

(1) HIGHER EDUCATION STATISTICS AGENCY LIMITED

and

(2)

HESA SUBSCRIPTION AGREEMENT

Table A (as referred to in clause 2.2 below)

Statutory Subscriber Category	Applicable Category
English Providers The Office for Students (OfS) will inform HESA which of the following categories your organisation falls into and/ or whether there are changes to your category. You will receive Regulatory Advice direct from OfS setting out their requirements and confirmation from HESA via the HESA Operational Documentation: Approved Approved (fee cap) Designation for Teach Out Limited Designation FEC (England)	
Full Subscriber (Scotland)	X
Full Subscriber (Wales)	
Full Subscriber (Northern Ireland)	
FEC (Northern Ireland)	
FEC (Wales)	

Table B (as referred to in clause 2.2 below)

Optional Services Subscription Category (Boxes to be marked as applicable. Please note that for Graduate Outcomes Optional Services Subscription Categories Providers will also need to select the appropriate option in the Graduate Outcomes Portal)	Mark to apply
Graduate Outcomes Opt-in Questions	
Graduate Outcomes Provider Questions	
Estates Management Record (for England only)	
Staff Outside the Coverage of the Staff Record (for England only)	
None of the above	

Table C (as referred to in clause 2.2 below)

Permission is granted for the following Categories of Onward Use of Data (for England and Scotland only) (Note: For Providers in Northern Ireland and Wales these will automatically apply. For other Providers these will only apply if permission is given by marking the relevant box)	Mark to provide permission	
Category 1 (as defined below, including sharing for the benefit of Providers, Statutory Customers and the Sector)	Yes	No
Category 2 (as defined below, including sharing for the benefit of students, prospective students, student representatives and graduate employers)	Yes	No
Category 3 (as defined below, including sharing for the benefit of other public, private or third-sector organisations)	Yes	No



INDEX TO AGREEMENT AND SCHEDULES

Definitions & Interpretation	3
Commencement & Obligations of the Provider.....	3
Obligations of HESA.....	7
Use of Provider Information by the Primary Regulator/Funder for UNISTATS Publication and NSS.....	10
Use of Provider Information by HESA and others with a Statutory power to request and process Provider information	10
Intellectual Property Rights.....	12
Data Protection	12
Confidentiality	15
Variation & Change Control	16
Assignment & Subcontracting.....	17
Subscription to HESA as a requirement of the Primary Regulator/Funder	18
Consequences of Breach	19
Termination.....	20
Consequences of Termination	22
Freedom of Information Legislation.....	24
Bribery and Fraud.....	24
Alternative Dispute Resolution.....	24
Liability.....	25
Notices.....	26
General.....	26
Execution of this Agreement.....	28
Signature Page	30
SCHEDULE 1- Definitions	31
SCHEDULE 2- HESA Subscriber Categories.....	46
SCHEDULE 3- Subscription Fees.....	49
SCHEDULE 4- Graduate Outcomes as a requirement of a Statutory Subscriber Category.....	51
SCHEDULE 5- Graduate Outcomes Opt-In Questions.....	57
SCHEDULE 6- Graduate Outcomes Provider Questions.....	59
SCHEDULE 7- Estates Management Record Subscription for English Providers	60
SCHEDULE 8- Staff Outside the Coverage of the Staff Record Subscription (for England only)	62
SCHEDULE 9- Onward Sharing of data for Providers based in England and Scotland.....	65
SCHEDULE 10-Variation Form for Optional Services Subscription Categories and Categories of Onward Use of Data.....	68



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")**
of
UKPRN Number:

RECITALS:

- a) The Provider is required to provide information to HESA by its Primary Regulator/Funder.
- b) HESA has agreed to provide services to the Provider and the Primary Regulator/Funder relating to the collection of information from the Provider.
- c) The Provider has agreed to become a HESA Subscriber on the terms set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS & INTERPRETATION

- 1.1 In this Agreement, defined terms and phrases shall have the meanings set out in Schedule 1.
- 1.2 HESA provides a United Kingdom wide service and the Core Terms of this Agreement apply to all Statutory Subscriber Categories available across the United Kingdom. In addition to the Core Terms are specific terms that apply only to certain Statutory Subscriber Categories, and certain Optional Services Subscription Categories and where Categories of Onward Use of Data have been selected by the Provider.
- 1.3 Schedule 2 of this Agreement sets out the current Required Data Collections for each Statutory Subscriber Category.

2. COMMENCEMENT & OBLIGATIONS OF THE PROVIDER

- 2.1 This Agreement shall commence on 1 August 2019 ("**the Commencement Date**") and shall remain in force unless terminated earlier in accordance with clause 13.

- 2.2 By signing this Agreement, the Provider agrees to become a HESA Subscriber for the services specified in Tables A-C on the front cover of this Agreement and to comply with the obligations set out in this Agreement.
- 2.3 If this Agreement is terminated under clause 13, the Provider shall cease to be a HESA Subscriber or to access any benefits or advantages available to organisations on the basis or condition that they are a HESA Subscriber. For the avoidance of doubt, this would include the collection of any apprenticeship standards data by HESA from the Provider which is covered by a separate Processor agreement.

Payment and invoicing

- 2.4 The Provider shall pay the Subscription Fees for each Subscription Period in which this Agreement remains in force and any additional applicable fees.
- 2.5 Invoices shall be paid by the Provider within 30 days of the invoice date. Any invoice which is not paid within this period is an overdue invoice as referred to in clause 2.6.
- 2.6 Without limitation of HESA's rights under clause 13, the Provider shall pay interest on the amount of any overdue invoice at the rate of 4% per annum above the Barclay's Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date for payment of the invoice under clause 2.5 until actual payment of the overdue amount, whether before or after judgment. The Provider shall pay the interest together with the overdue amount.
- 2.7 The Subscription Fees shall be approved by the HESA Board and notified to the Provider in accordance with Schedule 3.

Submission of data

- 2.8 The Provider shall supply the Provider Data Submission to HESA in accordance with the HESA Operational Documentation and any applicable Regulatory Advice. On receipt of the Provider Data Submission, HESA shall become an independent Controller of the Personal Data in the Provider Data Submission. For the avoidance of doubt, HESA will not be acting as a Processor for the Provider or acting as a Joint Controller with them.
- 2.9 In particular, and without prejudice to the generality of clause 2.8, the Provider shall ensure that the Provider Data Submission:
- 2.9.1 is supplied in accordance with the timescales specified in the HESA Operational Documentation or as otherwise specified by HESA in writing. Supply of the Provider Data Submission outside these timescales shall be regarded as late. Time shall be of the essence in this Agreement in relation to this obligation;
- 2.9.2 contains data which represents the complete Coverage of all Required Data Collections. In identifying the individuals falling within the Coverage

for any Required Data Collection, the Provider shall apply the definitions and criteria specified in the HESA 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 judgments or decisions as to the inclusion of individuals within the Provider Data Submission or any part thereof;

- 2.9.3 contains only data which the Provider has taken all appropriate steps to ensure is true and correct. Data shall be regarded as not being true and correct if it is inaccurate or otherwise than a true reflection of the factual position in respect of all relevant students, courses and Personnel, in accordance with the definition of the relevant data fields and the Coverage as specified in the HESA Operational Documentation. If a Provider becomes aware that data is not true and correct then the Provider must inform HESA of this as soon as reasonably possible, and must take any steps that are specified in the HESA Operational Documentation or in any further instructions issued by HESA to correct the inaccuracy ; and
- 2.9.4 complies with the Supply Side 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.
- 2.10 It is the responsibility of the Provider to seek clarification or explanation with regard to any aspect of the HESA Operational Documentation which the Provider does not understand or which the Provider considers to be unclear or ambiguous within a reasonable time prior to the relevant deadlines for submission of the Provider Data Submission (or any part thereof) specified in the HESA Operational Documentation. Lack of clarity in the HESA Operational Documentation or lack of understanding on the part of the Provider with regard to the requirements in the HESA Operational Documentation shall be no defence to any allegation of breach of clauses 2.8 or 2.9.
- 2.11 If HESA has significant concerns as to whether the Provider Data Submission meets the requirements as to quality and accuracy of data submitted under clauses 2.8 and 2.9, HESA shall notify the Provider and the Primary Regulator/Funder. HESA shall reasonably endeavour to notify the Provider prior to notifying the Primary Regulator/ Funder.
- 2.12 Without prejudice to any action which may be taken by the Primary Regulator/Funder, where HESA acting reasonably:
- 2.12.1 considers that the Provider is utilising a disproportionate amount of HESA Personnel time in order to enable the Provider to make a Provider Data Submission which complies with this Agreement; or
- 2.12.2 HESA has significant concerns as to whether the Provider Data Submission meets the requirements of clauses 2.8 and 2.9,

HESA may notify the Provider's Accountable Officer of its concerns, identifying the Required Data Collection(s) which appear to be causing difficulty to the Provider and specifying any actions which HESA, acting reasonably, considers are required to enable the Provider to submit the Provider Data Submission in accordance with this Agreement. Such actions will be at HESA's reasonable discretion and will be exercised on a case by case basis, so will likely vary, but may range from requesting members of the Provider's Personnel to undergo additional training, to exercising HESA's rights under clause 12.1, provided in the latter case that HESA may not exercise its rights under clause 12.1 unless it has previously notified the Provider's Accountable Officer and allowed a reasonable time for HESA's concerns to be addressed. Any actions taken by HESA are without prejudice to any action which might be taken by the Primary Regulator/ Funder.

- 2.13 Subject to clause 2.14, the Provider Data Submission shall be signed off by the Provider's Accountable Officer using the relevant sign off forms as provided in the HESA Operational Documentation from time to time, provided that:
- 2.13.1 for the UNISTATS collection only, following the UNISTATS Publication the Accountable Officer may nominate a senior substitute to sign on behalf of the Provider for the purposes of making any permitted late or additional return of data for the UNISTATS Publication; and
- 2.13.2 for other Provider Data Submissions, in exceptional circumstances and only with the prior permission of HESA and subject to such additional terms as HESA may require, the Provider Data Submission may be signed off by an appropriate senior substitute for the Accountable Officer.

Status of the Provider

- 2.14 Clauses 2.15 and 2.16 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 Provider 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.
- 2.15 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 Provider Data Submission relates, including the selection of Optional Services Subscription Categories set out in Table B on the front cover of this Agreement and of Categories of Onward Use of Data (1 to 3) in Table C on the front cover of this Agreement.
- 2.16 In particular, the Provider warrants and undertakes that the Provider has the capacity and authority to disclose any data in the Provider Data Submission to be processed for the Statutory Permitted Purposes.
- 2.17 The Provider warrants that it is Controller of the Provider Data Submission to be submitted to HESA.



- 2.18 The Provider acknowledges that, at the request of the Primary Regulator/Funder, HESA may be requested to collect, disseminate and display certain information separate from the balance of the Provider Data Submission. For example, information relating to medical schools and joint ventures. Where HESA is required to do this, HESA shall make this clear in the HESA Operational Documentation including any additional requirements (for example, additional legal terms and Subscription Fees). Any applicable Subscription Fees shall be specified on the HESA Website.
- 2.19 The Provider acknowledges that in the event it requests HESA to change its UKPRN, this may require a new subscription agreement with HESA and data linking to enable a coherent data report for the Primary Regulator/Funder. Such requested change will be made at the absolute discretion of HESA having consulted with the Primary Regulator/Funder and may incur the UKPRN Linking Fee.

General

- 2.20 The Provider shall respond promptly to all correspondence and communications from HESA or the Primary Regulator/Funder in respect of their Provider Data Submission.
- 2.21 If Graduate Outcomes is a Required Data Collection of the Provider or where applicable given the Optional Services Subscription Categories and Categories of Onward Use of Data of the Provider, the Provider shall comply with its obligations as set out in the following:
- 2.21.1 Schedule 4 in relation to the conduct of the Graduate Outcomes Survey (and as a requirement of a Statutory Subscriber Category);
 - 2.21.2 Schedule 5 in relation to the Graduate Outcomes Opt-In Questions;
 - 2.21.3 Schedule 6 in relation to the Graduate Outcomes Provider Questions;
 - 2.21.4 Schedule 7 in relation to the Estates Management Record Optional Services Subscription Category for English Providers;
 - 2.21.5 Schedule 8 in relation to the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category for English Providers; and
 - 2.21.6 Schedule 9 in relation to the Categories of Onward Use of Data.

3. OBLIGATIONS OF HESA

Subscription services

- 3.1 HESA shall agree to provide its services to the Provider based on the Statutory Subscriber Category(s) relevant to the Provider and the Provider shall subscribe for such services.



- 3.2 HESA shall agree to provide the Optional Services Subscription Categories at its sole discretion having determined whether the demand for these makes them financially and operationally viable.
- 3.3 Where applicable to the Provider, HESA shall comply with:
- 3.3.1 the requirements set out in Schedule 4 in relation to the conduct of the Graduate Outcomes Survey (and as a requirement of a Statutory Subscriber Category);
 - 3.3.2 the requirements set out in Schedule 5 in relation to the Graduate Outcomes Opt-In Questions;
 - 3.3.3 the requirements set out in Schedule 6 in relation to the Graduate Outcomes Provider Questions;
 - 3.3.4 the requirements set out in Schedule 7 in relation to the Estates Management Record Optional Services Subscription Category for English Providers;
 - 3.3.5 the requirements set out in Schedule 8 in relation to the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category for English Providers; and
 - 3.3.6 the requirements set out in Schedule 9 in relation to the Categories of Onward Use of Data.
- 3.4 Full Subscriber (Wales) and Full Subscriber (Northern Ireland) shall be deemed to have agreed to all Categories of Onward Use of Data (1 to 3) in Table C on the front cover of this Agreement.

The data collection process

- 3.5 HESA shall provide a data collection system for the submission of the Provider Data Submission pursuant to this Agreement which is compatible with HESA's obligations under clause 7 (Data Protection) below.
- 3.6 HESA shall carry out the collection and collation of the Provider Data Submission in accordance with the relevant Collection Cycle and HESA Operational Documentation.
- 3.7 HESA shall provide appropriate specification of the content of the Provider Data Submission and the process for submitting the Provider Data Submission, including:
- 3.7.1 the data fields within each Required Data Collection and the Coverage which applies to each Required Data Collection for the relevant HESA Subscriber Categories;

- 3.7.2 the timescales by which HESA shall carry out particular steps or make available particular information or functionality within its systems;
- 3.7.3 the timescales by which the Provider shall be required to undertake particular activities or provide information; and
- 3.7.4 the relative roles and responsibilities of HESA, the Provider and any third parties with respect to the submission of the Provider Data Submission,

provided that nothing in this clause 3.7 shall reduce the obligations of any of the parties under clause 7 (Data Protection) to ensure compliance with the Data Protection Legislation.

3.8 HESA shall comply with its obligations under clause 3.6 by:

- 3.8.1 publishing the HESA Operational Documentation for each of the Required Data Collections a reasonable period prior to the commencement of the relevant Collection Cycle for each year; and
- 3.8.2 providing such clarification or explanation of the HESA Operational Documentation as the Provider may reasonably request, provided that it is the responsibility of the Provider to seek such clarification or explanation as early as possible following publication of the HESA Operational Documentation and in any event a reasonable period prior to the actions about which clarification or explanation is sought.

3.9 HESA shall provide reasonable support and direction to the Provider in relation to the submission of the Provider Data Submission in accordance with HESA's processes and systems, as provided for in the Agreement and the HESA Operational Documentation, including:

- 3.9.1 applying the processes set out in the HESA Operational Documentation, including the quality assurance processes; and
- 3.9.2 providing reasonable day-to-day support and assistance to the Provider in collating and submitting the Provider Data Submission in compliance with the HESA Operational Documentation.

3.10 HESA shall comply with its obligation under clause 3.8.2 to provide reasonable day-to-day support and assistance to the Provider through its designated support team. That team will usually be contactable on a Working Day between 09.00 and 17.00, by telephone (01242 211144) or by email (liaison@hesa.ac.uk). HESA shall respond to communications from the Provider 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 relevant Collection Cycle and any need for HESA to consult with the Primary Regulator/Funder before responding substantively to communications.

3.11 Subject to clause 3.9, HESA shall respond promptly to all correspondence and communications from the Provider.



4. USE OF PROVIDER INFORMATION BY THE PRIMARY REGULATOR/FUNDER FOR UNISTATS PUBLICATION AND NSS

- 4.1 The Provider acknowledges that part of the Provider Data Submission shall be used by the Primary Regulator/Funder for its UNISTATS Publication and NSS and that separate terms and conditions shall apply between the Provider and the Primary Regulator/Funder in this regard. These separate terms and conditions are without prejudice to any additional use of the Provider Data Submission by the Primary Regulator/Funder following provision of data by HESA to the Primary Regulator/Funder as provided for in clause 5.8.

5. USE OF PROVIDER INFORMATION BY HESA AND OTHERS WITH A STATUTORY POWER TO REQUEST AND PROCESS PROVIDER INFORMATION

HESA's use of Provider Information

- 5.1 By submitting the Provider Data Submission to HESA, the Provider:
- 5.1.1 acknowledges that HESA may already hold, or may in the future collect, Provider Information other than that contained in the Provider 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, its company objects and powers, and where HESA reasonably considers appropriate or is requested to do so by the Primary Regulator/Funder; and
 - 5.1.2 acknowledges that HESA may link information and data in the Provider Data Submission to other Provider Information, for example, for the purposes of quality assuring the data within the Provider Data Submission and to supplement the Provider Data Submission. Quality assurance includes but is not limited to checks on the accuracy of individual data items within the Provider 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 5.1.1.
- 5.2 Subject to clause 5.1, the Provider agrees that HESA may process and share the Provider Information for the Statutory Permitted Purposes and the Graduate Outcomes Permitted Purpose where it is a Required Data Collection for the Provider. If the Provider is a Full Subscriber (Wales) and or a Full Subscriber (Northern Ireland), the Provider also agrees that HESA may process and share the Provider Information for all Categories of Onward Use of Data. In the case of Providers other than a Full Subscriber (Wales) or a Full Subscriber (Northern Ireland), HESA may process and share the Provider Information for those Categories of Onward Use of Data in relation to which the Provider has given their permission (either as shown at Table C on the front cover of this Agreement or in accordance with Schedule 10).



- 5.3 Other than as specified in the HESA Collection Notices, 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 undertake any processing activities which would constitute automated individual decision making or profiling pursuant to the General Data Protection Regulation.
- 5.4 HESA shall operate the Provider Preview service.
- 5.5 The Provider Information may be retained by HESA for audit, statistical and research purposes to the extent permissible under Data Protection Legislation. The continuing need to retain the information will be kept under review on an annual basis.
- 5.6 HESA does not guarantee that any Provider Information shall be included by HESA or any third party (for the avoidance of doubt this includes the Primary Regulator/Funder) in any dataset, publication or other onward use of data for any particular purpose or that a third party (including the Primary Regulator/Funder) may not cease to publish any of the Provider Information. Use and onward supply of the Provider Data Submission or any other Provider Information by HESA may be dependent on a number of factors including (but not limited to) the quality and completeness of the data provided, the Provider's compliance with clauses 2.8 and 2.9, the requirements of third parties, including Third Party Publication Criteria, and HESA's ability to secure appropriate terms and conditions for the onward supply of the data to any third party.

Sharing of Provider Information by HESA and Use of Provider Information by Statutory Customers

- 5.7 The Provider acknowledges and accepts that during a Collection Cycle, data within the Provider Data Submission will be processed by relevant Statutory Customers for the purposes of:
- 5.7.1 carrying out quality assurance activities concurrently with quality assurance processes operated by HESA (including linking data in the Provider Data Submission in a similar manner to linking by HESA as described in clause 5.1.2). Quality assurance includes but is not limited to checks on the accuracy of individual data items within the Provider Data Submission compared to data collected from other sources; and
 - 5.7.2 testing the ability of the Statutory Customers to use the data internally within their systems and databases.
- 5.8 The Provider acknowledges and accepts that HESA shall make onward provision of data from the Provider Data Submission for the Statutory Permitted Purposes. HESA and recipients of Personal Data from the Provider Information shall be acting as independent Controllers.



6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Following completion of the HESA quality assurance process and final submission of the Provider Data Submission, all Intellectual Property Rights in the final Provider Data Submission and any Fixed Database Submission submitted by the Provider, including the right to bring or defend claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, are hereby assigned to HESA absolutely with full title guarantee and shall remain vested in HESA under the Copyright Rights in Databases Regulations 1997.
- 6.2 HESA hereby grants to the Provider a perpetual, worldwide, non-exclusive, transferable, sub-licensable, royalty-free licence to use the final Provider Data Submission and any Fixed Database Submission submitted by the Provider for its own commercial and non-commercial purposes provided that any such use is in accordance with Data Protection Legislation.
- 6.3 Nothing in this Agreement shall assign or transfer to the Provider any Intellectual Property Rights owned by HESA.
- 6.4 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.
- 6.5 Save as permitted by clause 6.2 and the terms and conditions of any other licence between the parties, the Provider shall not use Intellectual Property Rights owned by HESA for any purposes whatsoever.

7. DATA PROTECTION

Warranty and co-operation

- 7.1 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 use reasonable endeavours to procure that its employees, agents and contractors or any natural person acting under their authority who has access to Personal Data complies with the provisions of the Data Protection Legislation.
- 7.2 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.
- 7.3 Each party shall co-operate with the other to ensure, in relation to matters arising out of or in connection with this Agreement, compliance with the Data Protection Legislation. Each party shall co-operate with the other to ensure, in relation to matters arising out of or in connection with this Agreement, compliance with the Data Protection Legislation.

Legal basis for processing Personal Data

- 7.4 Under this Agreement, the parties will be processing Personal Data and Special Categories of Personal Data. A full list of the data fields contained within each of the HESA Data Collections and required to be submitted to HESA can be found at <https://www.hesa.ac.uk/collection>.
- 7.5 In order for the processing of Personal Data described in this Agreement, including all Categories of Onward Use of Data, (which do not form part of HESA's statutory services) 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 Article 6 and Article 9 (where Special Categories of Personal Data are being processed) must be met. The parties agree that each party is responsible for determining its own lawful basis for processing.
- 7.6 HESA shall keep the HESA Collection Notices under review to ensure that they continue to fairly and accurately describe how Personal Data collected under this Agreement will be used.
- 7.7 Without prejudice to the generality of clause 7.6, the Provider shall ensure and warrants that the terms of the most recent Student Collection Notice and Staff Collection Notice shall be provided to any Data Subjects whose Personal Data is contained in the Provider Data Submission or make those terms readily available to them in accordance with any HESA guidance. The steps required by this clause 7.7 shall be taken by the Provider a reasonable period in advance of the Provider providing any data to HESA for the purposes of this Agreement, including any provision of data for quality assurance processes or for the purposes of obtaining advice and support from HESA on the provision of the Provider Data Submission under this Agreement.
- 7.8 Where any Personal Data within the Provider Data Submission is processed by the Provider for any purposes (including submission to HESA under this Agreement and/or for the purposes of Provider Preview), the Provider is the Controller of that 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 of or extract from the Provider Data Submission or data within the Provider Data Submission which has been provided by HESA to the Provider having been processed by HESA. Any such provision of data by HESA to the Provider is made on the basis that the Provider is Controller of any Personal Data that it receives from HESA and must be satisfied that its receipt and use of the data will be fair and lawful.

Security

- 7.9 HESA shall process the Personal Data contained within the Provider Information in accordance with Articles 32 and 5.1(f) of the GDPR.
- 7.10 Insofar as it may affect HESA's compliance with clause 7.9, 7.11, 7.12 and 7.13, the Provider shall ensure that the Personal Data provided within the Provider Data Submission is processed in accordance with Articles 32 and 5.1(f) of the GDPR prior to being provided to HESA.
- 7.11 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 information security.
- 7.12 In ensuring the security of the Personal Data, the Provider shall:
- 7.12.1 assign appropriate Personnel for roles within the HESA Identity System, taking into account the nature of the proposed role;
 - 7.12.2 ensure Provider Personnel comply with the terms of their HESA Identity System roles and are aware of best practice in setting passwords for their HESA Identity System roles; and
 - 7.12.3 promptly remove from the HESA Identity System any Personnel who no longer require access.

Notification

- 7.13 Where a party receives any of the following notices or communications in respect of Personal Data submitted by a Provider to HESA in its Provider Data Submission:
- 7.13.1 an information notice, or any other notice (including in particular any enforcement notice) or communication served by the Information Commissioner;
 - 7.13.2 complaints from or concerns expressed by Data Subjects; or
 - 7.13.3 a Subject Access Request (or purported Subject Access Request) insofar as the receiving party requires the assistance of the other party to comply;
 - 7.13.4 a request to rectify, block or erase any Personal Data;
 - 7.13.5 any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;

7.13.6 a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by any applicable law; or

7.13.7 any investigation of any breach or alleged breach of the Data Protection Legislation,

that party shall notify the other party without undue delay/ promptly (within 48 hours) after becoming aware of it insofar as the notice or communication is of material relevance to the other party's own GDPR obligations. The receiving party and notified party shall then assist one another in responding to the communication or notice.

7.14 Each party shall promptly report to the other party within 48 hours of becoming aware of any Personal Data Breach affecting the Provider Data Submission in accordance with the process set out in clause 20 (Notices).

Indemnity

7.15 The Provider shall indemnify HESA for any Losses arising as a result of:

7.15.1 the Provider breaching the Data Protection Legislation;

7.15.2 the Provider causing HESA to be in breach of any of the Data Protection Legislation; and

7.15.3 the Provider breaching any warranty given in this clause 7.

7.16 The parties agree that the Provider's liability pursuant to the indemnity in clause 7.15 is limited to fifty thousand pounds (£50,000) in aggregate in respect of Losses incurred by HESA in any Academic Year.

User Personal Data

7.17 The Provider acknowledges and accepts that HESA will process the Personal Data of individual users who interact with HESA processes on behalf of the Provider including to submit data to HESA under this Agreement or to respond to queries in respect of the Provider Data Submission. Such data will be processed by HESA for the purposes of performing this Agreement, including administering, monitoring, and auditing the Data Collections and onward sharing of data processes and responding to complaints.

8. CONFIDENTIALITY

8.1 Each party shall keep and procure that their Personnel keep 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.

8.2 Subject to clause 10.3, neither party shall disclose Confidential Information save:

- 8.2.1 as otherwise necessary for the purposes of the performance of this Agreement, including the investigation of any breach of the terms of this Agreement or the Supplier Side Data Collection Code of Conduct; or
 - 8.2.2 with the prior written agreement of the other party.
- 8.3 The obligations of confidentiality in clauses 8.1 and 8.2 shall not extend to any matter which:
- 8.3.1 is lawfully in, or has become lawfully part of, the public domain other than as a result of a breach of this Agreement;
 - 8.3.2 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;
 - 8.3.3 was known to the receiving party before the information was disclosed to it by the disclosing party; or
 - 8.3.4 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.

9. VARIATION & CHANGE CONTROL

Variation to the scope of the Required Data Collections

- 9.1 HESA shall give the Provider reasonable notice of any changes to the scope of the Required Data Collections or the Coverage for the Statutory Subscriber Category(s). In assessing the reasonableness of any notice of such changes, the parties shall have full regard to the timing of the notification of those changes to HESA.
- 9.2 For English Providers, the Office for Students shall also email the Accountable Officer a Regulatory Advice setting out its data requirements.
- 9.3 HESA shall provide reasonable assistance to the Provider in meeting any amended or additional requirements in respect of the Required Data Collections or the Coverage for the Statutory Subscriber Category(s).

Variation to the Optional Services Subscription Category(s)

- 9.4 HESA shall give the Provider reasonable notice of any changes to the Optional Services Subscription Category(s) in accordance with Schedules 5, 6, 7 and 8 to this Agreement. In assessing the reasonableness of any notice of such changes the parties shall have full regard to the fact that some of the Optional Services Subscription Category(s) are linked to or impacted by the delivery of Statutory Subscriber Category(s) and that HESA's ability to notify any changes will be



dependent on the time of the notification of the changes to HESA of the Required Data Collections or the Coverage for the Statutory Subscriber Category(s).

- 9.5 From time to time HESA may agree to offer additional Optional Services Subscription Categories under the terms of this Agreement. Where this is the case, HESA shall issue an addendum setting out the terms on which it is willing to offer the additional Optional Services Subscription Category(s). For the avoidance of doubt Heidi Plus shall be provided by or on behalf of HESA under separate agreements notwithstanding that Full Subscribers (Wales) and Full Subscribers (Northern Ireland) are required by their Primary Regulator/Funder to subscribe to Heidi Plus. The Primary Regulator/Funder is reviewing the position of FEC's in Wales.

Other variations

- 9.6 From time to time it may be necessary for HESA to seek amendments to the terms of this Agreement. Where HESA seeks to make a variation to this Agreement such agreement shall not be unreasonably withheld.
- 9.7 Save as expressly provided for in this clause 9, any variation to this Agreement shall be valid only if agreed in writing.

10. ASSIGNMENT & SUBCONTRACTING

- 10.1 The Provider shall not assign its rights, or sub-contract its rights or obligations under this Agreement without the prior written consent of HESA, such consent not to be unreasonably withheld.
- 10.2 HESA's rights and obligations under this Agreement shall transfer automatically without the permission of the other party to any successor body.
- 10.3 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 (as defined in the Companies Act 2006), provided HESA gives written consent in advance to such supply, such consent not to be unreasonably withheld.
- 10.4 If the Provider engages any subcontractor which has access to Personal Data processed under or in connection with the Agreement, the Provider must impose on its subcontractor obligations which meet the requirements set out in Article 28 of the General Data Protection Regulation. The Provider will provide details of any subcontractors to HESA on reasonable request.
- 10.5 HESA may subcontract its rights and obligations under the Agreement in compliance with Data Protection Legislation. The Provider acknowledges and accepts that HESA uses a range of Processors to assist it in performing this Agreement. HESA will provide details of its subcontractors to the Provider on reasonable request.



11. SUBSCRIPTION TO HESA AS A REQUIREMENT OF THE PRIMARY REGULATOR / FUNDER

11.1 The Provider acknowledges that:

11.1.1 material failure to submit the Provider Data Submission to HESA in accordance with this Agreement; or

11.1.2 any other material breach of the Provider's obligations under this Agreement,

may result in lawful termination of this Agreement. The consequent loss of the Provider's status as a HESA Subscriber may result in the Provider being in breach of the requirements of its Primary Regulator/Funder.

11.2 HESA shall be entitled to share with the Primary Regulator/Funder (or third parties nominated by the Primary Regulator/Funder) any information about the Provider and this Agreement which HESA reasonably considers to be relevant to the statutory or public functions of the Primary Regulator/Funder. This may include but is not limited to information about any of the following matters:

11.2.1 any termination of this Agreement by either party, together with information as the basis for the termination and details of all relevant circumstances or matters;

11.2.2 any reasonable concerns that the Provider will fail to deliver data to HESA on time;

11.2.3 any failure to deliver data to HESA or any late delivery of data;

11.2.4 any failure to respond promptly to correspondence or communications from HESA which results in HESA being concerned as to the Provider's ability to comply or intention of complying fully with this Agreement;

11.2.5 any concerns regarding the Provider's compliance with the Data Protection Legislation;

11.2.6 any significant concerns regarding the Provider's compliance with the HESA Operational Documentation or the Supplier Side Code of Practice for Higher Education Data Collections; including for the avoidance of doubt updates on and the outcome from any investigation undertaken by HESA;

11.2.7 any concerns regarding the quality of data in the Provider Data Submission as provided for in clause 2.11;

11.2.8 any information required by the Primary Regulator/Funder regarding the performance of the Provider in submitting data to HESA; or

- 11.2.9 where HESA is considering exercising its termination rights under clauses 13.1, 13.2, 13.4 or 13.5 and the reasons for that consideration.

For the avoidance of doubt, any notification within this clause 12.3 shall not be a breach of clause 8.

12. CONSEQUENCES OF BREACH

- 12.1 Where HESA reasonably considers that the Provider is or may be in breach of clauses 2.5, 2.12, 6.5 or 7, it may:
- 12.1.1 suspend the Provider's rights of access to HESA systems (including the HESA Identity System); and/or
 - 12.1.2 suspend any Collection Cycle in respect of the Provider and the Provider Data Submission.
- 12.2 Before taking action under 12.1 HESA will warn and consult with the Provider, unless the circumstances are such that it is not reasonably possible for HESA to do so. Where HESA takes action under clause 12.1, 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 13 below.
- 12.3 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.
- 12.4 Where the Provider fails to submit the Provider Data Submission, or any Required Data Collection within it, on time or in compliance with clauses 2.8 and 2.9, HESA may, in its absolute discretion:
- 12.4.1 refuse to accept late delivery of the Provider Data Submission or part thereof, in which case the Provider's late data shall not be included in any composite datasets, reports or analysis created by HESA. In these circumstances, the Provider shall not be entitled to any refund of the Subscription Fees or any other payment previously made to HESA by the Provider; or
 - 12.4.2 subject to consultation with the Primary Regulator/Funder, permit the Provider to make a late supply of the Provider Data Submission or part thereof. HESA may acting reasonably charge a Late Submission Fee; or
 - 12.4.3 permit the Provider to make a Fixed Database Submission in respect of the Provider Data Submission or part thereof. Use of this facility is only available to a Provider with the express authorisation of the Primary Regulator/Funder and subject to payment by the Provider of the Fixed Database Submission Fee.

- 12.5 Where the Provider Data Submission, or any Required Data Collection within it, contains a material error or omission or fails to pass either HESA or the Primary Regulator/Funder's quality assurance processes or has not been submitted in accordance with clauses 2.8 and 2.9:
- 12.5.1 HESA shall be entitled to delete the Provider Data Submission or any part thereof from its systems entirely and/or exclude it from the data delivered to the Primary Regulator/Funder and other Statutory Customers; and
 - 12.5.2 on the request of the Primary Regulator/Funder HESA may process a Fixed Database Submission for the Provider to replace the Provider Data Submission. The processing of a Fixed Database Submission for the Provider shall be subject to payment by the Provider of the Fixed Database Submission Fee; or
 - 12.5.3 the Provider may request HESA to process a Fixed Database Submission, provided that use of the Fixed Database on this basis is only available to a Provider with the express authorisation of the Primary Regulator/Funder and subject to payment by the Provider of the Fixed Database Submission Fee.
- 12.6 Notwithstanding clauses 12.4.2 and 12.5.2 due to the later availability of the Fixed Database HESA publications and information provision for All Permitted Purposes may not be based on the corrected version of the Provider Data Submission until such time as the Fixed Database is closed and HESA is able to take the necessary operational measures to use the corrected data. HESA is not under any obligation to update its publications or information supplies which have been published or supplied prior to the operational measures having been put in place.
- 12.7 For the avoidance of doubt, the provisions in clauses 12.4 and 12.5 for HESA to accept late Provider Data Submissions or operate a Fixed Database in relation to a Provider Data Submission are subject to the discretion and permission of HESA and the Primary Regulator/Funder as described in those clauses. The Provider acknowledges and accepts that where clause 12.4 and/or 12.5 applies, it has breached clauses 2.8 and 2.9 of this Agreement and, where clause 12.4.1 or 12.1.1 applies, the Provider may then be in breach of the requirements of the Primary Regulator/Funder. The provisions of clause 12.4 and 12.5 are without prejudice to HESA's rights under clause 13 of this Agreement.
- 12.8 Clauses 12.1 to 12.7 are without prejudice to any action which may be taken by the Primary Regulator/Funder.

13. TERMINATION

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

- 13.1.1 give the Provider written notice that such breach must be remedied within 14 (fourteen) days, giving such directions as HESA reasonably considers appropriate as to how that breach should be remedied; or
 - 13.1.2 if HESA reasonably considers that the breach is irreparable, terminate this Agreement immediately without liability by serving a notice of termination on the other party.
- 13.2 HESA may also terminate this Agreement immediately without liability by serving a notice of termination on the other party if the Provider has failed to remedy a breach in accordance with a notice under clause 13.1.1.
- 13.3 For the avoidance of doubt, the following shall always be regarded as a material breach of contract: any breach of clause 7 and any breach of clauses 2.8 and 2.9 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.
- 13.4 HESA may terminate this Agreement without liability with immediate effect by serving a notice of termination on the other party if:
- 13.4.1 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 13.4.1 HESA shall consider:
 - 13.4.1.1 the impact on HESA, on the Primary Regulator/Funder, HESA's other customers and any other relevant third parties of not continuing with this Agreement; and
 - 13.4.1.2 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;
 - 13.4.2 the Provider fails to pay any amount due under this Agreement by the due date for payment and remains in default not less than 10 days after being notified in writing that such payment is overdue;
 - 13.4.3 the Provider ceases, or threatens to cease, to carry out business;
 - 13.4.4 the Primary Regulator/Funder no longer requires the Provider to subscribe to HESA;
 - 13.4.5 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;



- 13.4.6 the Provider or any employee or agent therefore commits a Prohibited Act; or
 - 13.4.7 HESA ceases to act as the primary collector of data on behalf of the Primary Regulator/Funder.
- 13.5 HESA may terminate this Agreement without liability by serving a notice of termination and providing 6 months' notice. The Provider may terminate this Agreement without liability by serving a notice of termination and providing 12 months' notice. Nothing in this clause 13.5 is intended to release the Provider from any obligation to the Primary Regulator/Funder to submit data to HESA and exercise of this clause may place the Provider in breach of the requirements of the Primary Regulator/Funder.
- 13.6 The Provider may terminate this Agreement without liability by serving a notice of termination on HESA 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 14 days of written notice of the remediable breach being given by the Provider.
- 13.7 The Provider may terminate this Agreement without liability with immediate effect by giving written notice to HESA if:
- 13.7.1 HESA ceases to act as the primary collector of data on behalf of the Primary Regulator/Funder; or
 - 13.7.2 the Provider is notified by the Primary Regulator/Funder that it is no longer required to subscribe to HESA;
 - 13.7.3 HESA or any employee or agent thereof commits a Prohibited Act; or
 - 13.7.4 an Insolvency Event occurs in relation to the Provider.
- 13.8 Clause 13.7 does not affect or release the Provider from any obligations imposed on the Provider by the Primary Regulator/Funder that continue to apply to the Provider and is without prejudice to any action which may be taken by the Primary Regulator/Funder in respect of a failure to comply with such obligations.

14. CONSEQUENCES OF TERMINATION

- 14.1 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination provided that upon the date of termination the Subscription Fees due from the Provider to HESA shall become immediately payable.
- 14.2 Any Provider Information collected by HESA in connection with:
- 14.2.1 a previous subscription agreement entered into by HESA and the Provider;

- 14.2.2 a Statutory Subscriber Category under this Agreement;
- 14.2.3 Graduate Outcomes Opt-In Questions;
- 14.2.4 Estates Management Records (for England only) Optional Services Category;
- 14.2.5 Staff Outside the Coverage of the Staff Record (for England only) Optional Services Category; and
- 14.2.6 Any Categories of Onward Use of Data for which the Provider has at any time granted permission pursuant to Table C on the front cover of this Agreement and Schedules 9 and 10,

which is held by HESA at the time of termination shall not be required to be deleted and shall be retained and may be processed in accordance with the Data Protection Legislation.

14.3 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, including the provisions of:

- 14.3.1 this clause 14 (Consequences of Termination);
- 14.3.2 clause 1 and Schedule 1 (Definitions and Interpretation);
- 14.3.3 clause 2.4 and clause 2.5 (Payment and Invoicing)
- 14.3.4 clause 4 (Use of Provider Information by the Primary Regulator/Funder for UNISTATS Publication and NSS);
- 14.3.5 clause 5 (Use of Provider Information by HESA and others with a Statutory Power to Request and Process Provider Information);
- 14.3.6 clause 6 (Intellectual Property Rights)
- 14.3.7 clause 7 (Data Protection);
- 14.3.8 clause 17 (Alternative Dispute Resolution);
- 14.3.9 clause 18 (Liability);
- 14.3.10 clause 19 (Notices); and
- 14.3.11 clause 20 (General),

shall continue without limit in time and remain in full force and effect.



- 14.4 In particular but without limitation to the generality of clause 14.3, clause 14.3.5 shall mean that following termination of this Agreement and regardless of the reason for such termination, the Primary Regulator/Funder and Statutory Customers may continue to use or process any Provider Information shared with them by HESA pursuant to this Agreement (including disclosure of that data to third parties) provided that such use is in accordance with this Agreement, and that HESA is satisfied that the processing is in accordance with the HESA Collection Notices and the Data Protection Legislation.
- 14.5 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 one or more processing purposes permitted under this Agreement, the HESA Collection Notices or the Data Protection Legislation.

15. FREEDOM OF INFORMATION LEGISLATION

- 15.1 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.

16. BRIBERY AND FRAUD

- 16.1 The parties warrant that they understand their obligations under the Bribery Act 2010 and shall comply with those obligations.
- 16.2 No party nor any Personnel of that party shall offer, give or agree to give to another party or its Personnel any inducement or reward for doing or refraining from doing or having done or refraining 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.

17. ALTERNATIVE DISPUTE RESOLUTION

- 17.1 This clause applies to any dispute arising between the Provider and HESA in connection with this Agreement, including for the avoidance of doubt: (i) any dispute as to whether HESA has complied with a duty under this Agreement to act reasonably; and (ii) any dispute arising out of termination of this Agreement by either party.
- 17.2 Where a dispute as referred to in clause 17.1 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 the HESA 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 clause 17.3 shall apply.
- 17.3 This clause 17.3 and, if applicable, clauses 17.4 and 17.5, apply either where a dispute as referred to in clause 17.1 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 clause 17.2. 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 other, meet in a good faith effort to resolve the dispute.

- 17.4 If the dispute is not resolved following the meeting held in accordance with clause 17.3 the parties will within 15 Working Days of a written request from one party to the other attempt to settle the dispute through a meeting of the Chief Executive of HESA and the Accountable Officer who shall meet in a good faith effort to resolve the dispute.
- 17.5 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 party 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.
- 17.6 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 the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 17.7 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.

18. LIABILITY

- 18.1 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.
- 18.2 HESA shall have no liability (howsoever caused) for any loss of profit, business, contracts, revenues, increased costs or expenses or any indirect or consequential loss arising under this Agreement.
- 18.3 Subject to clause 18.4 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 the charges paid or payable by the Provider to HESA in accordance with this Agreement in the HESA Subscription Period to which the claim relates.
- 18.4 HESA does not exclude or limit liability to the Provider for:
- 18.4.1 death or personal injury caused by negligence; or

18.4.2 any matter for which it would be unlawful for the parties to exclude liability.

19. NOTICES

19.1 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 must be copied by email on the same day to legal@hesa.ac.uk and liaision@hesa.ac.uk in respect of a Personal Data Breach (with 'Notification of Personal Data Breach' included in the title of the email).

The Provider: marked for the attention of the Head of Provider at its address stated on page 3;

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.

19.2 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.

20. GENERAL

20.1 Nothing in this Agreement shall constitute a partnership, joint venture or other co-operative entity between the parties.

20.2 No delay or omission by either 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.

20.3 Without prejudice to clause 2.15 to 2.18 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.

- 20.4 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any accrued rights, powers and remedies.
- 20.5 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.
- 20.6 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.
- 20.7 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.
- 20.8 If any party ("**the Restricted Party**") is prevented from complying with its obligations under this Agreement due to a Force Majeure Event, then the following provisions apply:
- 20.8.1 Upon giving prompt notice of the nature and extent of the Force Majeure Event to the other party (the "**Non-Restricted Party**") it shall be excused from performance to the extent of the prevention, restriction or interference, subject only to clause 20.8.3.2.
- 20.8.2 Should the non-performance continue such that the ability of the Restricted Party to fulfil their functions or responsibilities to the other is significantly affected notwithstanding both parties' compliance with clause 20.8.3 and the parties are unable to agree a solution to the situation through amendment to this Agreement or otherwise, the Non-Restricted Party may terminate this Agreement by immediate written notice to the Restricted Party.
- 20.8.3 Notwithstanding the provisions of clauses 20.8.1 to 20.8.2, both parties shall:
- 20.8.3.1 use their reasonable endeavours to continue to perform their obligations under this Agreement for the duration of a Force Majeure Event; and

- 20.8.3.2 where a Force Majeure Event has a significant effect on the ability of the Restricted Party to fulfil its functions or responsibilities as described in paragraph 20.8.2, before the Non-Restricted Party may terminate this Agreement as provided for in paragraph 20.8.2 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 Collection Cycle 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 Collection Cycles following resolution of the Force Majeure Event.
- 20.8.4 Nothing in this clause 20.8 is intended to release the Provider from any obligation to the Primary Regulator/Funder to submit data to HESA and exercise of this clause may place the Provider in breach of the requirements of the Primary Regulator/Funder.
- 20.9 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.
- 20.10 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.

21. EXECUTION OF THIS AGREEMENT

- 21.1 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.
- 21.2 The following shall take effect as delivery of an executed counterpart of this Agreement:
- 21.2.1 this Agreement or a counterpart of this Agreement; or
- 21.2.2 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 the other party using that digital signature programme.
- 21.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

21.4 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 and the Primary Regulator/Funder 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

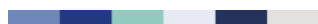
Date

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:

“Academic Research”	As defined in the Frascati Manual 2015.
“Accountable Officer”	For English HE Providers, the individual who has been identified as the Provider's accountable officer. For HE Providers based in other UK countries, the Accountable Officer shall be the chief executive of the HE Provider or individual fulfilling an equivalent role within the HE Provider.
“Agreement”	This agreement.
“All Permitted Purposes”	The Statutory Permitted Purposes, the Graduate Outcomes Permitted Purposes, the Category 1 Permitted Purpose, Category 2 Permitted Purpose and the Category 3 Permitted Purpose.
“Approved”	The Office for Students (OfS) registration category for English Providers that are not subject to a mandatory fee limit condition under section 10 of HERA.
“Approved (fee cap)”	The Office for Students (OfS) registration category for English Providers that are subject to a mandatory fee limit condition under section 10 of HERA.
“Category 1 Permitted Purpose”	The use of Provider Information for the following purposes which are in addition to any Statutory Permitted Purpose: <ul style="list-style-type: none"> a) Sharing with higher education providers and/or their Processors for their functions in providing further or higher education (including use in accordance with the Heidi Plus Organisational Access Agreement); b) Sharing with higher education sector representative bodies and other sector bodies for their functions (including use in accordance with the Heidi Plus Organisational Access Agreement); c) Sharing with higher education provider's Personnel and/or students for Academic Research; d) Sharing with researchers for Academic Research; e) Sharing with professional, statutory or regulatory bodies who require Provider Information for their functions and do not have a statutory power or function to collect data directly from HESA or higher education providers

	<p>(including use in accordance with the Heidi Plus Organisational Access Agreement);</p> <p>f) Sharing with Jisc and or its subsidiary to enable Jisc and or its subsidiary to provide products and services for the benefit of higher education providers and the Sector; and</p> <p>g) Sharing with non-departmental public bodies.</p> <p>HESA may process and share information using a number of different methodologies including but not limited to Heidi Plus, data visualisation products, analytical products and bespoke data extracts and reports. HESA and its wholly-owned subsidiary may themselves make use of Heidi Plus for the purpose of carrying out its own functions.</p>
<p>“Category 2 Permitted Purpose”</p>	<p>The use of Provider Information for the following purposes which are in addition to any Statutory Permitted Purpose:</p> <p>a) Sharing with graduate recruiters to enable them to ensure diversity of job applicants, target recruitment to relevant courses and/or monitor equal opportunity compliance;</p> <p>b) Sharing with higher education league table producers;</p> <p>c) Sharing with school, college and higher education comparison websites;</p> <p>d) Sharing with organisations that provide services to students and prospective students e.g. student loans.</p> <p>HESA may process and share information using a number of different methodologies including data visualisation products, analytical products and bespoke data extracts and reports.</p>
<p>“Category 3 Permitted Purpose”</p>	<p>The use of Provider Information for the following purposes which are in addition to any Statutory Permitted Purpose:</p> <p>a) Sharing with schools, colleges and other education providers (not including higher education providers) researching progression into higher education;</p> <p>b) Sharing with press and the media to enable them to research stories and articles about higher education;</p> <p>c) Sharing with organisations undertaking commercial research to understand the student customer markets. For the avoidance of doubt, such research would not permit any recipients to identify, make decisions about or contact Data Subjects;</p> <p>d) Sharing with international governments and bodies researching UK higher education to enable them:</p> <ol style="list-style-type: none"> I. to understand the UK higher education regulatory, quality and funding architecture; or II. to understand the outcomes of international students studying in the UK.



	HESA may share information using a number of different methodologies including data visualisation products, analytical products and bespoke data extracts and reports.
“Categories of Onward Use of Data”	The permitted use of Provider Information as set out in Table C on the front cover of this Agreement (as amended from time to time in accordance with this Agreement including Schedules 9 and 10) and defined further in Schedule 1 as amended from time to time as Category 1 Permitted Purpose, Category 2 Permitted Purpose and/or Category 3 Permitted Purpose.
“Cohort(s)”	A group of Graduates listed in the Population Data with graduation end dates in specified time periods within a Graduate Outcomes Survey Year as set out in the HESA Operational Documentation. It is anticipated that there will be cohorts A - D in any Graduate Outcomes Survey Year plus any additional cohorts specified by the Primary Regulator/Funder from time to time.
“Collection Cycle”	The timetable and process requirements of the relevant Data Collection.
“Commencement Date”	Has the meaning given in Clause 2.1.
“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 or which the receiving party ought reasonably to regard as confidential. The Provider Data Submission will not be regarded as Confidential Information.
“Contact Data Records”	The contact details of the Graduates listed in the Population Data supplied by the Provider and as updated from time to time by the Provider. For English FEC’s only by or on behalf of the Office for Students, as updated from time to time by the Provider or the OfS.
“Core Terms”	The terms of this Agreement that apply to all Statutory Subscriber Categories, being those set out in clauses 1 to clause 21.4.
“Coverage”	The population for which the Provider is required to supply the data fields which comprise the Required Data Collections for the relevant HESA Subscriber Category(s) as specified in the HESA Operational Documentation.

“Cut-Off Date”	The deadline for the selection of Graduate Outcomes Opt-In Questions by the Provider, being the date published in the HESA Operational Documentation for the relevant Graduate Outcomes Survey Year.
"Data Collection"	A group of data fields relating to particular categories of higher education course, higher education student, or higher education provider and/or particular categories of information defined in the HESA Operational Documentation.
“Data Deletion Administration Fee”	The fee for deleting data which shall be calculated by HESA acting reasonably taking into account the costs to be incurred given the nature and scale of the data required to be deleted.
“Data Dissemination Periods”	The periods during which HESA may disseminate Provider Information in accordance with the terms of this Agreement and the selected Categories of Onward Use of Data The periods will be set by HESA from time to time to take into account relevant changes to collection schedules. These are currently the following: Data Dissemination Period 1: 1 August- 30 November Data Dissemination Period 2: 1 December- 31 March Data Dissemination Period 3: 1 April- 31 July
“Data Landscape Steering Group”	A group made up of senior leaders from a broad range of data collectors and HE Providers from across the United Kingdom. The group pursues the twin agendas of data standardisation and rationalisation with the boarder aim of increasing capabilities in the management and governance of data.
“Data Protection Legislation”	All applicable data protection and privacy legislation, regulations and guidance including 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 (so far as such guidance is consistent with the applicable data protection and privacy legislation and regulations and all as amended, updated or re-enacted from time to time).
“Designation for Teach Out”	HE Providers not registered with the Office for Students, with courses designated for student support by the Office for Students for the purposes of teaching out existing students.
“EMR Subscription”	The Optional Services Subscription Category provided by HESA to facilitate the voluntary submission by English Providers of

	estates management data for inclusion in the Estates Management Record and for the onward sharing of such data.
“EMR Subscription Fee”	The amount payable annually by the Provider to HESA in relation to the EMR Subscription as published on the HESA Website.
“English Providers”	Providers required to subscribe to HESA by their Primary Regulator/Funder and who fall within the following Statutory Subscriber Categories: a) Approved; b) Approved (Fee cap); c) Designation for Teach Out; d) Limited Designation; e) FEC (England).
“FEC”	Further Education College.
“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 relevant HESA Collection Notice.
“Fixed Database Submission Fee”	The fee payable for a Fixed Database Submission as specified on the HESA Website.
“Fixed Database Submission”	A late or additional submission of any or all Required Data Collections in order that failure to meet required timetables for submission or failures to meet quality requirements in the data can be rectified.
“Force Majeure Event”	means any cause or event subsisting at any time which is not within a party's reasonable control including, without limitation: a) acts of God, flood, drought, earthquake or other natural disaster; b) epidemic or pandemic; c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations or similar actions; d) nuclear, chemical or biological contamination or sonic boom; e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; f) collapse of buildings, fire, explosion or accidental damage; g) any labour or trade dispute, strikes, industrial action or lockouts;

	<ul style="list-style-type: none"> h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); i) interruption or failure of utility service; and j) wilful or criminal damage or theft by a third party.
“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.
“Graduates”	Graduates of the Provider's higher education courses who graduated within the relevant Graduate Outcomes Survey Year.
“Graduate Outcomes Collection Notice”	The Graduate Outcomes collection notice as published on the HESA Website and updated from time to time.
“Graduate Outcomes Dashboard Data”	The survey response rates and SIC and SOC coding for Graduates made available in the Graduate Outcomes Portal's dashboard. The SIC and SOC coding may be subject to change during the relevant Graduate Outcomes Survey Year.
“Graduate Outcomes Data”	The Graduate Outcomes Dashboard Data and the Graduate Outcomes Results.
“Graduate Outcomes Final Data Delivery”	The final version of the Graduate Outcomes Results for the relevant Graduate Outcomes Survey Year. The format, content and delivery method shall be at the sole discretion of HESA.
“Graduate Outcomes Opt-In Questions”	"Opt-in" question banks selected by the Provider to be asked of their Graduates during the next Graduate Outcomes Survey Year of the Graduate Outcomes Survey.
“Graduate Outcomes Portal”	The portal provided by HESA for the purposes of the Graduate Outcomes Survey which includes the selection of Graduate Outcomes Opt-In Questions in accordance with this Agreement.
“Graduate Outcomes Permitted Purpose”	<p>The use of any Provider Information for the following purposes:</p> <ul style="list-style-type: none"> a) to perform the functions and services set out in Schedule 4 (Graduate Outcomes as a Requirement of Statutory Subscriber Category); b) to share with the Primary Regulator/Funder; c) to undertake research to enhance HESA's statutory statistical outputs, support integration with other data sources, assist policy making, direct HESA's quality assurance approach, deliver technical support to Statutory Customer data users, support review of statutory

	<p>collections and develop expertise and/or tools to support the Sector in complying with regulatory requirements;</p> <p>d) to produce and publish statistical publications including Open Data required by the Primary Regulator/ Funder;</p> <p>e) to make data available to Office for National Statistics (ONS), Northern Ireland Statistics and Research Agency (NISRA), and National Records of Scotland (NRS)</p> <p>f) to facilitate research through making data available through the ONS Secure Research Service;</p> <p>g) to facilitate research through making data available through the Department for Education and the devolved governments of the United Kingdom; and</p> <p>h) to share with Statutory Customers or other customers who have a statutory power or function to process Provider Information for their public functions, including but not limited to the General Medical Council and Health Education England.</p>
“Graduate Outcomes Portal”	The portal provided by HESA for the purposes of the Graduate Outcomes Survey which includes the selection of Graduate Outcomes Opt-In Questions in accordance with this Agreement.
“Graduate Outcomes Provider Questions”	"Additional questions requested by the Provider to be asked of their Graduates during the next Graduate Outcomes Survey Year of the Graduate Outcomes Survey. No Provider will be able to submit Graduate Outcomes Provider Questions in 2019/2020.
“Graduate Outcomes Results”	Results of the Graduate Outcomes Survey in relation to the Graduates, including responses to the core questions and Graduate Outcomes Opt-In Questions (where applicable). The format, content and delivery method shall be at the discretion of HESA.
“Graduate Outcomes Survey”	HESA’s survey of all graduates who fall within the population specified for the relevant Graduate Outcomes Survey Year consisting of a series of core questions and Graduate Outcomes Opt-In Questions selected by HE Providers or mandated by Statutory Customers.
“Graduate Outcomes Survey Year”	1 December to 30 November.
“HE Providers”	Providers of higher education
“Heidi Plus”	The web-based business information system developed by HESA to provide a wide range of HESA and non-HESA data content, visualisations and analytical functionality.

“HERA”	Higher Education and Research Act 2017
“HESA Collection Notices”	Means the Graduate Outcomes Collection Notice, Staff Collection Notice and Student Collection Notice.
“HESA Identity System” or “IDS”	Means the system used by HESA to enable Providers to manage access by their Personnel to the HESA data collection and data dissemination systems.
“HESA Operational Documentation”	The information published on the HESA Website for each Data Collection necessary for the supply of the Provider Data Submission to HESA as updated from time to time. For the avoidance of doubt, the Provider will need to refer to the HESA Operational Documentation for each relevant individual Data Collection. Each Data Collection is ascribed a collection number and the HESA Operational Documentation will make clear which collection number relates to which academic year.
“HESA Subscriber”	An organisation which has agreed to provide certain data to HESA and to pay the Subscription Fees in accordance with this Agreement in return for the benefits and services associated with the relevant HESA Subscriber Category.
“HESA Subscriber Category (ies)”	Statutory Subscriber Categories and Optional Services Subscription Categories.
“HESA Website”	HESA’s website located at http://www.hesa.ac.uk .
“IDS Terms”	The terms and conditions applying to access to IDS, including but not limited to the terms and conditions attached to each role within IDS.
“Insolvency Event”	<p>a) 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;</p> <p>b) 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>c) 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>d) 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>
“Intellectual Property Rights”	Copyrights and related rights, registered and unregistered 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.
“Late Submission Fee”	The fee chargeable by HESA where it agrees to keep a collection open beyond its scheduled closure data to enable a Provider to make a late submission of data. Such fee shall be calculated by HESA acting reasonably on a case by case basis taking into account the nature of the data and the extent of the delay.
“Limited Designation”	Providers not registered with the Office for Students, with courses designated for student support by the Office for Students while a registration assessment is ongoing.
“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.
“NSS”	The National Student Survey.
“OfS”	Office for Students or any successor body.
“Open Data and Official Statistics”	The suite of information and dissemination activities which are provided by HESA as part of its activities in relation to Statutory Subscriber Categories.
“Opt-In Questions Fee”	The amount payable as set out in the HESA Operational Documentation for the Graduate Outcomes Opt-In Questions

	selected by the Provider within the Graduate Outcomes Portal for the relevant Graduate Outcomes Survey Year.
“Opt-In Questions Payment Date”	The date specified on the HESA Website for payment of the Opt-In Questions Fee.
“Optional Services Subscription Categories”	The optional services set out in Table B on the front cover of this Agreement and defined in Schedule 1 and as supplemented by HESA from time to time.
“Organisational Access Agreement”	means the Agreement between HESA Services Limited and HE Providers by which HE Providers are given access to the Heidi Plus platform.
“Personnel”	in relation to a party means individuals acting on that party's behalf including employees, contractors, agents and other persons authorised by a party in relation to the matters covered by this Agreement.
“Population Data”	The Provider’s Graduate population required by the Primary Regulator/Funder to be surveyed by HESA in relation to the relevant Graduate Outcomes Survey Year including individual identifiers, name, subject and course attributes and date of graduation.
“Primary Regulator/Funder”	Scottish Funding Council of Apex 2, 97 Haymarket Terrace, Edinburgh EH12 5HD
“Prohibited Act”	Any act which constitutes an offence under the Bribery Act 2010, which contravenes clause 16 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 Data Submission”	The data which the Provider is required to submit under this Agreement in respect of the Required Data Collections and in accordance with the Coverage for the relevant HESA Subscriber Category(s). For the avoidance of doubt, this includes all and any versions of the data submitted by the Provider to HESA.
“Provider Information”	The Provider Data Submission and any information (including Personal Data) received by HESA from a source other than the Provider which relates to the Provider including without limitation its Personnel, students and Graduates.
“Provider Preview”	The process by which HESA or its Processors provides to the Provider an advance preview of data to be released to third parties under a Category 1 Permitted Purpose, a Category 2

	<p>Permitted Purpose, a Category 3 Permitted Purpose, or under paragraphs (f) or (g) of the Statutory Permitted Purpose where, in HESA's reasonable opinion, the proposed data usage meets one or more of the following criteria:</p> <ul style="list-style-type: none"> a) it is high profile; b) it publicly compares HE Providers; c) it constitutes part of the UK Performance Indicators; or d) it is being used by organisations to calculate subscription fees. <p>Details of how the process will work will be set out in the HESA Operational Documentation and updated from time to time.</p>
“Registered Data Protection Officer”	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.
“Regulatory Advice”	Advice issued by the Primary Regulator/Funder setting out its data requirements and or guidance HE Providers.
“Reporting Year”	The period 1 August to 31 July.
“Required Data Collections”	The collections of data which HESA Subscribers (including where relevant the Provider) are required to supply to HESA, as identified in Schedule 2.
“Sector”	The higher education sector in the United Kingdom.
“Service Providers”	HESA's service providers supporting the Graduate Outcomes Survey.
“SIC”	Standard Industrial Classification.
“SOC”	Standard Occupational Classification.
“Staff Collection Notice”	The HESA staff collection notice as published on the HESA Website and updated from time to time.
“Staff Outside the Coverage of the Staff Record Subscription”	The Optional Services Subscription Category provided by HESA to facilitate the voluntary submission by English Providers of data relating to staff outside the coverage of the Staff Record for inclusion in the Staff Record and for the onward sharing of such data.
“Staff Outside the Coverage of the Staff Record Subscription Fee”	The amount payable annually by the Provider to HESA for the purposes of the Staff Outside the Coverage of the Staff Record Subscription as published on the HESA Website.

“Statutory Customer”	a Government or statutory body within the UK with responsibility for higher education policy and the regulation of funding or for, and the provision of, higher education in the UK or particular parts of the UK as specified in the HESA Operational Documentation.
“Statutory Customer Agreement”	An agreement between HESA and a Statutory Customer for the provision of data by HESA to the Statutory Customer.
“Statutory Permitted Purpose”	The use of any Provider Information for the following purposes: <ul style="list-style-type: none"> a) to perform the functions and services set out in this Agreement; b) to share with the Primary Regulator/ Funder; c) to undertake research to enhance HESA’s statutory statistical outputs, support integration with other data sources, assist policy making, direct HESA’s quality assurance approach, deliver technical support to Statutory Customer data users, support review of Required Data Collections and develop expertise and/or tools to support the Sector in complying with regulatory requirements (including training); d) to produce and publish statistical publications including Open Data and Official Statistics required by the Primary Regulator/ Funder; e) to make data available to Office for National Statistics (ONS), Northern Ireland Statistics and Research Agency (NISRA), and National Records of Scotland (NRS); f) to facilitate research through making data available through the ONS Secure Research Service; g) to facilitate research through making data available through the Department for Education and the devolved governments of the United Kingdom; and h) to share with Statutory Customers or other customers who have a statutory power or function to process Provider Information for their public functions including but not limited to the General Medical Council and Health Education England.
“Statutory Subscriber Category(ies)”	The categories of subscribers required by any Statutory Customer to submit data to HESA as specified in Table A on the front cover of this Agreement and defined in Schedule 1. The Statutory Subscriber Categories offered by HESA may be amended from time to time on the request of any Statutory Customer.
“Student Collection Notice”	The HESA student collection notice as published on the HESA Website and updated from time to time.
“Subscription Fees”	Any amount payable by the Provider to HESA in relation to services supplied by HESA pursuant to this Agreement

	(including, for the avoidance of doubt, any development of the data collection system to facilitate such services) as calculated by HESA in accordance with the methodology published on the HESA Website and/or the process set out in Schedule 3 for each Subscription Period.
“Subscription Period”	The periods defined on the HESA Website.
“Supply Side Code of Practice”	The code of practice developed by the Data Landscape Steering Group to provide an overarching set of data governance goals and principles for HE Providers to ensure consistent approach of all those involved in the collection and processing of higher education data. The code of practice can be found at https://www.hesa.ac.uk/innovation/data-landscape/Codes-of-practice/Supply-side
“Third Party Publication Criteria”	Any criteria set and applied by a third party to determine the scope of the data obtained from HESA which it will publish, in whole or in part, or include or reference in its publications.
“UK Performance Indicators”	The annual publication of a suite of comparative data and measures of performance of HE Providers in the United Kingdom.
“UKPRN”	The UK Provider Reference Number (UKPRN) is a unique reference number allocated to providers by UK Register of Learning Providers (UKLP).
“UKPRN Linking Fee”	The fee chargeable by HESA where it agrees to link data submitted to HESA under two more UKPRN numbers. Such fee shall be calculated by HESA acting reasonably on a case by case basis taking into account the nature and scale of the data to be linked.
“UNISTATS Dataset”	The dataset (or its successor collection) which is produced by HESA for a particular application year to help prospective higher education students make a decision about where and what to study and which is required by the Primary Regulator/Funder for the UNISTATS Publication. It is produced from a variety of data sources including data submitted by the Provider to HESA in respect of other Data Collections.
“UNISTATS Publication”	The publication by the Primary Regulator/Funder of information about HE Providers, their courses and students on the UNISTATS Website. This is also made available by HESA as Open Data.

“UNISTATS Publication Year”	The period of approximately twelve months running from a date in September to a date in the following September in which the UNISTATS Dataset will be published.
“UNISTATS Website”	The website accessible from http://UNISTATS.direct.gov.uk/ .
“Variation Form”	A form substantially in the form of Schedule 10 which shall be used to vary Optional Services Subscription Categories and Categories of Onward Use of Data.
“Working Day”	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.

- 1.2 The terms “Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Processing”, “Subject Access Request” and “Special Category 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 words 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.
- 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:
- 1.14.1 subject to paragraph 1.14.2, the provision in the body of this Agreement shall take precedence;
 - 1.14.2 if Graduate Outcomes is a Required Data Collection of the Provider or where applicable given the Optional Services Subscription Categories and Categories of Onward Use of Data of the Provider, any provision in Schedules 4 to 9 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 10.



SCHEDULE 2

HESA SUBSCRIBER CATEGORIES

1. Providers are required to complete the submission of the Required Data Collections notified to them under any previous agreement with HESA and, with the exception of English FECs, the terms of this Agreement will apply to their ongoing submissions to these Required Data Collections.
2. The table below sets out HESA's current understanding of the data requirements of the Primary Regulator/Funder associated with each HESA Subscriber Category. The Coverage for which the data within the Required Data Collections must be provided will be specified in the HESA Operational Documentation. The table shall be interpreted in accordance with paragraphs 3 to 5 below.

Statutory Subscriber Category	Required Data Collections
Approved	<p>AP Student Record, Graduate Outcomes, UNISTATS, Finance and AOR.</p> <p>In addition, the Provider may be required by the Primary Regulator/Funder to participate in NSS. NSS is not a Data Collection undertaken by HESA but is referred to here in order to give the Provider a full picture of the data collections which are required.</p>
Approved (Fee Cap)	<p>Student Record or AP Student Record (depending on previous reporting practice), Provider Profile, Staff, Graduate Outcomes, UNISTATS, Finance, HEBCI. AOR and (if applicable) ITT.</p> <p>In addition, the Provider may be required by the Primary Regulator/Funder to participate in NSS. NSS is not a Data Collection undertaken by HESA but is referred to here in order to give the Provider a full picture of the data collections which are required.</p>
Designation for Teach Out	AP Student Record (or Student Record by agreement)..
Limited Designation	AP Student Record (or Student Record by agreement)..
FECs (England)	Graduate Outcomes and UNISTATS from 2020/21 (C20061)
Full Subscriber (Scotland)	Student, Staff, Provider Profile, Graduate Outcomes, UNISTATS, Finance, HEBCI, EMR and AOR.

	In addition, the Provider may be required by the Primary Regulator/Funder to participate in NSS. NSS is not a Data Collection undertaken by HESA but is referred to here in order to give the Provider a full picture of the data collections which are required.
Full Subscriber (Wales)	<p>Student, Staff, Provider Profile, Graduate Outcomes, UNISTATS, Finance, HEBCI, EMR and AOR.</p> <p>In addition, the Provider may be required by the Primary Regulator/Funder to participate in NSS. NSS is not a Data Collection undertaken by HESA but is referred to here in order to give the Provider a full picture of the data collections which are required.</p>
Full Subscriber (Northern Ireland)	<p>Student, Staff, Provider Profile, Graduate Outcomes, UNISTATS, Finance, HEBCI, EMR and AOR.</p> <p>In addition, the Provider may be required by the Primary Regulator/Funder to participate in NSS. NSS is not a Data Collection undertaken by HESA but is referred to here in order to give the Provider a full picture of the data collections which are required.</p>
Northern Ireland FECs	Graduate Outcomes and UNISTATS
Welsh FEC	<p>Student, Provider Profile, Graduate Outcomes, and UNISTATS.</p> <p>In addition, the Provider may be required by the Primary Regulator/Funder to participate in NSS. NSS is not a Data Collection undertaken by HESA but is referred to here in order to give the Provider a full picture of the data they are required to collect.</p>

3. The Required Data Collections for the Statutory Subscriber Category(s) may be amended by HESA at its absolute discretion taking into account the requirements of the Primary Regulator/Funder, provided that reasonable notice of the amendments is given to the Provider. These requirements may also be confirmed to Providers by their Primary Regulator Funder issuing Regulatory Advice.
4. In this Schedule 2, references to particular Data Collections within the Required Data Collections columns above are to those Data Collections as identified below and as further specified in the HESA Operational Documentation. The meaning of the abbreviated terms used above in this Schedule 2 are as follows:

UNISTATS - in this Schedule and Schedule 4 means the information which HESA needs to collect from an individual provider for preparation of the UNISTATS Dataset	Finance – Finance Data Collection ¹
Student – Full Student Data Collection	AOR – Aggregate Offshore Record Data Collection
Staff – Staff Data Collection	EMR – Estates Management Record
PP – Provider Profile	HEBCI – Higher Education Business and Community Interaction
NSS – National Student Survey	ITT – Initial Teacher Training
Graduate Outcomes - Graduate Outcomes Collection	AP – Alternative Provider Student Data Collection

¹ The OfS is currently running a consultation regarding the future of the Finance Data Collection. The outcome of this consultation may impact on whether the Finance Data Collection remains a Required Data Collection.

SCHEDULE 3

SUBSCRIPTION FEES

Subscription Fees

1. The Subscription Fees shall be determined in accordance with the provisions of this Schedule and charged in accordance with the methodology and rates published on the HESA Website.
2. The HESA Board will review the Subscription Fees on a periodic basis and changes to the Subscription Fees once agreed by the Board will be published on the HESA Website and notified to the Provider.
3. HESA's Subscription Fees for Statutory Subscriber Categories shall reflect the Statutory Subscriber Category of the Provider, its Required Data Collections and number of students, and, for Welsh and Northern Irish HE Providers only, their required access to Heidi Plus. These Subscription Fees are outside the scope of VAT. Should this change, VAT will be applicable at the prevailing rate. The terms of Schedule 4 shall also apply to Subscription Fees in relation to the Graduate Outcomes Survey.
4. HESA's Subscription Fees for Optional Services Subscription Categories shall be set according to the Optional Services Subscription Categories of the Provider and the applicable provisions of Schedules 5, 6, 7 and 8. They shall include but are not limited to the EMR Subscription Fee and the Staff Outside the Coverage of the Staff Record Subscription Fee. These Subscription Fees may be within the scope of VAT and where this is the case VAT will be applicable at the prevailing rate.
5. Any Subscription Fees relating to Heidi Plus shall be determined and payable in accordance with the Provider's Organisational Access Agreement (if any).

Process for determining the figure for the number of students being submitted to HESA

6. For HE Providers who have not previously submitted data to HESA in respect of the Alternative Provider Student Data Collection or the Full Student Data Collection, paragraph 6 will apply in the first year of this Agreement.
7. Where this paragraph applies the figure for the number of students which is used to calculate the Subscription Fees shall be based on an estimate of current student numbers provided to HESA by the Provider. The Subscription Fees calculated on this basis shall be reviewed by HESA when the actual number of students submitted by the Provider to HESA is known. If there is a material difference between the estimate and the actual numbers, HESA shall recalculate the Subscription Fees accordingly and where necessary a supplementary invoice or credit note will be issued by HESA. HESA shall keep under review and notify the HE Providers from time to time what it considers to be a material difference.
8. For the following years of this Agreement after the first year, the figure for the number of students which is used to calculate the Subscription Fees shall correspond to the

number of students in the most up to date student data submitted by the Provider to HESA prior to the applicable Subscription Period.

Fees outside HESA's Subscription Fees:

9. The following fees may be charged by HESA in addition to any Subscription Fees paid pursuant to clause 2.4 and any relevant Optional Services Subscription Category and shall be specified on the HESA Website:
 - a) Fixed Database Submission Fee;
 - b) Data Deletion Administration Fee;
 - c) Late Submission Fee; and
 - d) UKPRN Linking Fee.



SCHEDULE 4

GRADUATE OUTCOMES AS A REQUIREMENT OF A STATUTORY SUBSCRIBER CATEGORY

1. APPLICATION OF THESE TERMS

- 1.1 The terms set out in this Schedule shall apply to the conduct of the Graduate Outcomes Survey.

2. GRADUATE OUTCOMES SURVEY PARTICIPATION

- 2.1 The Provider agrees to take part in the Graduate Outcomes Survey, to pay the element of the Subscription Fees related to the Graduate Outcomes Survey and to comply with its obligations set out in this Agreement in relation to the Graduate Outcomes Survey. The element of the Subscription Fees related to the Graduate Outcomes Survey shall be invoiced and payable in accordance with clauses 2.4 to 2.6 unless expressly stated otherwise in the HESA Operational Documentation.

- 2.2 HESA permits the Provider to access the Graduate Outcomes Portal only to:

- 2.2.1 use the relevant roles assigned to the Personnel of the Provider within IDS;
- 2.2.2 update the Contact Data Records;
- 2.2.3 upload the Provider's logo and careers service URL;
- 2.2.4 select Graduate Outcomes Opt-In Questions;
- 2.2.5 access the Graduate Outcomes Dashboard Data to keep under review Graduate Outcome Survey metrics including survey response rates and any uploaded SIC and SOC coding regarding the employment of Graduates;
- 2.2.6 review and, if the Provider requires, download the Graduate Outcomes Results; and
- 2.2.7 review and, if the Provider requires, download the Graduate Outcomes Final Data Delivery,

in accordance with this Agreement and the relevant IDS Terms.

3. SUBMISSION OF CONTACT DATA RECORDS

- 3.1 The Provider shall, using the Graduate Outcomes Portal and in accordance with the HESA Operational Documentation:

- 3.1.1 respond to messages relating to, and take reasonable steps to ensure, the accuracy and validity of Contact Data Records; and

- 3.1.2 update the Contact Data Records within the Graduate Outcomes Portal, where it is reasonably able to do so.
- 3.2 The Provider acknowledges that:
 - 3.2.1 HESA is not responsible for setting the population to be surveyed or quality assuring the Contact Data Records submitted. It is the responsibility of the Provider and, for English and Northern Ireland FECs only, the Primary Regulator/Funder, to provide HESA with accurate and up to date contact information to ensure that the correct Graduates are surveyed;
 - 3.2.2 during the Graduate Outcomes Survey Year, for English FEC HESA Subscribers, the Primary Regulator/Funder will also be able to edit the Population Data and Contact Data Records via the Graduate Outcomes Portal in accordance with the HESA Operational Documentation and this may result in changes to the Graduates in the Graduate Outcomes Survey.

4. PROVIDER STATUS

- 4.1 The Provider warrants that:
 - 4.1.1 it has the capacity and authority to update the Contact Data Records; and
 - 4.1.2 it has taken reasonable steps, given that the Graduates will have graduated approximately 15 months prior to the Graduates being surveyed, to ensure the accuracy and validity of the Contact Data Records; and
 - 4.1.3 the reasonable steps being taken by the Provider in accordance with paragraph 4.1.2 take into account the best practice guidance published in the HESA Operational Documentation.

5. ACCESS TO THE GRADUATE OUTCOMES PORTAL

- 5.1 HESA shall provide access to the Graduate Outcomes Portal via IDS in accordance with the process set out in the HESA Operational Documentation.

6. GRADUATE OUTCOMES DASHBOARD DATA AND GRADUATE OUTCOMES RESULTS

- 6.1 During the relevant Graduate Outcomes Survey Year HESA shall make available via the Graduate Outcomes Portal the Graduates Outcomes Dashboard Data and the Graduate Outcomes Results.
- 6.2 The Provider shall only use its Graduate Outcomes Dashboard Data and Graduate Outcomes Results for the purposes specified in the relevant Graduate Outcomes Collection Notice.

- 6.3 The Provider understands and acknowledges that:
- 6.3.1 HESA has agreed to make available the Graduate Outcomes Dashboard Data and Graduate Outcomes Results via the Graduate Outcomes Portal on a regular basis;
 - 6.3.2 it is for the Provider to determine how often it is necessary to download/view their organisation's Graduate Outcomes Dashboard Data and Graduate Outcomes Results prior to the delivery of the Graduate Outcomes Final Data Delivery. This is expected to be in the Spring following the end of the relevant Graduate Outcomes Survey Year;
 - 6.3.3 during the Graduate Outcomes Survey and prior to the Graduate Outcomes Final Data Delivery, SIC and SOC will be applied to Graduates' employers and roles. This coding will be constantly reviewed, and quality assured and may therefore be subject to change prior to the Graduate Outcomes Final Data Delivery.
 - 6.3.4 The Graduate Outcomes Results available for download prior to the Graduate Outcomes Final Data Delivery will not have been subject to quality assurance processes and may also be subject to change prior to the Graduate Outcomes Final Data Delivery.
 - 6.3.5 The Graduate Outcomes Survey contains a number of free text boxes which Graduates have the opportunity to complete. HESA will not sanitise or amend the contents of these free text boxes and HESA is not responsible for what has been submitted by Graduates. Appropriate processes therefore need to be put in place within the Provider before the Graduate Outcomes Results are downloaded and processed to take this into account.
 - 6.3.6 To carry out the Graduate Outcomes Survey, HESA has relied upon the accuracy of the Contact Data Records provided either by the Provider or the Office for Students for English FECs.
 - 6.3.7 The Provider's Graduate Outcomes Final Data Delivery will be compiled and used by HESA to produce Open Data and Official Statistics publications, and the terms of Official Statistics pre-release access protocols apply to all Graduate Outcomes Data shared by HESA with the Provider. This means that Graduate Outcomes Dashboard Data, Graduate Outcomes Results and the Graduate Outcomes Final Data Delivery should not be shared with any third parties until the publication of the relevant Open Data and Official Statistics and access to the Graduate Outcomes Results should be restricted within the Provider.
 - 6.3.8 No information derived from the Graduate Outcomes Results shall be shared by the Provider outside of the Provider prior to the publication

of any Open Data and Official Statistics, details of which will be made available in due course by HESA once agreed with the Statutory Customers.

- 6.3.9 The Graduate Outcomes Dashboard Data and Graduate Outcomes Results downloaded or viewed within the Graduate Outcomes Portal shall only be used by the Provider for Purpose 1 of the Graduate Outcomes Collection Notice (referred to as the privacy notice on the Graduate Outcomes website), a copy of which can be found at <https://www.graduateoutcomes.ac.uk/privacy-info>.
- 6.3.10 No decisions shall be taken about Graduates as a result of their responses to the Graduate Outcomes Survey.
- 6.3.11 The Provider shall not contact Graduates to discuss their responses to the Graduate Outcomes Survey, or by reason of their responses to the Graduate Outcomes Survey, unless the relevant Graduate has provided specific consent to be contacted as part of their response to the Graduate Outcomes Survey.
- 6.3.12 Where Graduates have provided consent to be contacted in respect of their Graduate Outcomes Survey responses, the Provider shall make available to the Graduates fair processing information. This will enable Graduates to understand how the information they provide will be used and to meet the requirements of Article 13 and or Article 14 of the General Data Protection Regulation.
- 6.3.13 Where HESA shares information with the Provider on whether a Graduate has opted out of undertaking the Graduate Outcomes Survey, that information shall only be processed by the Provider to operate its own suppression list for its own communications regarding the Graduate Outcomes Survey.
- 6.3.14 Graduate Outcomes Survey communications in respect of a live cohort should only be issued by the Provider in accordance with the guidance published as part of the HESA Operational Documentation.
- 6.3.15 Graduate Outcomes Data downloaded from the Graduate Outcomes Portal will, in the majority of cases, constitute Personal Data and on download the Provider shall be the Controller and shall process the Graduate Outcomes Results in accordance with all applicable Data Protection Legislation.
- 6.3.16 The Provider shall put in place appropriate processes to ensure that when data from the Graduate Outcomes Portal is downloaded, that appropriate data protection and information security processes are put in place to cover how it will be processed by the Provider, and that it is made clear to all internal recipients within the Provider how this data may be used.

- 6.3.17 The Provider is responsible for compliance with Data Protection Legislation in relation to its use of data made available by HESA including viewed and/or downloaded from the Graduate Outcomes Portal. In particular, the Provider shall ensure that where Graduates provide consent to be contacted about the information provided in the Graduate Outcomes Survey, that the Provider makes available further privacy information to the Graduates when it makes contact with them.

7. HESA'S USE OF CONTACT DATA RECORDS

- 7.1 Contact Data Records will not be shared by HESA with a third party other than a Service Provider or Primary Regulator/Funder unless authorisation is provided by a Data Subject for their specific Contact Data Records to be shared by HESA with a third party in response to a Graduate Outcomes Survey question.
- 7.2 HESA shall retain the Contact Data Records in accordance with the HESA Operational Documentation.

8. HESA'S USE OF THE GRADUATE OUTCOMES DATA

- 8.1 The relevant Graduate Outcomes Collection Notice sets out the lawful bases for processing of the Graduate Outcomes Data relied upon by HESA. As set out in the relevant Graduate Outcomes Collection Notice, HESA's onward sharing activities may include data sharing activities that are not undertaken as part of a legal obligation on HE Providers but are separately undertaken by HESA in the public interest.
- 8.2 The Graduate Outcomes Final Data Delivery will be used for the Graduate Outcomes Permitted Purpose and may be used for any applicable Categories of Onward Use of Data.
- 8.3 HESA will retain and process the Graduate Outcomes Final Data Delivery for statistical and research purposes indefinitely and in accordance with Data Protection Legislation.
- 8.4 HESA may publish information derived from the Graduate Outcomes Final Data Delivery.

9. HESA'S SHARING OF PERSONAL DATA

- 9.1 Where HESA supplies any Graduate Outcomes Data to any third party, HESA shall ensure that such third party is obliged to:
- 9.1.1 comply with the Data Protection Legislation in respect of the Graduate Outcomes Data; and
- 9.1.2 take appropriate technical and organisational measures against unauthorised or unlawful processing and accidental loss of any Personal Data.



- 9.2 The Provider acknowledges that:
- 9.2.1 Statutory Customers and other recipients of Graduate Outcomes Data will act as independent Controllers in respect of such data;
 - 9.2.2 Service Providers will act as processors of Graduate Outcomes Data and HESA shall contract with Service Providers in compliance with Data Protection Legislation.
- 9.3 The Provider acknowledges that HESA may permit the retention of Graduate Outcomes Data by Statutory Customers indefinitely for statistical and research purposes, on the basis that HESA is satisfied that:
- 9.3.1 such retention complies with Data Protection Legislation; and
 - 9.3.2 the relevant Statutory Customer reviews the requirement to retain such information in accordance with Data Protection Legislation.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Provider acknowledges that Intellectual Property Rights in the Graduate Outcomes Dashboard Data and Graduate Outcomes Results and the Graduate Outcomes Final Data Delivery are vested in HESA.
- 10.2 HESA licenses the Provider to use the Graduate Outcomes Dashboard Data, the Graduate Outcomes Results and the Graduate Outcomes Final Data Delivery for the purposes specified in the Graduate Outcomes Collection Notice as limited by the terms of this Agreement.
- 10.3 Save as is permitted by the terms and conditions of any licence permitting re-use of the Intellectual Property Rights of HESA (whether in this Agreement or otherwise), the Provider shall not use the Intellectual Property Rights belonging to HESA for any purposes whatsoever.

SCHEDULE 5

GRADUATE OUTCOMES OPT-IN QUESTIONS

1. APPLICATION OF THESE TERMS

- 1.1 The terms set out in this Schedule shall apply to the conduct of the Graduate Outcomes Survey in respect of the Graduate Outcomes Opt-In Questions.
- 1.2 The terms set out in Schedule 4 shall also apply to the conduct of the Graduate Outcomes Survey in respect of the Graduate Outcomes Opt-In Questions.

2. SELECTING GRADUATE OUTCOMES OPT-IN QUESTIONS IN THE GRADUATE OUTCOMES PORTAL

- 2.1 The Provider may select the Graduate Outcomes Opt-In Questions that it wishes to ask its Graduates for the relevant Graduate Outcomes Survey Year within the Graduate Outcomes Portal prior to the Cut-Off Date and subject to the payment of the Opt-In Questions Fee by the Opt-In Questions Payment Date. Graduate Outcomes Opt-In Questions once selected may not be amended for the relevant Graduate Outcomes Survey Year.
- 2.2 Selected Graduate Outcomes Opt-In Questions will be asked of the Provider's Graduates for the relevant Graduate Outcomes Survey Year.

3. OPT-IN QUESTIONS FEE

- 3.1 HESA shall invoice the Provider for the Opt-In Questions Fee in accordance with the HESA Operational Documentation.
- 3.2 The Provider shall pay all invoices relating to the Opt-In Questions Fee within 30 days of the invoice date and in any event on or before the relevant Opt-In Questions Payment Date.
- 3.3 The Provider acknowledges that Graduate Outcomes Opt-In Questions will not be included in the Graduate Outcomes Survey for the Provider in a Graduate Outcomes Survey Year if the Provider fails to select the Graduate Outcomes Opt-In Questions it wishes to ask its Graduates prior to the Cut-Off Date and/or pay the Opt-In Question Fee by the Opt-In Questions Payment Date.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 The Provider acknowledges that Intellectual Property Rights in the Graduate Outcomes Dashboard Data and Graduate Outcomes Results relating to Graduate Outcomes Opt-In Questions are vested in HESA.
- 4.2 HESA licenses the Provider to use the Graduate Outcomes Dashboard Data, the Graduate Outcomes Results and the Graduate Outcomes Final Data Delivery relating to Graduate Outcomes Opt-In Questions for the purposes specified in the Graduate Outcomes Collection Notice as limited by the terms of this Agreement.
- 4.3 Save as is permitted by the terms and conditions of any licence permitting re-use of the Intellectual Property Rights of HESA (whether in this Agreement or otherwise), the Provider shall not use the Intellectual Property Rights belonging to HESA for any purposes whatsoever.



SCHEDULE 6

GRADUATE OUTCOMES PROVIDER QUESTIONS

[Placeholder for terms and conditions that apply to Graduate Outcomes Provider Questions. These will be provided as an Addendum when further information about this proposed service is known. It is not being offered in 2019/20]



SCHEDULE 7

ESTATES MANAGEMENT RECORD OPTIONAL SERVICES SUBSCRIPTION CATEGORY FOR ENGLISH PROVIDERS

1. APPLICATION OF THESE TERMS

- 1.1 The terms set out in this Schedule shall apply to the voluntary submission of data for inclusion in the Estates Management Record by English Providers and the onward sharing of such data.

2. PROVISION OF SERVICE AT HESA'S DISCRETION

- 2.1 The parties acknowledge that running the Estates Management Record Optional Services Subscription Category for English Providers on a voluntary basis requires a minimum level of voluntary subscribers to make it financially viable and sustainable.
- 2.2 HESA shall determine, in its own absolute discretion and acting in good faith whether the number of subscribers is above the minimum level required to enable this service to be financially viable and be operated by HESA for the relevant Reporting Year.
- 2.3 In the event that the Estates Management Record Optional Services Subscription Category for English Providers is not financially viable for a Reporting Year, HESA shall withdraw the service for the Reporting Year before the Data Collection is opened at its absolute discretion.

3. ONWARD SHARING OF DATA SUBMITTED FOR THE ESTATES MANAGEMENT RECORD OPTIONAL SERVICES SUBSCRIPTION CATEGORY BY ENGLISH PROVIDERS

- 3.1 The parties acknowledge that running the Estates Management Record Optional Services Subscription Category for English Providers is to enable English Providers to continue to benefit from the Estates Management Record for benchmarking and estates planning.
- 3.2 The parties agree that data voluntarily submitted to HESA in relation to the Estates Management Record Optional Services Subscription Category may be used by HESA for the following permitted purposes:
 - 3.2.1 the Statutory Permitted Purpose;
 - 3.2.2 Category 1 Permitted Purpose;
 - 3.2.3 Category 2 Permitted Purpose; and
 - 3.2.4 Category 3 Permitted Purpose.

4. GENERAL TERMS AND CONDITIONS

- 4.1 The Provider shall pay the EMR Subscription Fee for each Reporting Year in which the Provider has selected the Estates Management Record Optional Services Subscription Category and thereby agreed to submit relevant data in relation to that Optional Services Subscription Category. The EMR Subscription Fee shall be invoiced and payable in accordance with clauses 2.4 to 2.6 unless expressly stated otherwise in the HESA Operational Documentation.
- 4.2 The Provider may terminate its EMR Subscription by:
- 4.2.1 completing the appropriate section of the Variation Form;
 - 4.2.2 ensuring the Variation Form is signed by the Accountable Officer of the Provider; and
 - 4.2.3 emailing the completed and signed Variation Form to liaison@hesa.ac.uk using the email title: "Variation Form for [Insert Name of Provider]".
- 4.3 Where such a Variation Form is sent by the Provider to HESA terminating its EMR Subscription, the Provider may cease submitting data in relation to the EMR Subscription immediately but will be required to pay the EMR Subscription Fee until the end of the applicable Reporting Year.
- 4.4 Where a Provider has submitted a Variation Form terminating its EMR Subscription:
- 4.4.1 data submitted to HESA under the terms of this Agreement in relation to the Estates Management Record Optional Services Subscription Category, which has been signed off by the Provider for the current Reporting Year or any previous Reporting Year, shall continue to be used by HESA for the purposes set out in paragraph 3.2; and
 - 4.4.2 data submitted to HESA under the terms of this Agreement in relation to the Estates Management Record Optional Services Subscription Category, which has not been signed off during the relevant Reporting Year, may be deleted from the Data Collection system and HESA's quality reporting system subject to payment of a Data Deletion Administration Fee.



SCHEDULE 8

STAFF OUTSIDE THE COVERAGE OF THE STAFF RECORD OPTIONAL SERVICES SUBSCRIPTION CATEGORY FOR ENGLISH PROVIDERS

1. APPLICATION OF THESE TERMS

- 1.1 The terms set out in this Schedule shall apply to the voluntary submission of data relating to staff outside the coverage of the Staff Record by English Providers for inclusion in the Staff Record and the onward sharing of such data.

2. PROVISION OF SERVICE AT HESA'S DISCRETION

- 2.1 The parties acknowledge that running the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category for English Providers on a voluntary basis requires a minimum level of voluntary subscribers to make it financially viable.
- 2.2 HESA shall determine, in its own absolute discretion and acting in good faith, whether the number of subscribers is above the minimum level required to enable this service to be financially viable and be operated by HESA for the relevant Reporting Year.
- 2.3 In the event that this service is not financially viable for a Reporting Year, HESA shall withdraw the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category for the Reporting Year before the Data Collection is opened at its absolute discretion.

3. ONWARD SHARING OF DATA SUBMITTED FOR THE ESTATES MANAGEMENT RECORD OPTIONAL SERVICE SUBSCRIBER CATEGORY BY ENGLISH PROVIDERS

- 3.1 The parties acknowledge that offering the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category is to enable English Providers to continue to benefit from the Staff Record for staff outside the coverage of the Staff Record to meet their statutory reporting obligations (e.g. equality and diversity reporting, responding to freedom of information requests etc.) and for other legitimate interests such as benchmarking or internal reporting.
- 3.2 The parties agree that data voluntarily submitted to HESA for the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category may be used by HESA for the following permitted purposes:
- 3.2.1 the Statutory Permitted Purpose;
 - 3.2.2 Category 1 Permitted Purpose;
 - 3.2.3 Category 2 Permitted Purpose; and
 - 3.2.4 Category 3 Permitted Purpose.

4. GENERAL TERMS AND CONDITIONS

- 4.1 The Provider shall pay the Staff Outside the Coverage of the Staff Record Subscription Fee for each Reporting Year in which the Provider has selected the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category and thereby agreed to submit relevant data in relation to that Optional Services Subscription Category. The Staff Outside the Coverage of the Staff Record Subscription Fee shall be invoiced and payable in accordance with clauses 2.4 to 2.6 unless expressly stated otherwise in the HESA Operational Documentation.
- 4.2 The Provider may terminate its Staff Outside the Coverage of the Staff Record Subscription by:
- 4.2.1 completing the appropriate section of the Variation Form;
 - 4.2.2 ensuring the Variation Form is signed by the Accountable Officer of the Provider;
 - 4.2.3 emailing the completed and signed Variation Form to liaison@hesa.ac.uk using the email title: "Variation Form for [Insert Name of Provider]".
- 4.3 Where such a Variation Form is sent by the Provider to HESA terminating its Staff Outside the Coverage of the Staff Record Subscription, the Provider may cease submitting data in relation to the Staff Outside the Coverage of the Staff Record Subscription immediately but will be required to pay the Staff Outside the Coverage of the Staff Record Subscription Fee until the end of the applicable Reporting Year.
- 4.4 Where a Provider has submitted a Variation Form terminating its Staff Outside the Coverage of the Staff Record Subscription:
- 4.4.1 data submitted to HESA under the terms of this Agreement in relation to the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category, which has not been signed off during the relevant Reporting Year, shall be deleted from the Data Collection system and HESA's quality reporting system subject to payment of a Data Deletion Administration Fee; and
 - 4.4.2 data submitted to HESA under the terms of this Agreement in relation to the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category, which has been signed off by the Provider for the current Reporting Year or any previous Reporting Year shall be deleted as reasonably agreed between HESA and the Provider subject to payment of a Data Deletion Administration Fee;. For the avoidance of doubt, data from the Staff Outside the Coverage of the Staff Record Optional Services Subscription Category previously onwardly shared by HESA or included in Heidi Plus will not

be deleted and HESA shall not be required to delete such data from its backup records.



SCHEDULE 9

CATEGORIES OF ONWARD SHARING OF DATA FOR PROVIDERS BASED IN ENGLAND AND SCOTLAND

1. APPLICATION OF THESE TERMS

- 1.1 The terms set out in this Schedule shall apply to the Categories of Onward Sharing of Data:

2. PROVISION OF SERVICE AT HESA'S DISCRETION

- 2.1 The parties acknowledge that operating as an effective information hub for the Sector requires a minimum level of English and Scottish HE Providers to opt into Categories of Onward Use of Data to make it financially and statistically viable for HESA to facilitate such Categories of Onward Use of Data.
- 2.2 HESA shall determine, in its own absolute discretion and acting in good faith, whether the number of HESA Subscribers granting permission for Provider Information to be used for each Category of Onward Use of Data is above the minimum level required to enable such service to be financially and statistically viable.
- 2.3 In the event that any Category of Onward Use of Data is not financially and statistically viable, HESA may withdraw such service.

3. SELECTION OF CATEGORIES OF ONWARD USE OF DATA

- 3.1 Table C on the front cover of this Agreement sets out three different Categories of Onward Use of Data against which a Provider from England or Scotland can mark in the appropriate box its agreement to use of its Provider Information for the proposed Categories of Onward Use of Data.
- 3.2 By marking the appropriate boxes in Table C, the Provider agrees that HESA may process the Provider Information for the selected Categories of Onward Use of Data under this Agreement with effect from 1 August 2019. For the avoidance of doubt, any data collected under previous agreements between the Provider and HESA are not covered by this Schedule 9 and will be processed by HESA at its discretion in accordance with the Data Protection Legislation and any previous agreements between the Provider and HESA.
- 3.3 Where the Provider has granted its permission for HESA to make available data derived from the Provider Information for one or more Categories of Onward Use of Data, HESA confirms that HESA shall put in place processes and contractual terms compliant with the Data Protection Legislation in relation to such data. The contractual terms shall include provisions to prevent a recipient from using the Provider Information or any part thereof to:
- 3.3.1 inform a decision to be made about any individual;

- 3.3.2 to contact an individual or to enable them to be contacted; or
- 3.3.3 target groups of individuals for marketing e.g. leaflet dropping.
- 3.4 HESA and the Provider acknowledge that there may be circumstances where an application of Provider Information could fall within one or more of the Categories of Onward Use of Data, depending on the particular proposed recipient(s) and the particular proposed use(s). In these circumstances, the Provider recognises that HESA will use its discretion acting reasonably and applying its professional judgement to make the determination as to which Category of Onward Use of Data should be applied to the application.
- 3.5 Where HESA provides data derived from the Provider Information to a third party for proposed use in a dataset, publication, league table or other similar use falling within a Category of Onward Use of Data, HESA cannot guarantee any of the data will actually be used by the recipient in any publication, league table or other similar use. Use and onward supply of the Provider Data Submission or any other Provider Information by HESA may be dependent on a number of factors including (but not limited to) the quality and completeness of the Provider Information, the Provider's compliance with clauses 2.8 and 2.9, the requirements of third parties, and HESA's ability to secure appropriate terms and conditions for the onward supply of the data to any third party.
- 3.6 HESA shall operate the Provider Preview service.

4. PROCESS FOR VARYING CATEGORIES OF ONWARD USE

- 4.1 Providers may change the Categories of Onward Use of Data that they have selected in Table C on the front cover of this Agreement to add or remove one or more Categories of Onward Use of Data by
 - 4.1.1 completing the appropriate section of the Variation Form;
 - 4.1.2 ensuring the Variation Form is signed by the Accountable Officer of the Provider; and
 - 4.1.3 emailing the completed and signed Variation Form to liaison@hesa.ac.uk using the email title: "Variation Form for [Insert Name of Provider]".
- 4.2 Where a Variation Form is sent by the Provider to HESA agreeing to one or more Categories of Onward Use of Data in relation to the Provider Information, the following shall apply:
 - 4.2.1 if a Variation Form is received by HESA in accordance with paragraph 4.1 of this Schedule at least 10 Working Days prior to the end of any Data Dissemination Period, the new Categories of Onward Use of Data will take effect at the start of the following Data Dissemination Period; and

- 4.2.2 if a Variation Form is received by HESA in accordance with paragraph 4.1 of this Schedule less than 10 Working Days prior to the end of any Data Dissemination Period, the new Categories of Onward Use of Data will not take effect at the start of the following Data Dissemination Period but shall take effect at the start of the next but one Data Dissemination Period.
- 4.3 Where a Variation Form submitted by the Provider to HESA terminates its permission to one or more Categories of Onward Use of Data, paragraph 4.2 will apply, as will the following additional provisions:
- 4.3.1 Data onwardly shared on the basis of the permission previously provided by the Provider to a Category of Onward Use of Data shall not be recalled or required to be deleted;
- 4.3.2 Data included in Heidi Plus on the basis of the permission previously provided by the Provider to a Category of Onward Use of Data will not be removed and will remain in Heidi Plus;
- 4.3.3 The Provider acknowledges that their Provider Information may still need to be Processed in the following Data Dissemination Period to remove it from Data Collections in the process of being compiled by HESA; and
- 4.3.4 HESA may retain a copy of any dataset onwardly shared on the basis of the permission previously provided by the Provider to a Category of Onward Use of Data for a period of up to 2 years. Such copy datasets may be processed by HESA: for audit and record management purposes; for the purpose of dealing with any enquiries from recipients of the dataset; and to enable HESA to remove the Provider's data and update the dataset for the recipient for a new Reporting Year.



SCHEDULE 10

VARIATION FORM FOR OPTIONAL SERVICES SUBSCRIPTION CATEGORIES AND CATEGORIES OF ONWARD USE OF DATA

Name of Provider:

UKPRN Number of Provider:

Variation of Optional Services Subscription Category (Boxes to be marked as applicable)	Variation Effective Date	Mark to apply
Subscribe to Heidi Plus (Note: A separate agreement will be made available to you on receipt of this Variation Form)	This will take effect on the commencement date of the Heidi Plus Subscription Agreement	
Unsubscribe to Heidi Plus (Note: Notice to terminate your Heidi Plus Subscription Agreement will need to be served in accordance with the separate Heidi Plus Subscription Agreement)	N/A	N/A
Subscribe to Graduate Outcomes Opt-in Questions	This will take effect at the commencement of the next Graduate Outcomes Survey Year.	
Unsubscribe to Graduate Outcomes Opt-in Questions	This will take effect at the end of the current Graduate Outcomes Survey Year.	
Subscribe to Graduate Outcomes Provider Questions	This will take effect at the commencement of the next Graduate Outcomes Survey Year.	
Unsubscribe to Graduate Outcomes Provider Questions	This will take effect at the end of the current Graduate Outcomes Survey Year.	
Subscribe to Estates Management Record (for England)	This will take effect during the Reporting Year if there is an appropriate length of time to collect and report the data within the Collection Cycle. Otherwise it will take effect at the commencement of the next Estates Management Record Data Collection.	

Variation of Optional Services Subscription Category (Boxes to be marked as applicable)	Variation Effective Date	Mark to apply
Unsubscribe to Estates Management Record (for England)	This will take effect at the end of the current Estates Management Record Data Collection.	
Subscribe to Staff Outside the Coverage of the Staff Record Optional Services Subscription Category (for England)	This will take effect at the commencement of the next Staff Record Data Collection.	
Unsubscribe to Staff Outside the Coverage of the Staff Record Optional Services Subscription Category (for England)	This will take effect at the end of the current Staff Record Data Collection.	

Categories of Onward Use of Data (Boxes to be marked as applicable)	Variation Effective Date	Mark to apply
Subscribe to Category 1 – Sharing for the benefit of Providers, Statutory Customers and the Sector.	This will take effect at the commencement of the next Data Dissemination Period if a Variation Form is received by HESA at least 10 Working Days prior to the end of the current Data Dissemination Period. Otherwise the new Categories of Onward Use of Data will take effect at the start of the next but one Data Dissemination Period.	
Unsubscribe to Category 1 – Sharing for the benefit of Providers, Statutory Customers and the Sector.	This will take effect at the commencement of the next Data Dissemination Period if a Variation Form is received by HESA at least 10 Working Days prior to the end of the current Data Dissemination Period. Otherwise the new Categories of Onward Use of Data will take effect at the start of the next but one Data Dissemination Period.	
Subscribe to Category2 – Sharing for the benefit of students, prospective students, student representatives and graduate employers	This will take effect at the commencement of the next Data Dissemination Period if a Variation Form is received by HESA at least 10 Working Days prior to the end of the current Data Dissemination Period. Otherwise the new Categories of	



	Onward Use of Data will take effect at the start of the next but one Data Dissemination Period.	
Unsubscribe to Category 2 - Sharing for the benefit of students, prospective students, student representatives and graduate employers	This will take effect at the commencement of the next Data Dissemination Period if a Variation Form is received by HESA at least 10 Working Days prior to the end of the current Data Dissemination Period. Otherwise the new Categories of Onward Use of Data will take effect at the start of the next but one Data Dissemination Period.	
Subscribe to Category 3 - Sharing for the benefit of other public, private or third-sector organisations.	This will take effect at the commencement of the next Data Dissemination Period if a Variation Form is received by HESA at least 10 Working Days prior to the end of the current Data Dissemination Period. Otherwise the new Categories of Onward Use of Data will take effect at the start of the next but one Data Dissemination Period.	
Unsubscribe to Category 3 - Sharing for the benefit of other public, private or third-sector organisations.	This will take effect at the commencement of the next Data Dissemination Period if a Variation Form is received by HESA at least 10 Working Days prior to the end of the current Data Dissemination Period. Otherwise the new Categories of Onward Use of Data will take effect at the start of the next but one Data Dissemination Period.	

We understand that, in accordance with the terms of the Agreement, where we are withdrawing our Agreement for Provider Information to be onwardly shared for Categories of Onward Use of Data:

- Data previously onwardly shared on the basis of the permission previously granted by the Provider to a Category of Onward Use of Data shall not be recalled or required to be deleted; Data included in Heidi Plus on the basis of the permission previously provided by the Provider to a Category of Onward Use of Data, will not be removed. However, once the new



Categories of Onward Use of Data outlined in this Variation Form take effect (as indicated above), no new data will be added from the Provider Information.

- The Provider acknowledges that their Provider Information may still need to be processed in the following Data Dissemination Period to remove it from Data Collections in the process of being compiled by HESA.
- HESA shall retain a copy of any dataset onwardly shared on the basis of the permission previously provided by the Provider to a Category of Onward Use of Data for a period of 2 years. Such copy data sets may be processed by HESA: for audit and record management purposes; for the purpose of dealing with any enquiries from recipients of the dataset; and to enable HESA to remove the Provider's data and update the data set for the subsequent Reporting Year.

Signed:

By the Accountable Officer for and on behalf of the Provider

