

(1) HIGHER EDUCATION STATISTICS AGENCY LIMITED

and

(2) {●}

---

**PILOT PARTICIPATION AGREEMENT FOR  
HIGHER EDUCATION AND SOFTWARE PROVIDERS IN RESPECT OF THE DATA FUTURES  
PROGRAMME**

---

**Table A** (as referred to in clause 6.1)

HESA Pilot Participant Category (To be marked as applicable)	Mark to apply
1. Alpha HEP Pilot Participant	
2. Alpha HEP Software Supplier Pilot Participant	
3. Beta HEP Pilot Participant	
4. Beta HEP Software Supplier Pilot Participant	
5. 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) **HIGHER EDUCATION STATISTICS AGENCY LIMITED** (“HESA”) of 95 Promenade Cheltenham GL50 1HZ registered company number 2766993; and
- (2) {●} (“the Provider” or the “Software Provider”) of [{●}] UKPRN Number: {●} or registered address].

**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). HESA has been appointed the designated data body for England under paragraph 3(3) of Schedule 6 of the Higher Education and Research Act 2017.
- (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 2022/23.
- (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, an Alpha Pilot Software Supplier Participant and/or Beta HEP Pilot Participant and/or Beta HEP Software Supplier Pilot Participant and in the case of an Alpha HEP Pilot Agreement Participant and/or Beta HEP Pilot Participant to provide feedback to HESA in accordance with the terms of this Agreement in respect of both the HESA Data Platform and the Provider Migrated Dataset created in order to support transition quality assurance in the HESA Data Platform. For the avoidance of doubt there shall be no requirement for Alpha Pilot Software Supplier Participants and/or Beta HEP Software Supplier Participants to provide such feedback to HESA.
- (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 or Alpha HEP Software Supplier 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 Pilot

(whichever is later); or

- 3.1.2 Where the Provider is both either an Alpha HEP Pilot Participant or an Alpha HEP Software Supplier Participant and either a Beta HEP Pilot Participant or Beta Software Supplier Agreement on the Commencement Date the Agreement shall remain in force for:

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

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

(whichever is later); or

- 3.1.3 Where the Provider is a Beta HEP Pilot Participant or a Beta HEP Software Supplier 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 or Beta HEP Software Supplier Agreement; and/or

3.1.3.2 the duration of the Beta Pilot

(whichever is later),

subject in each case to any earlier termination in accordance with clause 16 (Termination) (the earlier of the date of termination under clause 16 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 the Commencement Date, this Agreement shall have immediate effect.
- 3.3 This Agreement terminates and replaces any previous agreement(s) entered into by the Parties (if any) in respect of Data Futures pilots but any other 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 and shall remain in full force and effect.

#### **4. DATA CONTROLLER STATUS**

- 4.1 It is agreed between the Parties that HESA and the Provider are entering into this Agreement as separate and independent controllers.
- 4.2 HESA is controller of any personal data processed within the Pilot Environment; and
- 4.3 The Provider is controller of personal data processed by it on its own systems outside the Pilot Environment including data extracted by it from the Pilot Environment.

#### **5. LAWFUL BASIS FOR PROCESSING**

- 5.1 The parties agree that each party is responsible for determining its own lawful basis for processing.

#### **6. OBLIGATIONS OF THE PROVIDER**

- 6.1 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.
- 6.2 If this Agreement is terminated under clause 16, 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.
- 6.3 The Provider acknowledges that any Pilot Participant User must enter into the Pilot Participant User IDS Terms before they access the Pilot Environment and/or submit any data to HESA. These terms will vary according to the specific role and responsibilities of the Pilot Participant User and copies of the Pilot Participant User IDS Terms are contained within the Pilot Operational Documentation.

##### **Appointment of a Record Contact**

- 6.4 The Provider's Accountable Officer must appoint a Record Contact who shall be the primary point of contact for the Provider in relation to matters arising from this Agreement, and obligations of the Record Contact shall include, but not be limited to:
- 6.4.1 responsibility for managing accounts for the Provider's Pilot 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;

- 6.4.2 responsibility for overseeing the Provider's data submissions to HESA and feedback (if applicable) on the Provider Migrated Dataset and ensuring the submissions and feedback are made in accordance with the Pilot Operational Documentation;
  - 6.4.3 responsibility for nominating the individual at the Provider responsible for receiving/downloading, as appropriate, the Provider Migrated Dataset and providing relevant feedback in accordance with the Pilot Operational Documentation;
  - 6.4.4 liaising with HESA and ensuring that deadlines are achieved; and
  - 6.4.5 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;
- 6.5 Should the Record Contact appointed by the Provider pursuant to Clause 6.4 cease to be the Provider's Record Contact, the Provider shall promptly inform HESA in writing of the name and contact details for the new Record Contact within seven (7) days of the Record Contact ceasing to hold office using the form which will be provided to the Provider by HESA upon request. The Provider shall procure that in the event the Record Contact ceases to hold office that they will not have access to the Pilot Environment.
- 6.6 The Provider acknowledges that any Record Contact it appoints must accept the relevant Pilot Participant User IDS Terms (a copy of which is published in the Pilot Operational Documentation) through the HESA IDS System before they are able to access the Pilot Environment and allocate other Pilot Participant User roles.

#### **Use of the HESA Data Platform**

- 6.7 The Provider shall supply the Pilot Data Submission to HESA in accordance with the Pilot Operational Documentation.
- 6.8 Being a pilot, it is important that data submitted by the Provider is submitted in accordance with the Pilot Operational Documentation to ensure the best possible test of all of the components of the HESA Data Platform. In particular, without prejudice to the generality of clause 6.7, the Provider shall ensure that the Pilot Data Submission:
- 6.8.1 is supplied in accordance with the timescales specified in the Pilot Operational Documentation or as otherwise specified by HESA in writing from time to time;
  - 6.8.2 complies with 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. This is particularly important in Alpha Pilot Phase 1 when, unless agreed in advance in writing between the Parties, only test data created by HESA and provided to Providers should be submitted to the HESA Data Platform; and

- 6.8.3 for Alpha Pilot Phase 2 and Beta Pilot 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, where data relating to real individuals is authorised to be submitted to the HESA Data Platform.
- 6.9 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.
- 6.10 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 requirements, processes, and systems set out in the Pilot Operational Documentation. Such reasonable co-operation shall include (but not be limited to):
- 6.10.1 undertaking induction and training on the Data Futures Pilot, including (but not limited to) the new data model, the HESA Data Platform (including the Online Validation Tool), the Provider Migrated Dataset; and key HESA data protection and information security requirements;
  - 6.10.2 if requested by HESA, participating in moderated and unmoderated usability testing to enable HESA to gather input as part of this process;
  - 6.10.3 if applicable, checking and re-submitting the Pilot Data Submission including at the reasonable request of HESA and/or a Statutory Customer; and
  - 6.10.4 at HESA's request, attending Data Futures Pilot events including (but not limited to) workshops, webinars, one to one sessions, training and making staff available to make a meaningful contribution to the Data Futures Pilot through user testing and feedback on the HESA Data Platform (including the Online Validation Tool) and the Provider Migrated Dataset. Such attendance and participation matching the time commitment requirements set out in the Pilot Operational Documentation.
- 6.11 Where HESA acting reasonably:
- 6.11.1 considers that the Provider is utilising a disproportionate amount of HESA staff support time in order to enable the Provider to make a Pilot Data Submission which complies with this Agreement, or
  - 6.11.2 HESA has significant concerns as to whether a Pilot Data Submission made to the HESA Data Platform meets the requirements as to quality and accuracy of data submitted under clauses 6.7 or 6.8,

HESA shall notify the Provider identifying the elements of the Pilot Data Submission which appear to be causing difficulty to the Provider and specifying any actions which HESA acting reasonably considers are 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 sole discretion and

shall be exercised on a case by case basis, so will likely vary, but may range from requesting the Provider to attend a meeting or requesting members of the Provider's staff to undergo additional training, to exercising HESA's rights under clause 15.13.

- 6.12 The Pilot Data Submission shall be signed off by the Provider Participant User holding the relevant sign off role as detailed within the Pilot Operational Documentation.

#### **Access to Provider Information**

- 6.13 The Pilot Environment is a controlled environment and access to the Pilot Environment granted to the Provider should only facilitate access to Provider Information. The Provider agrees and acknowledges in the event that the Provider 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.

#### **Provider Migrated Dataset**

- 6.14 The Provider shall supply feedback on the Provider Migrated Dataset in accordance with the Pilot Operational Documentation including any specified data quality assurance process.
- 6.15 It is important that the feedback submitted by the Provider is true and accurate and is submitted in accordance with the Pilot Operational Documentation to enable HESA to develop the most accurate Provider Migrated Dataset possible for use in the HESA Data Platform. Feedback must be supplied by the Provider:
- 6.15.1 using the mechanism specified in the Pilot Operational Documentation;
  - 6.15.2 in accordance with the methodology and timescales specified in the Pilot Operational Documentation or as otherwise specified by HESA in writing;
- 6.16 HESA is reliant on the Provider to seek clarification or explanation with regard to any aspect of the Pilot Operational Documentation relating to the Provider Migrated Dataset 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.
- 6.17 The Provider shall co-operate with HESA as reasonably required to ensure its feedback on the Provider Migrated Dataset is 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):
- 6.17.1 undertaking induction and training on the Provider Migrated Dataset review process;
  - 6.17.2 reviewing and providing feedback on the Provider Migrated Dataset in accordance with the Pilot Operational Documentation;

- 6.17.3 participating in moderated and unmoderated usability testing to enable HESA to obtain input and feedback from providers as part of this process; and
- 6.17.4 confirming, on HESA's request, whether all accuracy concerns regarding the Provider Migrated Dataset have been raised by the Provider with HESA.

### **General**

- 6.18 The Provider recognises that its feedback is invaluable to ensuring the success of the Data Futures Pilot and achieving 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.
- 6.19 The Provider shall respond to all correspondence and communications from HESA or a Statutory Customer within reasonable timescales.

### **Capacity of the Provider**

- 6.20 Clauses 6.21 and 6.22 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.
- 6.21 The Provider warrants that it has the legal authority and power to enter into the Agreement and to ensure compliance with the terms of this Agreement.
- 6.22 In particular, the Provider warrants and undertakes that the Provider has the capacity and authority to disclose any data in the Pilot Data Submission and for it to be processed for the Permitted Purposes.
- 6.23 The Provider warrants that it is the controller of the data to be submitted to HESA.

## **7. OBLIGATIONS OF HESA**

- 7.1 HESA shall provide a secure process for the:
  - 7.1.1 submission of the Pilot Data Submission pursuant to this Agreement which is compatible with HESA's obligations under clause 10 below.
  - 7.1.2 sharing of the Provider Migrated Dataset and the feedback from the Provider on the accuracy of the Provider Migrated Dataset.
- 7.2 HESA shall carry out the collection and collation of the Pilot Data Submission and the feedback on the Provider Migrated Dataset in accordance with the Pilot Operational Documentation.
- 7.3 HESA shall provide an appropriate specification of the content of the Pilot Data Submission and the process for submitting the Pilot Data Submission and sharing feedback on the Provider Migrated Dataset, including:



- 7.3.1 the timescales by which HESA shall carry out particular steps or make available particular information or functionality;
- 7.3.2 the timescales by which the Provider shall be required to undertake particular activities or provide information;
- 7.3.3 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 7.3 shall reduce the obligations of the Provider under clause 10 to ensure compliance with the Data Protection Legislation and furthermore to procure compliance from any third party under the direct or indirect control of the Provider (including Alpha HEP Software Supplier Pilot Participant(s) and Beta HEP Software Supplier Plot Participant(s)) with such Data Protection Legislation.

- 7.4 HESA shall comply with its obligations under clause 7.3 by:
  - 7.4.1 publishing the Pilot Operational Documentation a reasonable period prior to the relevant stage or part of the pilot;
  - 7.4.2 providing such clarification or explanation of the Pilot Operational Documentation as the Provider may reasonably request.
- 7.5 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.
- 7.6 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](mailto: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 time period, having regard to the nature of the communication, the workload of the team at the time, the timing of the communication and any need for HESA to consult with a Statutory Customer before responding substantively to communications.
- 7.7 Subject to clause 7.6, HESA shall respond to all correspondence and communications from the Provider within reasonable timescales.

## **8. USE OF PROVIDER INFORMATION**

- 8.1 By submitting the Pilot Data Submission to HESA the Provider:
  - 8.1.1 acknowledges that HESA may already hold or may in the future collect Provider Information other than that contained in the Pilot Data Submission from sources other than direct from 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

- 8.1.2 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 8.1.1.
- 8.2 Subject to clause 8.1, the Provider agrees that HESA may process the Provider Information for and only for the Permitted Purposes.
- 8.3 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.
- 8.4 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 Pilot (as notified by HESA to the Provider and Statutory Customers) for post submission analysis.
- 8.5 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 on a confidential basis.
- 8.6 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.
- 8.7 The Provider acknowledges and accepts that HESA shall make onward provision of the Provider Information to Statutory Customers pursuant to agreements with Statutory Customers for the Statutory Customer Permitted Purpose.
- 8.8 Where HESA supplies the Provider Information or any part thereof to any Statutory Customer or any other third party (as described under clause 8.7):
- 8.8.1 such supply shall be subject to requirements on the Statutory Customer or other third party to use the Provider Information only for the Statutory Customer Permitted Purpose;
- 8.8.2 the Statutory Customer as recipient of some or all of the Provider Information from HESA shall be acting as a separate controller of that received information where it is personal data;

- 8.8.3 the Provider Information may be retained by Statutory Customers for up to six (6) months following the end of the Beta Pilot (as notified by HESA to the Provider and the Statutory Customers) for post submission analysis and reference.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 Subject to clause 9.2 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 Provider Migrated Dataset are vested and shall remain vested in HESA under the Copyright Rights in Databases Regulations 1997.
- 9.2 The Pilot Data Submission and Provider Migrated Dataset may contain derived fields created by HESA using Third Party IPR and links to any required attribution clauses and/or licence terms will be contained within the Pilot Operational Documentation.
- 9.3 HESA to the extent that it is the author of any materials comprising the Pilot Data Submission and Provider Migrated Data, 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.
- 9.4 Nothing in this Agreement shall assign or transfer to the Provider any Intellectual Property Rights owned by HESA or a third party.
- 9.5 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.
- 9.6 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.

## **10. DATA PROTECTION**

- 10.1 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 (including but not limited to Alpha HEP Software Supplier Pilot Participant(s) and Beta HEP Software Supplier Plot Participant(s) under the direct or indirect control of a Alpha HEP Pilot Participant and/or Beta HEP Pilot Participant (if applicable) with the provisions of the Data Protection Legislation.
- 10.2 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.
- 10.3 All parties shall fully co-operate with each other to ensure compliance with the Data Protection Legislation.
- 10.4 Without prejudice to the generality of clauses 10.2 and 10.3 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 10.4 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.

- 10.5 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.

### Security

- 10.6 HESA warrants that it will take appropriate technical and organisational measures as may be reasonably necessary to protect against the 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 clause 10.9.
- 10.7 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 by HESA to only those persons who have received appropriate training regarding data protection and security.
- 10.8 The Provider warrants that it will instruct its staff not to use any of the same or similar passwords for the roles they hold within the Pilot Environment that they use for their HESA business as usual IDS roles.
- 10.9 The Provider shall take all reasonable steps to ensure the reliability and integrity of any personnel who have access to personal data and HESA Confidential Information including ensuring that they:
  - 10.9.1 are aware of and comply with the Provider's obligations under this Agreement;
  - 10.9.2 are informed of the confidential nature of the personal data and HESA Confidential Information as being subject to appropriate confidentiality undertakings with the Provider or any sub-processor; and
  - 10.9.3 have undergone adequate training in the use, care, protection and handling of personal data and HESA Confidential Information.
- 10.10 The Provider warrants that it will take appropriate technical and organisational measures as may be reasonably necessary to protect against the unauthorised or unlawful processing of personal data received from HESA and against accidental loss or destruction of, or damage to, the 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.

### Notification

- 10.11 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:
- 10.11.1 an information notice, or any other notice (including in particular any enforcement notice) or communication served by the Information Commissioner;
  - 10.11.2 complaints from or concerns expressed by data subjects; or
  - 10.11.3 a request to rectify, block or erase any personal data;
  - 10.11.4 any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
  - 10.11.5 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
  - 10.11.6 any investigation of any breach or alleged breach of the Data Protection Legislation.
- 10.12 Each party shall promptly report to the other party 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. For the avoidance of doubt any issues or concerns relating to the security of the Pilot Environment must be disclosed to HESA.
- 10.13 The obligation to notify under clauses 10.11 and 10.12 shall include the provision of further information in phases, as details become available.
- 10.14 Each party shall promptly report to the other party any circumstance that it becomes aware of which:
- 10.14.1 may mean that this clause 10 has not been complied with;
  - 10.14.2 may cause any party to breach the Data Protection Legislation as a result of processing carried out in connection with this Agreement; or
  - 10.14.3 may mean that there has been unauthorised processing of personal data in connection with this Agreement.

- 10.15 Subject to clause 10.16, the Provider shall indemnify and hold harmless HESA for any Losses arising as a result of:
- 10.15.1 the Provider breaching the Data Protection Legislation;
  - 10.15.2 the Provider causing HESA to be in breach of any of the Data Protection Legislation;
  - 10.15.3 the Provider breaching any warranty given in this clause 10; and
  - 10.15.4 HESA having reasonable grounds for concern that the Data Protection Legislation may have been breached by the Provider.
- 10.16 The indemnity in clause 10.15 is limited to fifty thousand pounds (£50,000). For the avoidance of doubt, the Losses are not subject to a liability cap.

#### **User personal data**

- 10.17 The Provider acknowledges and accepts that HESA will process the personal data of the Pilot Participant Users and recipients of the Provider Migrated Dataset. Such data will be used by HESA for the purposes of auditing, security, performance monitoring, error reporting, recording feedback and investigation purposes. Where such individuals take part in webinars, workshops and 1-2-1 sessions they may be recorded by HESA for the purposes of improving the performance and design of the HESA Data Platform.

## **11. CONFIDENTIALITY**

- 11.1 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.
- 11.2 Subject to clause 11.3, neither party shall disclose Confidential Information save:
- 11.2.1 as otherwise necessary for the purposes of the proper performance of this Agreement; or
  - 11.2.2 with the prior agreement of the other party.
- 11.3 The obligations of confidentiality in clauses 11.1 and 11.2 shall not extend to any matter which:
- 11.3.1 is lawfully in, or has become lawfully part of, the public domain other than as a result of a breach of this Agreement;
  - 11.3.2 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;
  - 11.3.3 was known to the receiving party before the information was disclosed to it by the disclosing party; or

- 11.3.4 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.

## **12. VARIATION**

- 12.1 The Required Pilot Data Collection 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 model and specification of data.
- 12.2 HESA shall provide reasonable assistance to the Provider in meeting any amended or additional requirements.
- 12.3 Save as provided for in clause 12.1 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.

## **13. ASSIGNMENT & SUBCONTRACTING**

- 13.1 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.
- 13.2 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. HESA may at any time assign or otherwise transfer, subcontract, delegate, or deal in any other manner with any or all of its rights and obligations under this Agreement.
- 13.3 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.
- 13.4 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. Details of processors are available on request and will include Jisc (HESA's Data Futures delivery partner), Amazon, which hosts the HESA Data Platform in Amazon Web Service, and Microsoft which hosts other elements of HESA's Pilot Environment in Azure.

## **14. 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.

## 15. CONSEQUENCES OF BREACH

- 15.1 Where HESA reasonably considers that the Provider is or may be in breach of clauses 6.8.2, 6.8.3, 6.13, 9.6 or 10 (Data Protection) it may:
- 15.1.1 suspend the Provider's rights of access to the Pilot Environment; and/or
  - 15.1.2 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.
- 15.2 Where HESA takes action under clause 15.1, 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 16 (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.
- 15.3 Where HESA takes action under clause 6.11, it shall as quickly as reasonably possible determine whether HESA wishes to:
- 15.3.1 suspend the Provider's rights of access to the Pilot Environment; or
  - 15.3.2 suspend the Provider's participation in the Data Futures Pilot from a specified date; or
  - 15.3.3 terminate under clause 16.4.6 (Termination).
- 15.4 Where the Provider fails to submit the Pilot Data Submission, on time in compliance with clauses 6.7, 6.8, 10.4 HESA may, in its absolute discretion:
- 15.4.1 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
  - 15.4.2 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.
- 15.5 Where the Pilot Data Submission contains a material error or omission or otherwise fails to pass HESA's quality assurance processes as required by clauses 6.7, 6.8 and 10.4:
- 15.5.1 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



- 15.5.2 may process a Fixed Database Submission for the Provider to replace the Pilot Data Submission.
- 15.6 For the avoidance of doubt, the provisions in clauses 15.4 and 15.5 for HESA to accept late Pilot Data Submissions or operate a Historic Amendment in relation to a Pilot Data Submission are subject to the discretion and permission of HESA as described in those clauses. The provisions of clause 15.4 and 15.5 are without prejudice to HESA's rights under clause 16 (Termination) of this Agreement.

## 16. TERMINATION

- 16.1 Where the Provider commits a material breach of contract, HESA may in its absolute discretion:
- 16.1.1 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
- 16.1.2 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.
- 16.2 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 16.1.1.
- 16.3 For the avoidance of doubt, the following shall always be regarded as a material breach of contract: any breach of clause 10 (Data Protection) and any breach of clause 6.8.2 or 6.8.3 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.
- 16.4 HESA may terminate this Agreement without liability with immediate effect by serving a notice of termination on the other parties if:
- 16.4.1 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 16.4.1 HESA shall consider:
- 16.4.1.1 the impact on Statutory Customers and the Data Futures Pilot of not continuing with this Agreement; and
- 16.4.1.2 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;
- 16.4.2 the Provider ceases, or threatens to cease, to carry out business;

- 16.4.3 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;
  - 16.4.4 the Provider or its employees or agents commits a Prohibited Act;
  - 16.4.5 the Data Futures Pilot is cancelled; or
  - 16.4.6 HESA determines, in its own absolute discretion, that termination is reasonable under clause 6.11.
- 16.5 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.
- 16.6 The Provider may terminate this Agreement without liability with immediate effect by giving written notice to the other parties if:
- 16.6.1 HESA or any employee or agent thereof commits a Prohibited Act; or
  - 16.6.2 an Insolvency Event occurs in relation to the Provider.
- 16.7 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 Pilot (as notified by HESA to the Provider and Statutory Customers) for the Permitted Purposes.
- 16.8 HESA may terminate this Agreement by giving at least fourteen (14) days written notice to the Provider if it no longer wishes the Provider to participate in the Data Futures Pilot.

## **17. CONSEQUENCES OF TERMINATION**

- 17.1 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at the date of termination.
- 17.2 Any Provider Information held by HESA at the date of termination shall be retained in accordance with the Pilot Operational Documentation for up to six (6) months following the end of the Beta Pilot (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.
- 17.3 Any provision of this Agreement that expressly or by implication is intended to come into or remain in force on or after termination, for any cause, or expiry of this Agreement shall survive including (but not limited to) the following provisions:
- 17.3.1 this clause 17;
  - 17.3.2 clause 1 and Schedule 1 (Definitions and Interpretation);

- 17.3.3 clause 8 (Use of Provider Information);
  - 17.3.4 clause 9 (Intellectual Property Rights);
  - 17.3.5 clause 10 (Data Protection);
  - 17.3.6 clause 11 (Confidentiality);
  - 17.3.7 clause 14 (Publicity);
  - 17.3.8 paragraphs 3 to 6 of Schedule 2.
- 17.4 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.

## **18. EXECUTION OF THIS AGREEMENT**

- 18.1 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.
- 18.2 The following shall take effect as delivery of an executed counterpart of this Agreement:
- 18.2.1 This Agreement or a counterpart of this agreement; or
  - 18.2.2 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.
- 18.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.
- 18.4 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 [or Software Provider]

Name:

Position:

Date:

**SCHEDULE 1**  
**DEFINITIONS**

**1. DEFINITIONS**

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

<b>"Accountable Officer"</b>	For English and Welsh registered higher education providers the individual who has been identified as the Provider's accountable officer. For higher education providers based in Scotland and Northern Ireland the Accountable Officer shall be the Head of Provider or individual fulfilling an equivalent role within the Provider.
<b>"Agreement"</b>	This agreement.
<b>"Alpha HEP Pilot Participant"</b>	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 Pilot of the Data Futures Pilot and shall be required to comply with the Pilot Operational Documentation relevant to the Alpha Pilot.
<b>"Alpha HEP Software Supplier Pilot Participant"</b>	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 Pilot of the Data Futures Pilot and shall be required to comply with the Pilot Operational Documentation relevant to the Alpha Pilot.
<b>"Alpha Pilot "</b>	<p>The Alpha Pilot is the first part of the Data Futures Pilot and will take place in two phases (Alpha Pilot Phase 1 and Alpha Pilot Phase 2). The Alpha Pilot will enable HESA to assess the performance and operability of the HESA Data Platform and the outcomes from the Alpha Pilot will influence the HESA Data Platform and Migrated Dataset's future design and performance. The Pilot will include but not be limited to:</p> <ol style="list-style-type: none"> <li>1) Testing the end to end operability of the HESA Data Platform using test data (both synthetic data and/or Personal Data) in accordance with the terms of this Agreement.</li> <li>2) Reviewing and providing feedback on the data, data reports, data model, guidance and rules including automated checks and managing tolerances, and raising issues to inform future development work and bug fixes.</li> <li>3) Obtaining usability input for consideration in the development process.</li> <li>4) Reviewing and providing feedback on the Provider Migrated Dataset to enable HESA to improve data</li> </ol>

	accuracy. The detail for the Alpha Pilot will be set out in the Pilot Operational Documentation, including the timetable, data and process requirements of each phase.
<b>“Alpha Pilot Phase 1”</b>	The first part of the Alpha Pilot comprising: <ol style="list-style-type: none"> <li>1) moderated and unmoderated user testing of and feedback on the HESA Data Platform and associated systems including the data and reports its produces by the Provider using only synthetic data provided by HESA, unless authorised in writing by HESA under clause 6.8.2, to refine requirements and provide input into and feedback on design decisions and business processes in accordance with the process set out in the Pilot Operational Documentation.</li> <li>2) review, feedback and finessing of the Provider Migrated Dataset in accordance with the process set out in the Pilot Operational Documentation.</li> </ol>
<b>“Alpha Pilot Phase 2”</b>	The second part of the Alpha Pilot comprising: <ol style="list-style-type: none"> <li>1) moderated and unmoderated user testing of and feedback on the HESA Data Platform and associated systems including the data and reports its produces using synthetic and/or real data as authorised by HESA from time to time and documented within the Operational Documentation to refine requirements and provide input into and feedback on design decisions and business processes in accordance with the process set out in the Pilot Operational Documentation.</li> <li>2) review, feedback and finessing of the Provider Migrated Dataset in accordance with the process set out in the Pilot Operational Documentation.</li> </ol>
<b>"Beta HEP Pilot Participant"</b>	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 Pilot of the Data Futures Pilot and shall be required to comply with the Pilot Operational Documentation relevant to the Beta Pilot.
<b>“Beta HEP Software Supplier Pilot Participant”</b>	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 Pilot of the Data Futures Pilot and shall be required to comply with the Pilot Operational Documentation relevant to the Beta Pilot.
<b>"Beta Pilot "</b>	The Beta Pilot of the Data Futures Pilot as detailed in the Pilot Operational Documentation. The Beta Pilot is scheduled to take place from around January 2022 and is likely include a full test of the HESA Data Platform

	i.e. submission of student data for an academic year using real data about living individuals, and reviewing and providing feedback on the Provider Migrated Dataset to enable HESA to continue to improve data accuracy.
<b>"Coding Manual"</b>	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.
<b>"Commencement Date"</b>	Has the meaning given in clause 3.1 of this Agreement.
<b>"Confidential Information"</b>	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.
<b>"Data Futures Pilot"</b>	HESA is in the process of developing the HESA Data Platform and will operate a pilot of the HESA Data Platform and its Provider Migrated Dataset in two parts, Alpha Pilot and Beta Pilot. The pilot for the avoidance of doubt includes (but is not limited to) a pilot of: <ul style="list-style-type: none"> <li>(i) the HESA Data Platform and associated systems;</li> <li>(ii) the Provider Migrated Dataset;</li> <li>(iii) the latest version of the Coding Manual; and</li> <li>(iv) data specifications, collection methods and processes.</li> </ul>
<b>"Data Protection Legislation"</b>	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction which relates to the protection of individuals with regards to the processing of personal data to which a Party is subject for the purposes of this Agreement, including the Data Protection Act 2018 and the General Data Protection Regulation 2016/679 ( <b>EU GDPR</b> ) as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, as amended to be referred to as " <b>DPA 2018</b> " and the " <b>UK GDPR</b> " respectively; and (b) any code of practice or guidance published by the ICO or European Data Protection Board from time to time;
<b>"Freedom of Information Legislation"</b>	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.
<b>“HEP”</b>	Means Higher Education Provider
<b>"HESA Board"</b>	The board of directors of HESA.
<b>"HESA Data Platform"</b>	The collection system made available by HESA through which the Provider will be requested to submit its Pilot Data Submission for the Alpha Pilot and/or Beta Pilot (as applicable) in accordance with the terms of this Agreement and the HESA Operational Documentation. This platform shall be updated throughout the duration of the Data Futures Pilot and shall include once available in the Beta Pilot the Online Validation Tool.
<b>"HESA Pilot Participant Category"</b>	<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"> <li>(i) Alpha HEP Pilot Participant; or</li> <li>(ii) Beta HEP Pilot Participant; or</li> <li>(iii) both, or</li> <li>(iv) an Alpha Software Supplier Pilot Participant or</li> <li>(v) a Beta HEP Pilot Participant</li> <li>(vi) or both.</li> </ul> <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>
<b>"HESA Website"</b>	HESA's website located at <a href="http://www.hesa.ac.uk">http://www.hesa.ac.uk</a> .
<b>“IDS”</b>	HESA's identity system. A role management system through which roles are used by HESA to manage the granting and revocation of access to the Pilot Environment and HESA's business as usual collections and systems. The identity system is designed to enable HESA to delegate to providers the capability to grant/delegate roles to staff at their own institution.
<b>"Information Commissioner"</b>	The Information Commissioner as defined in the Freedom of Information Act 2000.
<b>"Insolvency Event"</b>	<ul style="list-style-type: none"> <li>(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</li> </ul>



	<p>voluntary arrangement is proposed, or any moratorium comes into effect;</p> <p>(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;</p> <p>(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</p> <p>(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.</p>
<b>"Intellectual Property Rights"</b>	<p>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 thereof and rights to apply for any of the foregoing in each case as may now or in the future exist anywhere in the world.</p>
<b>"Losses"</b>	<p>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.</p>
<b>"Online Validation Tool"</b>	<p>An area of the HESA Data Platform to be provided by HESA, as controller, during the Beta Pilot for providers to carry out their own validation checks (which replicate some of the checks undertaken by HESA) against their submission data to enable providers to receive reports from HESA and to amend their submission data to make it more accurate prior to formally submitting it to HESA as its Pilot Data Submission.</p>

<p><b>"Permitted Purposes"</b></p>	<p>The use of any Provider Information by HESA and or its Processors for the following purposes:</p> <ul style="list-style-type: none"> <li>(i) to perform the obligations or exercise any right set out in this Agreement;</li> <li>(ii) for testing, assessment and quality assurance of the HESA Data Platform (including the Online Validation Tool) and its associated systems and outputs including sharing Provider Information with Statutory Customers;</li> <li>(iii) for assessing and improving the accuracy of the Provider Migrated Dataset including sharing Provider Information with Statutory Customers;</li> <li>(iv) reporting to the Programme Board and HESA Board; and</li> <li>(v) for sharing with Statutory Customers for the Statutory Customer Permitted Purpose</li> </ul> <p>The Provider Information may not be used for regulatory or business as usual purposes.</p>
<p><b>"Personal Data Breach"</b></p>	<p>Shall have the same meaning as set out in the UK 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.</p>
<p><b>"Pilot Data Submission"</b></p>	<p>The data which the Provider is required to submit under this Agreement and which may be submitted by the Provider on multiple occasions to the HESA Data Platform (including the Online Validation Tool) until the Provider has improved the accuracy of the Pilot Data Submission and it has been accepted as credible data. For the avoidance of doubt it is recognised that where synthetic data is submitted the accuracy and credibility is theoretical and that the data is being processed to test the functionality of the HESA Data Platform.</p>
<p><b>"Pilot Environment"</b></p>	<p>The information technology systems, software and third party applications used by HESA to operate the Data Futures Pilot and securely host the HESA Data Platform and the other collection, storage, management and communication systems used for the Alpha Pilot and the Beta Pilot. These information technology systems reside in HESA's cloud infrastructures.</p>
<p><b>"Pilot Operational Documentation"</b></p>	<p>The information published on the HESA Website and/or in the Pilot Environment and/or Microsoft Teams 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</p>

	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 reference and the documentation will make clear which collection number relates to which Required Pilot Data Collection.
<b>"Pilot Participant User"</b>	Means an individual employee, agent or contractor of the Provider which has been approved by the Provider to take part in the Data Futures Pilot and hold an IDS role.
<b>"Pilot Participant User IDS Terms"</b>	Means the terms and conditions which a Pilot Participant User is required to accept within HESA's Identity Management System before access to the HESA Pilot Environment can be granted. These terms will vary according to the specific role and responsibilities of the Pilot Participant User and copies of the terms are contained within the Pilot Operational Documentation.
<b>"Programme Board"</b>	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 <a href="https://www.hesa.ac.uk/innovation/data-futures/the-programme/engagement-and-programme-governance">https://www.hesa.ac.uk/innovation/data-futures/the-programme/engagement-and-programme-governance</a> .
<b>"Prohibited Act"</b>	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.
<b>"Provider Information"</b>	Includes: <ul style="list-style-type: none"> <li>(i) the Pilot Data Submission;</li> <li>(ii) Provider Migrated Dataset, including any feedback on the Provider Migrated Dataset;</li> <li>(iii) any information (including personal data) received by HESA from a source other than the Provider which relates to the Provider;</li> <li>(iv) information derived by HESA from the Pilot Data Submission and/or the Provider Migrated Dataset;</li> <li>(v) feedback on the Provider Migrated Dataset including information extracted from the Provider Migrated Dataset; and</li> <li>(vi) feedback and reports produced by HESA on the Pilot Data Submission and any information</li> </ul>

	received by HESA from a source other than the Provider which relates to the Provider.
<b>“Provider Migrated Dataset”</b>	The datasets produced by HESA which translate data returned by the Provider in historic data collections (which use the existing data models) to the new Data Futures Pilot data model for the purposes of assisting HESA to refine and gain feedback on the translation accuracy. The feedback and refining will be used by HESA to create new datasets for review by the Provider and for the purposes of quality assuring data submissions from the Provider during the Data Futures Pilot and when the HESA Data Platform is used for its first go live collection.
<b>“Record Contact”</b>	An individual appointed by the Provider’s Accountable Officer to act as the primary point of contact, at the Provider, for HESA and whose responsibilities are set out in clause 6.4 of this Agreement, the Pilot Operational Documentation and in the relevant Pilot Participant User IDS Terms.
<b>"Required Pilot Data Collection"</b>	The collections of data and data requirements associated with each HESA Pilot Participant Category for the Alpha Pilot (including Alpha Pilot Phase 1 and Alpha Pilot Phase 2 which have different data submission requirements) and Beta Pilot which the Provider is required to submit pursuant to this Agreement, as specified in the Pilot Operational Documentation.
<b>“Registered Data Protection Officer”</b>	The Data Protection Officer for the Provider notified to HESA as the point of contact for the Provider in respect of data protection issues and to receive notices in respect of any Personal Data Breach.
<b>"Security Incident"</b>	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.
<b>"Statutory Customer"</b>	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.

<b>"Statutory Customer Agreement"</b>	An agreement between HESA and a Statutory Customer for the provision of data by HESA to the Statutory Customer.
<b>"Statutory Customer Permitted Purpose"</b>	<p>Testing of the HESA Data Platform and its associated systems, software, reports, data model, reference data, and data processes by Statutory Customers including (but not limited to):</p> <ul style="list-style-type: none"> <li>• downloading data from the HESA Data Platform following its sign off by the Provider and processing the data for the purposes of testing performance and the interaction with Statutory Customer systems and software from a Statutory Customer perspective; and</li> <li>• concurrent quality assurance testing by Statutory Customers of the Pilot Data Submission.</li> </ul> <p>Such use of Provider Information during the Pilot will not include the use of Provider Information for regulatory or funding purposes.</p>
<b>"Student Collection Notice"</b>	The HESA student collection notice as published on the HESA Website and updated from time to time.
<b>"Table A"</b>	The table on the front page of this Agreement which indicates the HESA Pilot Participant Category.
<b>"Third Party IPR"</b>	Intellectual property rights in the content of the Provider Information which are vested, and shall remain vested, in third parties rather than HESA as set out in the Operational Documentation.
<b>"Working Day"</b>	Means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the city of London and on which the offices of HESA are open for business.

- 1.1 The terms "controller", "processor", "data subject", "personal data", "process", "processing", and "special categories of data" shall have the meanings set out in UK GDPR.
- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 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.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 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.
- 1.10 "Or" shall be interpreted as meaning "and/or".
- 1.11 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.
- 1.12 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.
- 1.13 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.
- 1.14 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 13.

## SCHEDULE 2 GENERAL TERMS AND CONDITIONS

### 1. FREEDOM OF INFORMATION LEGISLATION

- 1.0 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 20 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

and where the notice relates to a Personal Data Breach it must be copied by email on the same day to [legal@hesa.ac.uk](mailto:legal@hesa.ac.uk) and [liaison@hesa.ac.uk](mailto:liaison@hesa.ac.uk). and include the phrase "Notification of Personal Data Breach" in the title.

**The Provider:** marked for the attention of the Accountable Officer at the address stated on page 2 of this Agreement.



and where the notice relates to a Personal Data Breach it must be copied by email on the same day to the Provider's Registered Data Protection Officer.

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.

## 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 12 (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 6.20 to 6.22 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.