordance with clause 13 (the "**Access Period**") unless extended in accordance with clause 8. The maximum period of the Access Period shall be the duration of the Data Futures Pilot.

9. If you require an extension to the Access Period, you may request an extension in writing to HESA. The decision to extend the Access Period shall be at HESA's sole discretion.
10. Your role will consist of carrying out one or more tasks allocated to you by the Provider in accordance with the Pilot Operational Documentation.
11. In consideration of being given the opportunity to take part in the Data Futures Pilot you agree to comply with the terms of this Agreement and such additional instructions as may be given to you by [organisation] and/or HESA, whether orally or in writing.

USING AND ACCESSING DATA

12. You understand and accept that:
 - a. You are being given permission to access Pilot Environment only for the purposes of undertaking tasks allocated to you by [organisation] for the Data Futures Pilot.
 - b. The Pilot Environment will contain personal data and special category data. As responsible data controllers the HESA Pilot Participants and HESA need to manage data security and risks around use of data appropriately, both to protect the rights of individual data subjects and to avoid reputational, relationship and commercial risks arising from any perceived breach or inadequacy in the protection and security of data accessed for the purposes of the Data Futures Pilot. For the avoidance of doubt, you should not do (or omit to do) anything that may damage the reputation of a HESA Pilot Participant and/or HESA and/or the Data Futures Pilot or breach the HESA Pilot Participant and/or HESA's obligations under Data Protection Legislation.
 - c. You will not access the Pilot Environment until you have undertaken any data protection and security training specified by [organisation] or as otherwise required by clause 8.13 of the Participant Agreement.
 - d. You will not process data within the Pilot Environment for any purpose other than a task allocated by your Provider and which is in accordance with the Pilot Operational Documentation.
 - e. You will only process personal data to the extent that this is necessary and proportionate for the allotted task.
 - f. You will not access or use, or attempt to access or use, any data other than data relating to [organisation]. You acknowledge and accept that you must not access or process data which does not relate to [organisation]'s Provider Information even if the set-up of the Pilot Environment and the permissions and access rights within the Pilot Environment are such that it is or may be possible for you to access such data without prior permission or knowledge of HESA.
 - g. You will fully co-operate with HESA to enable HESA, [organisation], Statutory Customers and other HESA Pilot Participants to comply with their obligations as data controllers under the Data Protection Legislation.

- h. You will inform [organisation]'s Data Protection Officer as soon as possible and in any event that same day in the event that you believe a third party's personal data may have been deliberately accessed by another authorised user within the Pilot Environment.
 - i. You acknowledge and accept that in the event of a Personal Data Breach HESA may need to identify any individual involved in the Personal Data Breach for the purposes of responding or dealing with such Personal Data Breach in accordance with its obligations under the Data Protection Legislation or for the Permitted Purposes.
 - j. Data submitted for the Data Futures Pilot shall not be used to identify or contact individuals or to enable them to be identified or contacted by others, or to inform any decision to be made about an individual.
 - k. You will not alter or seek to alter any element of the underlying software or functionality of the Pilot Environment (whether for the purposes of accessing data beyond that agreed in the scope or for any other reason).
 - l. You will not, and will not attempt to, copy or extract any data from the Pilot Environment.
 - m. You will take all reasonable steps to preserve the security of the Pilot Environment and the data within it. In particular the User will:
 - i. not share your log-in details for the Pilot Environment or allow any other individual to access the Pilot Environment using their log-in details or to view data on the Pilot Environment;
 - ii. co-operate fully and immediately with any investigation by HESA into any suspected breach of this Agreement by the User or any other person; and
 - iii. follow all reasonable directions given by HESA for the purposes of ensuring the security of the data within the Pilot Environment.
 - n. You have no right to sub-licence or assign your role under this Agreement.
 - o. You will not access the Pilot Environment while located outside the United Kingdom.
 - p. You will inform HESA and [organisation] immediately of any actions (of your own or of any other person) that will or appear likely to breach or risk breaching this Agreement or [organisation]'s Data Futures Pilot Participation Agreement.
 - q. You will seek advice from HESA promptly if you are unsure as to whether any action or proposed action is within the terms of this Agreement.
13. This Agreement and your access to the Pilot Environment will terminate on the earliest of:
- a. you notifying HESA that you will not participate further in the Data Futures Pilot;

- b. termination of the Participant Agreement;
 - c. completion of the tasks allocated to you by [organisation]; or
 - d. HESA determines in its absolute discretion that it wishes to, or that it is appropriate to, terminate access.
14. If you breach the terms of this Agreement:
- a. this may constitute a breach of the Data Protection Legislation; and
 - b. your involvement in the Data Futures Pilot may be suspended or terminated permanently.

GENERAL

15. You acknowledge and accept that your personal data may be held and retained by HESA for the purposes of managing and evaluating the Data Futures Pilot and for records management and audit of the Data Futures Pilot, including through retention of a copy of this Agreement.
16. You acknowledge and accept that:
- a. your use of the Pilot Environment and data within it may be subject to reasonable monitoring by HESA in order to ascertain whether you have and are complying with this Agreement; and
 - b. HESA may use the information obtained through monitoring to take action under or to enforce this Agreement.
17. You acknowledge and accept that we may carry out (using your HESA Identity and all other information you provide to us) all such checks, verifications and assessments as we deem necessary from time to time during the term of this Agreement to assess your suitability for access to the Pilot Environment or certain parts of or content on it. The checks and verification procedures set out in this clause shall not affect our other rights, or your obligations, under the Agreement.
18. You acknowledge and accept that all intellectual property rights in the Pilot Environment and any data generated or derived from the Pilot Environment are vested and shall remain vested in HESA.
19. Any waiver by HESA of its rights in respect of a breach of this Agreement shall not be deemed to be a waiver of its rights in respect of any subsequent breach.
20. This Agreement shall be governed by and construed in accordance with English Law. The parties submit to the exclusive jurisdiction of the English Courts.

HESA IDENTITY SYSTEM GENERAL TERMS AND CONDITIONS

1. Background

- a. The Higher Education Statistics Agency Limited (HESA) goal is to operate a safe and secure environment for our services and therefore we require all users to abide by these terms when using our services

2. Agreement

- a. By registering a HESA Identity you agree to abide by this agreement. If you do not agree, do not register a HESA Identity.
- b. HESA may, from time to time, change or amend these terms. If we do, we will notify you, either through the user interface, in an email notification, or through other reasonable means. Your continued use of your HESA Identity after notification will be your consent to the changed terms. If you do not agree to the changes, you must stop using your HESA Identity.

3. HESA Identity

- a. You need a HESA Identity to access some of the services HESA provides. A HESA Identity provides the credentials for you to authenticate your use of these services. You are responsible for keeping your account information and password confidential. You are responsible for all activity that occurs under your account. You must inform HESA immediately if you believe that there has been any compromise of your HESA Identity.
- b. If you've forgotten your password or otherwise can't access your HESA Identity, you can recover your HESA Identity by visiting the Account Recovery webpage and providing account recovery information. You are responsible for setting up account recovery information and for keeping that information confidential. If you cannot recover your HESA Identity using the method above you may reset your HESA Identity by visiting the Account Reset webpage.

4. HESA Identity Organisation Role

- a. As well as requiring a HESA Identity to authenticate, access to some of our services is further restricted to only those people who act in a relevant capacity on behalf of an organisation and have appropriate authorisation. Such services will require your HESA Identity to show you as holding the appropriate HESA Identity Organisation Role before access to these service is authorised. You may be invited to hold such a role or you may request such a role. You must be authorised to act in such a capacity for that organisation before accepting or requesting a role. You will be required to accept any additional responsibilities that holding a role may entail.
- b. If you cease to work for an organisation in the same capacity you must remove the non-applicable roles from your HESA Identity. If you cease to work for an organisation completely you must remove all the roles you hold for that organisation from your HESA Identity.

- c. If you reset your HESA Identity, as described above, all roles and associated information will be removed from your HESA Identity. If you require a role in order to fulfil your or your organisation's obligations to HESA you will have to re-acquire it. You accept that any delay or inability to carry out your activities caused by an account reset is your responsibility.

5 Privacy

- a. We may use your personal data to monitor the use of the Pilot Environment and HESA's website.
- b. We use cookies that are necessary for the provision of the HESA Identity System and the services we provide to you. We also use cookies to collect anonymous information about pages visited on our website. We may also use cookies to remember choices you make to improve your experience of our services. We do not use cookies to share information about your use of our services with any third parties. By accepting these terms you consent to our use of cookies.
- c. We may pass your personal data to third parties who need your personal information in order for us to provide our services to you. For example:
 - If you request or accept a HESA Identity Role in order to act on behalf of an organisation we will provide information about you to members of that organisation so that they may contact you, manage their role delegation and review your activity.
 - If you hold a role that means you approve or reject role requests for an organisation we will provide information about you to people requesting roles so that they may contact you in connection with their request.
- d. We may use your personal data to inform you about changes and improvements to our systems, operational documentation, and website.
- e. For more information on how your personal data may be used by HESA please see <https://www.hesa.ac.uk/about/website/privacy> .

6. Cancellation

- a. If you do not comply with the terms of this agreement we may take action against you including suspending your HESA Identity, suspending or removing roles, asking you to refrain from certain activities and referring your activity to your organisation or other appropriate authority e.g. The Information Commissioner's Office.
- b. At our sole discretion we may permanently suspend your HESA Identity and prevent you from further registration. You accept that any delay or inability to carry out your activities caused by any such action is your responsibility.
- c. If your HESA Identity is not used for 720 days it will be reset. You may reset your HESA Identity yourself at any time.

SCHEDULE 4

DATA FUTURES PILOT PROVIDER PARTICIPANT AGREEMENT FOR LEAD USERS

ROLE DESCRIPTION

1. You have been selected by your [organisation] (the "Provider") to be a Lead User. The Provider is required under clause 4.4. of the Data Futures Pilot Participation Agreement for HEP Organisations to appoint and retain a Lead User who may either administer the Pilot Data Submissions for the Provider or delegate this activity by granting Data Futures Pilot Provider Participant Users roles.
2. You shall be the primary point of contact for the Provider in relation to matters arising in connection with the Data Futures Pilot and HESA Data Platform and must ensure that all of your registration, account information and details are kept up to date, and notify HESA promptly of any changes.
3. As stated above in clause 1, you may either administer the Pilot Data Submissions for the Provider or delegate this activity by granting Data Futures Pilot Provider Participant Users roles. This shall include, but not be limited to:
 - a responsibility for carrying out the organisation and user administration for the Provider and its Data Futures Pilot Provider Participant Users;
 - b. responsibility for managing accounts for the Provider's Data Futures Pilot Provider Participant Users, including verifying and adding accounts, and removing accounts which are no longer needed or for people who either no longer act for the Provider or no longer have a role in the submission of data to the Data Futures Pilot;
 - c. responsibility for overseeing the Provider's data submissions to HESA in accordance with the Pilot Operational Documentation;
 - d. liaising with HESA and ensuring that deadlines are achieved;
 - e. ensuring that the HESA Student Collection Notice has been made available to data subjects prior to personal data being submitted to HESA for the Data Futures Pilot; and
 - f. ensuring that any Data Futures Pilot Provider Participant User enters into the Data Futures Pilot Provider Participant Agreement for Users through the HESA IDS System before they access the Pilot Environment and/or submit any data to HESA.

DEFINITIONS

4. Terms used in this Agreement shall have the meaning specified in Schedule 1 of the Data Futures Pilot Participation Agreement for HEP Organisations in respect of the Data Futures Programme a copy of which can be found at www.hesa.ac.uk/innovation/data-futures/pilot-agreement. ("the Pilot Participant Agreement")

AGREEMENT

5. By accepting this role you agree to abide by this agreement. If you do not agree, do not accept this role and no access to the Pilot Environment shall be granted.
6. HESA may, from time to time, change or amend these terms. If we do, we will notify you, either through the user interface, in an email notification, or through other reasonable means. Your continued use of your HESA Identity for this role after such notification will be your consent to the changed terms. If you do not agree to the amended terms, you must relinquish this role and your access to the Pilot Environment shall be revoked.

PURPOSE AND DURATION OF THIS AGREEMENT

7. Higher Education Statistics Agency Limited ("**HESA**") is in the process of developing the HESA Data Platform and is operating the Data Futures Pilot prior to implementing the HESA Data Platform in 2019/20.
8. Your employing Provider has signed the Pilot Participant Agreement and has agreed to participate in the Data Futures Pilot in accordance with its terms. This Agreement sets out the terms and conditions on which you will act as the Lead User and be allowed to access the Pilot Environment.
9. This Agreement shall commence on the date you agree these terms and shall remain in force until you cease to be the Provider's Lead User subject to any earlier termination in accordance with clause 13.
10. Access to the Pilot Environment will be available to you as Lead User until this Agreement is terminated in accordance with clause 17 (the "**Access Period**") unless extended in accordance with clause 11. The maximum period of the Access Period shall be the duration of the Data Futures Pilot.
11. If you require an extension to the Access Period, you may request an extension in writing to HESA. The decision to extend the Access Period shall be at HESA's sole discretion.
12. Your role will consist of the detailed obligations set out in clauses 1 to 3 and/or carrying out one or more tasks allocated to you by the Provider in accordance with the Pilot Operational Documentation.
13. In consideration of being given the opportunity to take part in the Data Futures Pilot you agree to comply with the terms of this Agreement and such additional instructions as may be given to you by [organisation] and/or HESA, whether orally or in writing.

USING AND ACCESSING DATA

14. You understand and accept that:

- a. You are being given permission to access Pilot Environment only for the purposes of fulfilling your role as Lead User and/or undertaking tasks allocated to you by [organisation] for the Data Futures Pilot.
- b. The Pilot Environment will contain personal data and special category data. As responsible data controllers the HESA Pilot Participants and HESA need to manage data security and risks around use of data appropriately, both to protect the rights of individual data subjects and to avoid reputational, relationship and commercial risks arising from any perceived breach or inadequacy in the protection and security of data accessed for the purposes of the Data Futures Pilot. For the avoidance of doubt, you should not do (or omit to do) anything that may damage the reputation of a HESA Pilot Participant and/or HESA and/or the Data Futures Pilot or breach the HESA Pilot Participant and/or HESA's obligations under Data Protection Legislation.
- c. You will not access the Pilot Environment until you have undertaken any data protection and security training specified by [organisation] or as otherwise required by clause 8.13 of the Participant Agreement.
- d. You will not process data within the Pilot Environment for any purpose other than a task allocated by your Provider and which is in accordance with the Pilot Operational Documentation.
- e. You will only process personal data to the extent that this is necessary and proportionate for the allotted task.
- f. You will not access or use, or attempt to access or use, any data other than data relating to [organisation]. You acknowledge and accept that you must not access or process data which does not relate to [organisation]'s Provider Information even if the set-up of the Pilot Environment and the permissions and access rights within the Pilot Environment are such that it is or may be possible for you to access such data without prior permission or knowledge of HESA.
- g. You will fully co-operate with HESA to enable HESA, [organisation], Statutory Customers and other HESA Pilot Participants to comply with their obligations as data controllers under the Data Protection Legislation.
- h. You will inform [organisation]'s Data Protection Officer as soon as possible and in any event that same day in the event that you believe a third party's personal data may have been deliberately accessed by another authorised user within the Pilot Environment.
- i. You acknowledge and accept that in the event of a Personal Data Breach HESA may need to identify any individual involved in the Personal Data Breach for the purposes of responding or dealing with such Personal Data Breach in accordance with its obligations under the Data Protection Legislation or for the Permitted Purposes.

- j. Data submitted for the Data Futures Pilot shall not be used to identify or contact individuals or to enable them to be identified or contacted by others, or to inform any decision to be made about an individual.
 - k. You will not alter or seek to alter any element of the underlying software or functionality of the Pilot Environment (whether for the purposes of accessing data beyond that agreed in the scope or for any other reason).
 - l. You will not, and will not attempt to, copy or extract any data from the Pilot Environment.
 - m. You will take all reasonable steps to preserve the security of the Pilot Environment and the data within it. In particular the User will:
 - i. not share your log-in details for the Pilot Environment or allow any other individual to access the Pilot Environment using their log-in details or to view data on the Pilot Environment;
 - ii. co-operate fully and immediately with any investigation by HESA into any suspected breach of this Agreement by the User or any other person; and
 - iii. follow all reasonable directions given by HESA for the purposes of ensuring the security of the data within the Pilot Environment.
 - n. You have no right to sub-licence or assign your role under this Agreement.
 - o. You will not access the Pilot Environment while located outside the United Kingdom.
 - p. You will inform HESA and [organisation] immediately of any actions (of your own or of any other person) that will or appear likely to breach or risk breaching this Agreement or [organisation]'s Data Futures Pilot Participation Agreement.
 - q. You will seek advice from HESA promptly if you are unsure as to whether any action or proposed action is within the terms of this Agreement.
15. Should you cease to be the Provider's Lead User, you shall or procure that the Provider shall promptly inform HESA in writing of the name and contact details for the new Lead User within seven (7) days of the Lead User ceasing to hold office.
16. This Agreement and your access to the Pilot Environment will terminate on the earliest of:
- e. you notifying HESA that you will not participate further in the Data Futures Pilot;
 - f. termination of the Participant Agreement;
 - g. you ceasing to be the Provider's Lead User; or

- h. HESA determines in its absolute discretion that it wishes to, or that it is appropriate to, terminate access.
17. If you breach the terms of this Agreement:
- a. this may constitute a breach of the Data Protection Legislation; and
 - b. your involvement in the Data Futures Pilot may be suspended or terminated permanently.

GENERAL

18. You acknowledge and accept that your personal data may be held and retained by HESA for the purposes of managing and evaluating the Data Futures Pilot and for records management and audit of the Data Futures Pilot, including through retention of a copy of this Agreement.
19. You acknowledge and accept that:
- a. your use of the Pilot Environment and data within it may be subject to reasonable monitoring by HESA in order to ascertain whether you have and are complying with this Agreement; and
 - b. HESA may use the information obtained through monitoring to take action under or to enforce this Agreement.
20. You acknowledge and accept that we may carry out (using your HESA Identity and all other information you provide to us) all such checks, verifications and assessments as we deem necessary from time to time during the term of this Agreement to assess your suitability for access to the Pilot Environment or certain parts of or content on it. The checks and verification procedures set out in this clause shall not affect our other rights, or your obligations, under the Agreement.
21. You acknowledge and accept that all intellectual property rights in the Pilot Environment and any data generated or derived from the Pilot Environment are vested and shall remain vested in HESA.
22. Any waiver by HESA of its rights in respect of a breach of this Agreement shall not be deemed to be a waiver of its rights in respect of any subsequent breach.
23. This Agreement shall be governed by and construed in accordance with English Law. The parties submit to the exclusive jurisdiction of the English Courts.

HESA IDENTITY SYSTEM GENERAL TERMS AND CONDITIONS

1. Background

- a. The Higher Education Statistics Agency Limited (HESA) goal is to operate a safe and secure environment for our services and therefore we require all users to abide by these terms when using our services

2. Agreement

- a. By registering a HESA Identity you agree to abide by this agreement. If you do not agree, do not register a HESA Identity.
- b. HESA may, from time to time, change or amend these terms. If we do, we will notify you, either through the user interface, in an email notification, or through other reasonable means. Your continued use of your HESA Identity after notification will be your consent to the changed terms. If you do not agree to the changes, you must stop using your HESA Identity.

3. HESA Identity

- a. You need a HESA Identity to access some of the services HESA provides. A HESA Identity provides the credentials for you to authenticate your use of these services. You are responsible for keeping your account information and password confidential. You are responsible for all activity that occurs under your account. You must inform HESA immediately if you believe that there has been any compromise of your HESA Identity.
- b. If you've forgotten your password or otherwise can't access your HESA Identity, you can recover your HESA Identity by visiting the Account Recovery webpage and providing account recovery information. You are responsible for setting up account recovery information and for keeping that information confidential. If you cannot recover your HESA Identity using the method above you may reset your HESA Identity by visiting the Account Reset webpage.

4. HESA Identity Organisation Role

- a. As well as requiring a HESA Identity to authenticate, access to some of our services is further restricted to only those people who act in a relevant capacity on behalf of an organisation and have appropriate authorisation. Such services will require your HESA Identity to show you as holding the appropriate HESA Identity Organisation Role before access to these service is authorised. You may be invited to hold such a role or you may request such a role. You must be authorised to act in such a capacity for that organisation before accepting or requesting a role. You will be required to accept any additional responsibilities that holding a role may entail.
- b. If you cease to work for an organisation in the same capacity you must remove the non-applicable roles from your HESA Identity. If you cease to work for an organisation completely you must remove all the roles you hold for that organisation from your HESA Identity.

- c. If you reset your HESA Identity, as described above, all roles and associated information will be removed from your HESA Identity. If you require a role in order to fulfil your or your organisation's obligations to HESA you will have to re-acquire it. You accept that any delay or inability to carry out your activities caused by an account reset is your responsibility.

5. Privacy

- a. We may use your personal data to monitor the use of the Pilot Environment and HESA's website.
- b. We use cookies that are necessary for the provision of the HESA Identity System and the services we provide to you. We also use cookies to collect anonymous information about pages visited on our website. We may also use cookies to remember choices you make to improve your experience of our services. We do not use cookies to share information about your use of our services with any third parties. By accepting these terms you consent to our use of cookies.
- c. We may pass your personal data to third parties who need your personal information in order for us to provide our services to you. For example:
 - If you request or accept a HESA Identity Role in order to act on behalf of an organisation we will provide information about you to members of that organisation so that they may contact you, manage their role delegation and review your activity.
 - If you hold a role that means you approve or reject role requests for an organisation we will provide information about you to people requesting roles so that they may contact you in connection with their request.
- d. We may use your personal data to inform you about changes and improvements to our systems, operational documentation, and website.
- e. For more information on how your personal data may be used by HESA please see <https://www.hesa.ac.uk/about/website/privacy> .

6. Cancellation

- a. If you do not comply with the terms of this agreement we may take action against you including suspending your HESA Identity, suspending or removing roles, asking you to refrain from certain activities and referring your activity to your organisation or other appropriate authority e.g. The Information Commissioner's Office.
- b. At our sole discretion we may permanently suspend your HESA Identity and prevent you from further registration. You accept that any delay or inability to carry out your activities caused by any such action is your responsibility.
- c. If your HESA Identity is not used for 720 days it will be reset. You may reset your HESA Identity yourself at any time.